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State Water Resources Control Board

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Gray Davis
Governor

NOTICE OF PUBLIC HEARING

Regarding

**State Water Resources Control Board will hold a hearing regarding
Administrative Civil Liability Complaint No. 262.5-14**

Against William and Jennifer Sloan

Unnamed Stream in Sonoma County

Commencing May 9, 2000, at 1 P.M.

(or as soon thereafter as the matter may be heard)

at

State Water Resources Control Board

Paul R. Bonderson Building

First-Floor Hearing Room

901 P Street, Sacramento, CA

SUBJECT OF HEARING

The purpose of this hearing is to receive evidence regarding adoption of [an order imposing administrative civil liability](#) against William and Jennifer Sloan (Sloans) in the amount of \$500, or some other amount, for an unauthorized diversion of water.

BACKGROUND

By letter dated April 9, 1998, the State Water Resources Control Board (SWRCB), Division of Water Rights (Division), notified the Sloans that a reservoir located on their property was not authorized by any water right known to the Division. The Division's April 9, 1998, letter requested that the Sloans identify an existing water right for the reservoir or file a water right application. The Division files indicate that there was no written response to the April 9, 1998 letter. Division staff conducted a field inspection on May 5, 1998, and found an offstream pit-type reservoir with an estimated capacity of 5 acre-feet. The water was being

diverted into the reservoir via pipeline from a stream on a neighbor's property.

By certified letter dated July 6, 1998, the Sloans were advised of the Division's findings and advised that unless they had evidence showing the diversion to offstream storage was not subject to SWRCB's permitting authority or unless a water right application was submitted within 45 days, enforcement action could be taken without further notice. On September 1, 1998, the SWRCB received a letter from Jennifer Sloan requesting a water right application. The application was mailed to the Sloans on about September 15, 1998. On January 25, 1999, Division staff spoke with Jennifer Sloan by telephone and she confirmed that she had received the application. A contact report on the telephone conversation states that Mrs. Sloan stated the Division could expect the application in 30 days. An application was not submitted as required.

Pursuant to Water Code section 1055(a), the SWRCB's Executive Director issued Administrative Civil Liability (ACL) Complaint No. 262.5-14 on May 14, 1999, in the amount of \$500, against the Sloans. This complaint was issued for the illegal storage of water in a reservoir collecting water from an unnamed stream within the Maacama Creek watershed in Sonoma County. No water right application was filed for the Sloan's reservoir prior to issuance of the ACL complaint.

By letter dated June 14, 1999, Mrs. Sloan submitted an application for Registration of a Small Domestic Use Appropriation and requested a hearing on the proposed civil liability of \$500 as specified in Complaint 262.5-14. Mrs. Sloan's June 14, 1999, letter states that her family is one of many in the area with a small agricultural pond, that they received a permit from Sonoma County for construction of the pond, and that neither their engineer, general contractor, nor the county informed them that a permit was required from the state. Mrs. Sloan questions why her family was "singled out" for enforcement action and states that the diversion of water to the pond from her neighbor's property had been turned off.

Water Code section 1055 provides that a party against whom an ACL complaint has been issued may request a hearing before the SWRCB. In response to Mrs. Sloan's June 14, 1999 letter, the SWRCB has scheduled a hearing on the ACL Complaint No. 262.5-14 for the time and place specified above.

The staff costs associated with issuance of the ACL complaint, including a field inspection and review by the Office of Chief Counsel are conservatively estimated to be well over \$500.

PROJECT DESCRIPTION

The Sloans are the owners of Sonoma County Assessor's Parcel Number (APN) 132-230-18 and a reservoir on that parcel located within the SE1/4 of NW1/4 of Section 29, T10N,

R7W, MDB&M. Division staff estimated the capacity of the reservoir to be 5 acre-feet (0.5-acre surface area x 14.5-foot berm height x 0.7 = 5 AFA). However, Division staff did not measure the depth of water. The Sloan's application for Registration of a Small Domestic Use Appropriation has subsequently been accepted as Small Domestic Use Registration Number D031005R. This registration covers 4320 gallons per day by direct diversion and 2.5 acre-feet by storage. The storage amount is less than the Division's estimate but appears reasonable due to the limited 5-foot depth.

KEY ISSUE

Should the SWRCB adopt an order affirming administrative civil liability and, if so, should it be in the amount of \$500 or some other amount?

HEARING PROCEDURES AND PARTICIPATION

The hearing will provide an opportunity for staff from the Division of Water Rights and Mr. and Mrs. Sloan to present evidence relevant to the issue of imposing administrative civil liability on the Sloans for the reservoir on their property. Each party to the hearing may present testimony and exhibits and may cross-examine witnesses presented by the other party. Parties may present rebuttal evidence. Any rebuttal evidence is also subject to cross-examination.

If a party intends to present written testimony or other exhibits at the hearing, 6 copies of the written testimony or exhibits shall be provided to Mr. David R. Beringer by 4 P.M. on May 5, 2000, at the following address:

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

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

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

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

A copy of the statutes and regulations governing SWRCB adjudicative proceedings may be accessed at the SWRCB web-site at www.swrcb.ca.gov or by calling the staff person listed at the phone number below.

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

PARKING AND ACCESSIBILITY

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

IF YOU HAVE ANY QUESTIONS

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

SIGNED BY

Maureen Marché
Administrative Assistant to the Board.

Dated: April 10, 2000