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KENNETH PETRUZZELLI (SBN 227192)
JOHN PRAGER (SBN 289610)
STATE WATER RESOURCES CONTROL BOARD
1001 I Street, 16th Floor
Sacramento, CA 95814
Tel: (916) 319-8577
Fax: (916) 341-5896

Attorneys for the Prosecution Team

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

**In the matter of Cease and Desist
Order and Administrative Civil
Liability Complaint issued against
Nancy K. Donovan and Stephen J.
Peters**) **Prosecution Team Motion for Default**

I. INTRODUCTION

The Prosecution Team requests that the Hearing Officer deem the Request for a Hearing filed by Nancy K. Donovan and Stephen J. Peters (Diverters) on July 6, 2012, and July 18, 2012 as withdrawn, and consider the immediate imposition of a cease and desist order (CDO) and administrative civil liability (ACL) without further notice. The Diverters failed to submit a Notice of Intent to Appear (NOI) as required for any party who wishes to take part in the Hearing by the appropriate deadline, and when that occurs the Hearing Procedures are clear – the State Water Board will deem the Request for Hearing as withdrawn.

II. BACKGROUND

The Notice of Public Hearing issued on March 15, 2015 (Hearing Notice) outlines the procedures for submitting a Notice of Intent to Appear:

“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, anyone wishing 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 the deadline listed below. **If Nancy K. Donovan and Stephen J. Peters fail to submit a Notice of Intent to Appear by the deadline specified in this notice, the State Water Board will deem the request for a hearing regarding the issuance of a cease and desist order and imposition of administrative civil liability to be withdrawn, and the Board may adopt the draft CDO and impose administrative civil liability in the amount of \$40,000**

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without further notice. If Nancy K. Donovan and Stephen J. Peters withdraw their hearing request, the Board may also adopt the draft CDO and impose administrative civil liability without further notice.” (emphasis in original)

On July 21, 2016, the State Water Board issued a Notice of Rescheduled Public Hearing, which provides the: (1) rescheduled hearing date, (2) revised deadline for participants to submit a NOI form; and (3) revised deadline for receipt and service of witnesses’ proposed testimony, exhibits, lists of exhibits, qualifications, and statement of service. The revised deadline to submit an NOI was 12 Noon, August 10, 2016. The NOI appeared on the fourth page of the Notice of Rescheduled Hearing.

The State Water Board did not receive Respondents’ NOI by the deadline.

Despite the clearly stated consequences of failing to adhere to this deadline the Hearing Officer instead issued a nine day extension of this deadline in a letter dated August 11, 2016, in violation of the clear and contrary direction of the Hearing Procedures.

After receiving the notice from the Hearing Officer of the extended deadline Ms. Donovan, on August 11, 2016, responded that she had not received the Notice of Intent to Appear that was attached to the July 21, 2016 Notice of Rescheduled Public Hearing.

III. ARGUMENT

The procedures outlined for the hearing in the Hearing Notice specified the consequences of failing to timely file a Notice of Intent to Appear within the scheduled timeframe. The language in Paragraph 5 of the Hearing Notice does not allow for Hearing Officer discretion in the manner in which it has been exercised in this case. The operative sentence of the paragraph outlines a clear conditional logical format that requires the State Board to act in a specific fashion if the condition is met. While the State Water Board need not immediately issue the CDO and ACL, it must deem the Request for Hearing as withdrawn. The Hearing Officer does not have the discretion to arbitrarily extend the deadline to accommodate a party that has had ample opportunity to file the Notice of Intent to Appear within the deadline, but didn’t.

Furthermore, considering the fact that the Hearing Request was initially submitted in 2012, and the hearing postponed at the Diverter’s request numerous times, it stands to reason that the Diverters have received and understood the previous Hearing Notices that outline the requirements for participation at the Hearing. The Diverters have had numerous communications with the Hearing Team regarding this matter that do not evidence any confusion or misunderstanding of the procedures or substance of the Hearing. See attached Declaration of Kenneth Petruzzelli in Support of Motion for Default (“Petruzzelli Decl.”), p. 1 at ¶ 2.)

Moreover, Ms. Donovan’s claim that she received a Notice of Rescheduled Public Hearing that did not contain a Notice of Intent to Appear form does not stand up to scrutiny. The Diverters

1 admitted to receiving the Notice of Rescheduled Public Hearing via email on July 21, 2016 in their
2 August 11, 2016 communication with the Hearing Officer. (Petruzzelli Decl.), p. 1 at ¶ 4.). The
3 Notice of Rescheduled Public Hearing clearly includes the Notice of Intent to Appear on the fourth
4 page with the new deadline in large bright font across the top of the form. (Petruzzelli Decl.), p. 1
at ¶ 3.) There is no reasonable way this could have been missed.

5 **IV. CONCLUSION**

6 Based on the foregoing, the Prosecution Team requests that the Hearing Officer deem the
7 Request for Hearing filed by the Diverters on July 6, 2012, and July 18, 2012 as withdrawn and
8 consider the immediate imposition of a cease and desist order and administrative civil liability
without further notice.

9 Respectfully submitted,

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Kenneth Petruzzell

15 **OFFICE OF ENFORCEMENT**

16 Attorney for the Prosecution Team
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1 KENNETH PETRUZZELLI (SBN 227192)
2 JOHN PRAGER (SBN 289610)
3 STATE WATER RESOURCES CONTROL BOARD
4 1001 I Street, 16th Floor
5 Sacramento, CA 95814
6 Tel: (916) 319-8577
7 Fax: (916) 341-5896

Attorneys for the Prosecution Team

7 **BEFORE THE STATE WATER RESOURCES CONTROL BOARD**

8 **In the matter of Cease and Desist) Declaration of Kenneth Petruzzelli in**
9 **Order and Administrative Civil) Support of Prosecution Team Motion**
10 **Liability Complaint issued against) for Default**
11 **Nancy K. Donovan and Stephen J.)**
12 **Peters**

11 I, Kenneth Petruzzelli, declare as follows:

- 12 1. I am an Attorney III (Specialist) with the Office of Enforcement of the State Water
13 Resources Control Board (State Water Board). I have been a practicing attorney
14 since 2003, California Bar No. 227192. I joined the Office of Enforcement in 2015. I
15 have represented the Prosecution Team as lead counsel in the matter of the
16 Administrative Civil Liability Complaint and Draft Cease and Desist Order issued
17 against Nancy K. Donovan and Stephen J. Peters since about May 4, 2016.
- 18 2. On July 11, 2016 Ernie Mona, on behalf of the Hearing Team, emailed Ms.
19 Donovan regarding her availability for a tentatively set October 12, 2016, reminding
20 her of the need to submit a Notice of Intent to Appear, which would be included
21 with the formal Notice of Rescheduled Hearing. Ms. Donovan acknowledged
22 receipt of this email. A true and correct copy of that email is attached as
23 Attachment 1.
- 24 3. On July 21, 2016, the State Water Board issued a Notice of Rescheduled Public
25 Hearing, which included on page 4, the Notice of Intent to Appear form. The
26 revised deadline to submit a Notice of Intent to Appear was 12 Noon, August 10,
27 2016. Ernie Mona, on behalf of the Hearing Team, emailed the Notice of
28 Rescheduled Public Hearing to Ms. Donovan using the e-mail address Ms.
Donovan had previously provided. The email from Mr. Mona further stated that the
Notice of Rescheduled Public Hearing was also sent by certified US Mail. The

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Notice of Rescheduled Public Hearing is available at the State Water Board's Hearings page at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/donovan/rescheduled_notice_donovan_peters.pdf/. A true and correct copy of that email is attached as Attachment 2.

- 4. On August 11, 2016 Ms. Donovan emailed the Hearing team, claiming that she did not receive a Notice of Intent to Appear with a rescheduled deadline on July 21, 2016. A true and correct copy of this email is attached as Attachment 3.

I declare under penalty of perjury to the laws of the State of California that the foregoing is true and correct. Executed this 12th day of August 2016, at Sacramento, California.



Kenneth Petruzzelli

Petruzzelli, Kenneth@Waterboards

From: Mona, Ernie@Waterboards
Sent: Monday, July 11, 2016 7:49 AM
To: N D
Cc: Petruzzelli, Kenneth@Waterboards; Olson, Samantha@Waterboards; Buckman, Michael@Waterboards; Riddle, Diane@Waterboards; Mrowka, Kathy@Waterboards; Tauriainen, Andrew@Waterboards
Subject: RE: Nancy K. Donovan and Stephen J. Peters ACL/CDO Hearing

Ms. Donovan,

Thank you for responding to our inquiry regarding your availability to attend a “tentatively” scheduled hearing on the above-referenced matter.

If the “tentatively “ scheduled October 12th hearing moves forward, a **formal** Notice of Rescheduled Hearing will be issued, as noted in my June 2nd email. At this time, however, it is possible that the “tentatively” scheduled hearing may be rescheduled for a later date. Should rescheduling occur, we will contact you and provide you with possible alternative “tentative” hearing dates and request that you reconfirm your availability to attend. Again, thank you for your cooperation.

Posted information can be viewed at the [Project Website](#):

(http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/donovan/index.shtml)

If you have any questions, please contact me or Michael Buckman, Chief of the Hearings Unit (Michael.Buckman@waterboards.ca.gov).

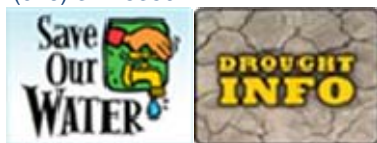
Ernest Mona

[State Water Resources Control Board](#)

[Division of Water Rights](#)

[Bay-Delta and Hearings Section](#)

(916) 341-5359



From: N D [mailto:n.donovan@LIVE.COM]
Sent: Friday, July 08, 2016 9:50 AM
To: Mona, Ernie@Waterboards
Subject: Re: Nancy K. Donovan and Stephen J. Peters ACL/CDO Hearing

Dear Mr. Mona,

Thank you for your message, I have been under the weather for a while and am just responding to messages. I should be able to attend the rescheduled hearing on October 12, 2016. If something beyond my control should arise please advise me of my available options regarding the hearing.

Thank you in advance,

Nancy Donovan

From: Mona, Ernie@Waterboards <Ernie.Mona@waterboards.ca.gov>

Sent: Thursday, June 2, 2016 8:56 AM

To: 'N D'

Cc: Petruzzelli, Kenneth@Waterboards; Olson, Samantha@Waterboards; Buckman, Michael@Waterboards; Riddle, Diane@Waterboards; Mrowka, Kathy@Waterboards; Tauriainen, Andrew@Waterboards

Subject: RE: Nancy K. Donovan and Stephen J. Peters ACL/CDO Hearing

Miss Donovan,

The purpose of this email is to request that you provide us with confirmation of your availability to attend the rescheduled hearing on the above-referenced enforcement action. As noted in my previously sent email, the hearing has been tentatively rescheduled to commence on **Wednesday, October 12, 2016**. A formal Notice of Rescheduled Hearing will be issued providing additional specific information setting the date, time and place of the rescheduled hearing, and other deadlines for submittal of Notices of Intent to Appear and exhibits/testimony.

Posted information can be viewed at the [Project Website](#):

(http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/donovan/index.shtml)

If you have any questions, please contact me or Michael Buckman, Chief of the Hearings Unit

(Michael.Buckman@waterboards.ca.gov).

Thank you

Ernest Mona

[State Water Resources Control Board](#)

[Division of Water Rights](#)

[Bay-Delta and Hearings Section](#)

(916) 341-5359



From: Mona, Ernie@Waterboards

Sent: Friday, May 13, 2016 8:05 AM

To: N D; Tauriainen, Andrew@Waterboards; Mrowka, Kathy@Waterboards

Cc: Petruzzelli, Kenneth@Waterboards; Olson, Samantha@Waterboards; Buckman, Michael@Waterboards; Riddle, Diane@Waterboards

Subject: RE: Nancy K. Donovan and Stephen J. Peters ACL/CDO Hearing

Nancy K. Donovan
21415 Hwy 128
Yorkville, CA 95494.
n.donovan@LIVE.COM

Kathy Mrowka
Enforcement Section
Division of Water Rights
Kathy.Mrowka@waterboards.ca.gov

Andrew Tauriainen
Office of Enforcement
Andrew.Tauriainen@waterboards.ca.gov

Ladies and Gentlemen:

After consideration of Ms. Donovan's present circumstances, the Hearing Officers have granted a further postponement of this hearing until after September 15, 2016. Therefore, the purpose of this email is to provide you with an advance courtesy notice that the hearing on the above referenced matter has tentatively been rescheduled to commence on **Wednesday, October 12, 2016**. A formal Notice of Rescheduled Hearing will be issued in the future providing additional specific information setting the date, time and place of the rescheduled hearing, and other deadlines for submittal of Notices of Intent to Appear and exhibits/testimony.

Should a settlement be reached as a result of private settlement discussions between the Prosecution Team and Nancy K. Donovan and Stephen J. Peters, the hearing team should be notified as soon as possible.

If you have any questions, please contact me or Michael Buckman, Chief of the Hearings Unit (Michael.Buckman@waterboards.ca.gov).

Thanks

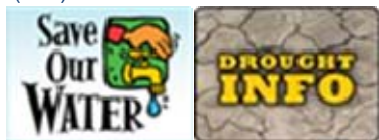
Ernest Mona

[State Water Resources Control Board](#)

[Division of Water Rights](#)

[Bay-Delta and Hearings Section](#)

(916) 341-5359



From: N D [<mailto:n.donovan@LIVE.COM>]
Sent: Monday, May 09, 2016 1:22 PM
To: Mona, Ernie@Waterboards
Subject: Re: Nancy K. Donovan and Stephen J. Peters ACL/CDO Hearing

Dear Mr. Mona,

I would like to respond to your inquiry. As a result of the additional treatment I am receiving I will be available after September 15, 2016.

Thank you,

Nancy Donovan

From: Mona, Ernie@Waterboards <Ernie.Mona@waterboards.ca.gov>
Sent: Tuesday, May 3, 2016 1:09 PM
To: n.donovan@live.com
Cc: Tauriainen, Andrew@Waterboards; Mrowka, Kathy@Waterboards; Buckman, Michael@Waterboards; Olson, Samantha@Waterboards
Subject: Nancy K. Donovan and Stephen J. Peters ACL/CDO Hearing

Ms. Donovan,

The purpose of this email is to request information concerning your availability to attend a hearing on the above subject matter, during the weeks of July 4-8, 2016, July 11-15, 2016 or July 18-22, 2016. Please respond to this request by **Monday, May 9, 2016**.

RECAP: To recap events, on July 6, 2012, Mr. Peters [requested a hearing](#) on a June 14, 2012, [Administrative Civil Liability Complaint \(ACL\) and draft Cease and Desist Order \(CDO\)](#) issued by the Assistant Deputy Director of the Division of Water Rights. On March 13, 2015, the State Water Board issued a [Notice of Public Hearing](#), which set July 1, 2015 as the date of the hearing on this matter. March 20, 2015, the State Water Board received your request to reschedule the July 1st hearing, the Hearing Officers granted the request, and the State Water Board issued on April 10, 2015 a [Notice of Postponement of Public Hearing](#). (See also [Project Webpage: http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/donovan/index.shtml](#))

SETTLEMENTS: As noted in the March 13th Notice, in this is water rights enforcement hearing, the Prosecution Team is prosecuting Nancy K. Donovan and Stephen J. Peters for an alleged violation. The Prosecution Team and Nancy K. Donovan and Stephen J. Peters may, at their discretion, engage in private settlement discussions and may include any other persons in those discussions. Due to the separation of functions discussed above, the hearing team cannot participate in settlement discussions. Should the a settlement be reach, the hearing team should be notified as soon as possible.

If you have any questions regarding this email, please contact me...Thanks

Ernest Mona

[State Water Resources Control Board](#)
[Division of Water Rights](#)
[Bay-Delta and Hearings Section](#)
(916) 341-5359



Petruzzelli, Kenneth@Waterboards

From: Mona, Ernie@Waterboards
Sent: Thursday, July 21, 2016 5:46 PM
To: Tauriainen, Andrew@Waterboards; Petruzzelli, Kenneth@Waterboards; Mrowka, Kathy@Waterboards; n.donovan@live.com
Cc: Olson, Samantha@Waterboards; Buckman, Michael@Waterboards; Riddle, Diane@Waterboards
Subject: Nancy K. Donovan and Stephen J. Peters ACL/CDO Hearing: Notice of Rescheduled Hearing
Attachments: rescheduled notice_donovan-peters.pdf

RESEND

Nancy K. Donovan
Stephen J. Peters
21451 Hwy 128
Yorkville, CA 95494.
n.donovan@LIVE.COM

Ken Petruzzelli, Andrew Taurianen
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814

Ladies and Gentlemen:

The purpose of this email is to provide you with the attached Notice of Rescheduled Public Hearing related to the above-referenced matter. A hard copy of the notice will be posted at the Project Webpage: [Nancy K. Donovan & Stephen J. Peters: ACL-CDO Hearing](#), and will also be sent, via CERTIFIED regular mail, to:

Nancy K. Donovan
Stephen J. Peters
21451 Hwy 128
Yorkville, CA 95494

If you have any question regarding this email, please contact me. Thank you.

Ernest Mona
[State Water Resources Control Board](#)
[Division of Water Rights](#)
[Bay-Delta and Hearings Section](#)
(916) 341-5359



State Water Resources Control Board

NOTICE OF RESCHEDULED PUBLIC HEARING

The State Water Resources Control Board will hold a Public Hearing to determine whether to issue a Cease and Desist Order and whether to impose Administrative Civil Liability against

Nancy K. Donovan and Stephen J. Peters

**Unnamed Stream tributary to Maple Creek
thence Rancheria Creek thence Navarro River**

The Public Hearing listed above originally scheduled to commence on **July 1, 2015** **has been rescheduled** to commence on

**Wednesday, October 12, 2016
at 9:00 a.m.**

in the Byron-Sher Auditorium/Hearing Room
Joe Serna Jr. CalEPA Building
1001 I Street, Second Floor
Sacramento, CA

This notice supplements the [March 13, 2015 Notice of Public Hearing](http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/donovan/notice_donovan_peters.pdf) available at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/donovan/notice_donovan_peters.pdf. Except to the extent expressly modified in this notice of rescheduling, the hearing requirements set forth in the original hearing notice remain unchanged.

PURPOSE 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: 1) whether to impose administrative civil liability for unauthorized diversion of water and, if so, whether in the amount of \$40,000, or some other amount; and 2) whether to adopt, with or without revision, the June 14, 2012 draft cease and desist order (draft CDO) against Nancy K. Donovan and Stephen J. Peters.

SUMMARY OF CHANGES

This notice describes the following changes or clarifications: (1) rescheduled hearing date, (2) revised deadline for participants to submit a Notice of Intent to Appear; and (3) revised deadline for receipt and service of witnesses' proposed testimony, exhibits, lists of exhibits, qualifications, and statement of service.

REVISED HEARING SCHEDULE AND DEADLINES

The hearing has been rescheduled to commence on **Wednesday, October 12, 2016 at 9:00 a.m.**

The deadlines for submittal of: (1) a Notice of Intent to Appear and (2) exhibits and other hearing documents have been changed, as follows:

12 Noon, August 10, 2016

Deadline for receipt and service of Notice of Intent to Appear

12 Noon, September 14, 2016

Deadline for receipt and service of witnesses' proposed testimony, exhibits, lists of exhibits,

SUBMITTALS TO THE STATE WATER BOARD

All documents, including 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
Attention: Ernest Mona

By Mail: P.O. Box 2000, Sacramento, CA 95812-2000
By Hand Delivery: Joe Serna Jr.-CalEPA Building
1001 I Street, 2nd Floor, Sacramento, CA 95814
By Fax: (916) 341-5400
By Email: wrhearing@waterboards.ca.gov
With Subject of "**Donovan/Peters Hearing**"

ALL HAND DELIVERED SUBMITTALS should be stamped with the date and time by the Division of Water Rights' Records Unit on the second floor of the Joe Serna Jr.-CalEPA Building at the above address prior to or at the submittal deadline. Persons delivering submittals must first check in with lobby security personnel on the first floor. Hand delivered submittals that do not have a timely date and time stamp by the Division of Water Rights' Records Unit will be considered late and may not be accepted by the hearing officer.

IF YOU HAVE ANY QUESTIONS

During the pendency of this proceeding, there shall be no ex parte communications regarding substantive or controversial procedural matters within the scope of the proceeding between State Water Board members or hearing team members and any of the other participants, including members of the prosecution team. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters should be directed to Senior Staff Counsel Samantha Olson at (916) 327-8235, or by email to samantha.olson@waterboards.ca.gov; or Staff Engineer Ernest Mona at (916) 341-5359, or by email to ernie.mona@waterboards.ca.gov. (Gov. Code, § 11430.20, subd. (b).)

July 21, 2016

Date



Jeanine Townsend
Clerk to the Board

NOTICE OF INTENT TO APPEAR

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

Draft Cease and Desist Order
and Administrative Civil Liability
against
Nancy K. Donovan and Stephen J. Peters

**Rescheduled to commence
Wednesday, October 12, 2016 at 9:00 a.m.**

1) Check only one (1) of the following:

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the Following Table)

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.)

2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:

Name (Print): _____

Mailing Address: _____

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

E-mail: _____

Optional:

- I/we decline electronic service of hearing-related materials.

Signature: _____ Date: _____

Petruzzelli, Kenneth@Waterboards

From: Mona, Ernie@Waterboards
Sent: Thursday, August 11, 2016 6:17 PM
To: N D
Cc: Petruzzelli, Kenneth@Waterboards; Olson, Samantha@Waterboards; Buckman, Michael@Waterboards; Petruzzelli, Kenneth@Waterboards; Mrowka, Kathy@Waterboards; Riddle, Diane@Waterboards
Subject: RE: Nancy K. Donovan and Stephen J. Peters ACL/CDO Hearing: Failure to Submit Notice of Intent to Appear
Attachments: donovanpeters_nonoletter081116(3).pdf

Ms. Donovan,
A copy of the Notice of Intent to Appear form is attached (page 3) to the attached PDF file (letter that we just sent to you). If you have any questions, please contact me....Thanks

From: N D [n.donovan@LIVE.COM]
Sent: Thursday, August 11, 2016 4:24 PM
To: Mona, Ernie@Waterboards
Subject: Re: Nancy K. Donovan and Stephen J. Peters ACL/CDO Hearing: Failure to Submit Notice of Intent to Appear

Mr. Mona,

Please be advised we did not receive a Notice of Intent to Appear only a Notice of Rescheduled Public Hearing that I have attached for your review. Both Mr. Peters and I plan on attending the rescheduled Hearing on October 12, 2016. Please forward any additional forms required so we may return them to you.

Thank you,

Nancy Donovan

From: Mona, Ernie@Waterboards <Ernie.Mona@waterboards.ca.gov>
Sent: Thursday, August 11, 2016 2:12 PM
To: n.donovan@live.com
Cc: Petruzzelli, Kenneth@Waterboards; Prager, John@Waterboards; Mrowka, Kathy@Waterboards; Arnold, Jane@Wildlife; Riddle, Diane@Waterboards; Buckman, Michael@Waterboards; Olson, Samantha@Waterboards
Subject: Nancy K. Donovan and Stephen J. Peters ACL/CDO Hearing: Failure to Submit Notice of Intent to Appear

Nancy K. Donovan
Stephen J. Peters
21451 Hwy 128

Yorkville, CA 95494.
n.donovan@LIVE.COM

Ms. Donovan and Mr. Peters:

The purpose of this email is to provide you with a copy of the attached letter regarding the above-referenced matter. The attached letter will also be sent via CERTIFIED regular mail to above mailing address, as well as posted at

the Project

Website: http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/donovan/index.shtml

If you have any question regarding this email, please contact me. Thank you.

Ernest Mona

[State Water Resources Control Board](#)

[Division of Water Rights](#)

[Bay-Delta and Hearings Section](#)

(916) 341-5359



August 11, 2016

VIA CERTIFIED REGULAR MAIL AND ELECTRONIC MAIL

Nancy K. Donovan and Stephen J. Peters
21451 Hwy 128
Yorkville, CA 95494.
n.donovan@LIVE.COM

Dear Ms. Donovan and Mr. Peters:

**FAILURE TO SUBMIT NOTICE OF INTENT TO APPEAR AT PUBLIC HEARING
CONCERNING THE IMPOSITION OF ADMINISTRATIVE CIVIL LIABILITY UPON AND
ADOPTION OF CEASE AND DESIST ORDER AGAINST NANCY K. DONOVAN AND
STEPHEN J. PETERS – NAVARO RIVER WATERSHED IN MENDOCINO COUNTY**

Nancy K. Donovan and Stephen J. Peters (hereafter Respondents) have failed to submit to the State Water Resources Control Board (State Water Board or Board) a Notice of Intent to Appear (NOI) for the October 12, 2016 Public Hearing to determine whether to issue a cease and desist order (CDO) against and whether to impose administrative civil liability (ACL) upon the Respondents.

The Respondents were served with an ACL complaint and draft CDO on June 14, 2012. In letters dated July 6, 2012 and July 18, 2012, respectively, Mr. Peters and Ms. Donovan acknowledged receipt of the ACL complaint and draft CDO and requested a hearing. On March 13, 2015, the State Water Board issued a [Notice of Public Hearing](#) setting July 1, 2015 as the hearing date. Based on requests by Ms. Donovan, the Hearing Officers agreed on multiple occasions to postpone the hearing, which is now rescheduled to commence on Wednesday, October 12, 2016. (See [Notice of Postponement of Public Hearing](#).)

On July 21, 2016, the State Water Board issued a [Notices of Rescheduled Public Hearing](#), which provides: (1) rescheduled hearing date, (2) revised deadline for participants to submit a NOI form; and (3) revised deadline for receipt and service of witnesses' proposed testimony, exhibits, lists of exhibits, qualifications, and statement of service. The revised deadline to submit an NOI was **12 Noon, August 10, 2016**. The State Water Board did not receive Respondents' NOI by the deadline.

The original March 13, 2015 hearing notice provides:

If Nancy K. Donovan and Stephen J. Peters fail to submit a Notice of Intent to Appear by the deadline specified in this notice, the State Water Board will deem the request for a hearing regarding the issuance of a cease and desist order and imposition of administrative civil liability to be withdrawn, and the Board may adopt the draft CDO and impose administrative civil liability in the amount of \$40,000 without further notice. If

Nancy K. Donovan and Stephen J. Peters withdraw their hearing request, the Board may also adopt the draft CDO and impose administrative civil liability without further notice.

Accordingly, if the Respondents did not intend to withdraw their hearing request, they must immediately submit a NOI to:

Division of Water Rights
State Water Resources Control Board
Attention: Michael Buckman

By Mail: P.O. Box 2000, Sacramento, CA 95812-2000

By Hand Delivery: Joe Serna, Jr.-CalEPA Building
1001 I Street, 2nd Floor, Sacramento, CA 95814

By Fax: (916) 341-5400

By Email: wrhearing@waterboards.ca.gov
With Subject of "Donovan/Peters Hearing"

In completing the enclosed NOI form, Respondents must check one of the following boxes: 1) "I/we plan to call the following witnesses to testify at the hearing" or 2) "I/we intend to participate by cross-examination or rebuttal only." If the Respondents plan to call witnesses, they must identify each witness on the NOI and provide his or her: 1) name, 2) subject of proposed testimony, 3) estimated length of direct testimony, and 4) status as an expert witness.

If we do not receive a NOI from the Respondents by **12:00 Noon, Friday, August 19, 2016**, the State Water Board will immediately issue a notice cancelling the public hearing they requested and may immediately impose ACL upon them and adopt the draft CDO against them without further notice.

Should a settlement be reached as a result of private settlement discussions between the Prosecution Team and Respondents, the hearing team should be notified as soon as possible. Counsel to the Prosecution Team, Kenneth P. Petruzzelli, Attorney III, in this matter can be reach by telephone at 916-319-8577 or by e-mail at kenneth.petruzzelli@waterboards.ca.gov.

Otherwise, if the Respondents have non-controversial procedural questions, they may contact Senior Staff Counsel Samantha Olson at (916) 327-8235, or by email to samantha.olson@waterboards.ca.gov; or Staff Engineer Ernest Mona at (916) 341-5359, or by email to ernie.mona@waterboards.ca.gov. (Gov. Code, § 11430.20, subd. (b).)

Sincerely,

ORIGINAL SIGNED BY

Michael Buckman, Chief
Hearing Unit

NOTICE OF INTENT TO APPEAR

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

Draft Cease and Desist Order
and Administrative Civil Liability
against
Nancy K. Donovan and Stephen J. Peters

**Rescheduled to commence
Wednesday, October 12, 2016 at 9:00 a.m.**

1) Check only one (1) of the following:

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we plan to call the following witnesses to testify at the hearing. (Fill in the Following Table)

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.)

2) Fill in the following information of the Participant, Party, Attorney, or Other Representative:

Name (Print): _____

Mailing Address: _____

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

E-mail: _____

Optional:

- I/we decline electronic service of hearing-related materials.

Signature: _____ Date: _____