

SOMACH, SIMMONS & DUNN

A PROFESSIONAL CORPORATION
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March 29, 2007

Via Hand-Delivery

Gary Wolff, P.E., Ph.D., Vice Chair
State Water Resources Control Board
1101 I Street
Sacramento, CA 95812

Re: Vineyard Club, Inc. — Enforcement Proceeding

Dear Vice Chair Wolff:

This firm represents the Vineyard Club, Inc. (Vineyard Club) in connection with Administrative Liability Complaint No. 262.5-44 (ACL) and Proposed Cease and Desist Order No. 262.31-14 (CDO). The purpose of this letter is to inform you of recent communications and actions related to the pending enforcement proceeding that have raised concern regarding the fairness and process being afforded our client.

As set forth in the Vineyard Club's Motion to Dismiss the ACL, the Prosecution Team's advocacy of increased monetary sanctions simply due to the Vineyard Club's exercise of its right to a hearing raises serious constitutional issues and threatens the legitimacy of the process. Since the filing of the Motion to Dismiss, additional circumstances have contributed to the doubt cast on the fundamental fairness of the proceedings.

Some time in January, employees of the Enforcement Section within the SWRCB's Division of Water Rights informed the Vineyard Club that they would no longer assist the Vineyard Club in determining how to comply with the SWRCB's substantive requirements unless the Vineyard Club withdrew its request for a hearing and paid the ACL in full. The Vineyard Club sought this assistance, in part, because they are within the authorized diversion season under their water right license and have a need to divert water. While it was (and is) entirely unclear why state employees would refuse to assist a water right holder in complying with state-mandated conditions, the Vineyard Club ceased to seek staff's assistance.

John O'Hagan, who is apparently also a member of the Prosecution Team, informed the Vineyard Club that it must seek approval of the "measuring device" through

Victoria Whitney, Chief of the Division of Water Rights. (Att. 1) The next day, he indicated that the same determination may be made by the Board from "hearing evidence." (Att. 1)

Consistent with Mr. O'Hagan's e-mail, Mr. Sandell, on behalf of the Vineyard Club sought, by letter dated February 1, 2007, Ms. Whitney's approval of a device that the Vineyard Club believed met the State's requirements. (Att. 2) Ms. Whitney apparently never received the letter. Consequently, Mr. Sandell sought to provide the letter to Ms. Whitney via e-mail. Mr. Sandell originally, and erroneously, sent the e-mail, with the attached letter, to Jean McCue, a member of the Hearing Team in this matter, with a request that Ms. McCue forward the letter to Ms. Whitney. (Att. 3) Upon realizing that he needed to deal directly with Ms. Whitney, Mr. Sandell withdrew his prior e-mail to Ms. McCue with a request that she delete the prior e-mail and informed Ms. McCue that he would communicate directly with Ms. Whitney. (Att. 3) The Vineyard Club provided me with a copy of that e-mail.

Ms. McCue responded to Mr. Sandell, and requested that Mr. Sandell supply her, a member of the Hearing Team, with a copy of the letter the Vineyard Club intended to send to Ms. Whitney. (Att. 4) While Ms. McCue provided Barbara Katz, attorney for the Hearing Team, with a copy of the e-mail, she failed to provide a copy to my office. (Att. 4.) Ms. Katz also replied to Mr. Sandell, without copying this firm, requesting Mr. Sandell also provide a copy of the letter to Mr. Bullock, a member of the Prosecution Team. (Att. 5) I first learned of these communications when Mr. Sandell provided me with a copy of his reply to the Hearing Team's request. I responded to the Hearing Team with a request that, as the Vineyard Club was represented by counsel, any communications between the Hearing Team or the Prosecution Team and the Vineyard Club be done through my office. (Att. 6)

Ms. McCue circulated the February 1, 2007 letter to Ms. Whitney to hearing participants via e-mail, which did not disclose that she had specifically requested the letter from the Vineyard Club. (Att. 7) That letter is now part of the record in this matter. It is entirely unclear why Ms. McCue, in her capacity as a member of the Hearing Team, would request evidence from hearing participants. Nevertheless, these activities appear to violate the SWRCB's prohibitions on ex parte contacts. As set forth in the SWRCB's Ex Parte Communications Questions and Answers, issued on July 25, 2006, by Michael A.M. Lauffer, Chief Counsel, SWRCB, staff assigned to assist and advise the Board

are not advocates for a particular action, and in fact, *cannot have served as investigators*, prosecutors, or advocates in the proceeding or its pre-adjudicative stage for the ex parte exception to apply. These staff members may evaluate the evidence in the record *but shall not furnish, augment, diminish, or modify the evidence in the record.*

(Ex Parte Communications Questions And Answers, Response to Question 22, p. 8, emphasis added.)

In any event, and because the only thing preventing the Vineyard Club from being able to divert water under its license is the SWRCB's approval of a measuring device, the Vineyard Club continued to follow Mr. O'Hagan's advice and request approval from Ms. Whitney. While the Vineyard Club has yet to hear from Ms. Whitney, the Vineyard Club recently received a copy of a letter sent by the "Prosecution Team" to Ms. Whitney on March 23, 2007 effectively requesting Ms. Whitney deny the Vineyard Club's request. (Att. 8.) This letter is troubling in several respects.

The Prosecution Team, and apparently the remainder of staff of the Enforcement Section of the Division of Water Rights, indicated that they would cease assisting the Vineyard Club in its attempt to comply with the state's permit requirements unless and until the Vineyard Club withdrew its request for a hearing and paid the proposed \$4,100 fine. The Prosecution Team did not simply cease to assist the Vineyard Club, however; it also took the extraordinary step of attempting to impede the Vineyard Club's efforts to lawfully exercise rights granted under its water right license by advocating denial of the proposed measuring device.

The Public Notice issued for this hearing indicated that the "Prosecution Team" consisted of Larry Lindsay, Mark Stretars, and Matthew Bullock. Since the Public Notice was issued, the Vineyard Club has learned that both John O'Hagan and Andrew Sawyer are at least assisting, if not actual members of, the Prosecution Team. The March 23, 2007 letter from the "Prosecution Team" to Ms. Whitney is signed by "James W. Kassell, Assistant Deputy Director, Prosecution Team." (Att. 8) Now, just one week before the hearing, the Vineyard Club, for the first time, learns that James Kassell is also a member of the Prosecution Team. This again raises serious concerns. Mr. Kassell, who holds himself out as a member of the Prosecution Team, is the Assistant Chief of the Division of Water Rights. In other words, he (apparently in both his capacity as member of the Prosecution Team *and* as Assistant Chief of the Division) advised Ms. Whitney that the Prosecution Team did not believe the Vineyard Club's proposal should be approved as proposed.

The Vineyard Club also understands that Mr. Lindsay, a member of the Prosecution Team, and its "lead" witness, is the Chief of the Hearing Unit and oversees Ms. McCue, who is a staff member within Mr. Lindsay's Hearing Unit and a member of the Hearing Team. Mr. Kassell, as Assistant Division Chief and member of the Prosecution Team, also oversees Ms. McCue, a member of the Hearing Team.

Gary Wolff, P.E., Ph.D., Vice Chair
March 29, 2007
Page 4

This process is fraught with problems and certain of the activities identified above implicate significant due process and other constitutional issues that cannot go unnoticed and unresolved.

The Prosecution Team's proposal to penalize the Vineyard Club for requesting a hearing, the addition of evidence to the record by the Hearing Team, the failure to disclose all the members of the Prosecution Team, and the fact that members of the Prosecution Team also supervise members of the Hearing Team individually and collectively result in substantial adverse prejudice to the Vineyard Club, which has resulted in a deprivation of due process. At a minimum, we contend the Hearing Officer must disqualify both the Hearing Prosecution Teams.

If you have any questions, or need additional information, please do not hesitate to contact me.

Very truly yours,



Daniel Kelly
Attorney

DK:sb

cc: Matthew Bullock, SWRCB
Michael Lauffer, Chief Counsel, SWRCB
Margaret Brown, SWRCB
Barbara Katz, SWRCB

Att. 1

Subject: RE: Vineyard Club Bypass Measuring
Date: Wednesday, January 17, 2007 4:12 PM
From: Bert Sandell <bertsandell@earthlink.net>
To: 'John O'Hagan' <JOHAGAN@waterboards.ca.gov>

Mr. O'Hagan,

Message received. Thank you.

Best Regards,

Bert Sandell

-----Original Message-----

From: John O'Hagan [mailto:JOHAGAN@waterboards.ca.gov]
Sent: Wednesday, January 17, 2007 3:50 PM
To: bertsandell@earthlink.net
Subject: RE: Vineyard Club Bypass Measuring

Mr. Sandell,

I disagree that the enforcement is a separate matter. Please note that the draft Cease and Desist Order (CDO) requires Vineyard Club within 90 days to:

"Submit documentation that a contract has been signed with a registered engineer to design and install a measuring device in Oak Flat Creek that will meet the approval of the State Water Board. The documentation shall also include a time schedule for installation of the device, including consideration of time to secure appropriate Sonoma County and Department of Fish and Game approvals..."

Because the Vineyard Club requested a hearing on the draft CDO and ACL, the determination of a measuring device that meets the approval of the State Water Board may now be determined by the Board from hearing evidence. We have provided you with ideas for possible compliance but Division staff cannot design the system. The Division also does not maintain a list of examples of acceptable measuring devices because projects have different requirements. For design assistance, you should consult an engineer. Check our website at: www.waterrights.ca.gov for the Consultant List of engineers who are familiar with stream flow measuring devices.

John O'Hagan, Chief
Enforcement Section
Division of Water Rights
(916) 341-5368
Fax (916) 341-5400

johagan@waterboards.ca.gov

>>> "Bert Sandell" <bertsandell@earthlink.net> 1/17/2007 8:46 AM >>>
Mr. Hagan,

Thank you for your response. I view the hearing request on the ACL and the CDO as completely separate from trying to determine what the State wants on a go-forward basis as far as an acceptable measuring device / bypass opening. Our real goal here is to meet the requirements of our permit. Might it be possible for somebody in your organization to provide a specific example of such a mechanism that has been accepted in the past so that it can be used as a guideline with a professional engineer that we engage?

Thanks Again & Best Regards,

Bert Sandell

-----Original Message-----

From: John O'Hagan [mailto:JOHAGAN@waterboards.ca.gov]
Sent: Tuesday, January 16, 2007 12:45 PM
To: bertsandell@earthlink.net
Cc: Larry Lindsay; Mark Stretars
Subject: Re: Vineyard Club Bypass Measuring

Mr. Sandell,

I received a copy of your email to Larry Lindsay concerning approval of your compliance plan. Mr. Lindsay's last email correctly stated that you should consult with a professional engineer and submit your plan by letter. This letter must be addressed specifically to the Division Chief who is the only one with the authority to approve or reject the plan. Division staff, like Larry, does not have such authority. In addition, I directed Larry to discontinue communication with you while we are preparing testimony for the hearing requested by Vineyard Club. Unless this matter is resolved by your payment of the ACL and retraction of the hearing request on the ACL and CDO, it is not proper for Larry, myself or other members of the prosecution team to give you advise at this time.

Thank you for your cooperation.

John O'Hagan, Chief
Enforcement Section
Division of Water Rights
(916) 341-5368
Fax (916) 341-5400

johagan@waterboards.ca.gov

>>> "Bert Sandell" <bertsandell@earthlink.net> 1/12/2007 1:37 PM >>>
Mr. Lindsay,

Thank you once again for your input on the measuring device / bypass opening for the Vineyard Club's water diversion permit. I appreciate your concern about getting too involved with the project. I also understand that the State's interest is in making sure there is sufficient bypass flow, not in helping design a specific system.

I am confident that our design as presented will achieve the required bypass flow. However, I also did some research and found that we could purchase a hand-held flow meter at an affordable price to measure the output from the Bypass Opening. I have therefore modified the language in the attached Compliance Plan to reflect a procedure for field measurement of the Bypass Opening. As you will see, the language has been changed as follows (the new applicable language is highlighted in red):

1. The measuring device / bypass opening, as described in the attached EXHIBIT A, shall be installed each season as part of the temporary dam installation. At the time of installation, and whenever requested by a State Water Resources Control Board representative, a physical flow test will be performed by a Vineyard Club representative using a hand held flow meter to demonstrate that the Bypass Opening is allowing a minimum of .4 cubic feet per second of bypass flow when water is being diverted.

2. The dam shall be inspected and flow tested with a hand held flow meter at least monthly during all periods of operation to ensure that the Bypass Opening remains clear of debris and is fully operational. All such inspections shall be noted in a log maintained by representatives of The Vineyard Club. This log will be presented to a State Water Resources Control Board representative upon request.

Under the attached written Compliance Plan (that includes that above language), The Vineyard Club is responsible for ensuring that the required bypass flow is available at all times when water is being diverted.

Please let me know if the attached Compliance Plan is acceptable. From your earlier correspondence, I understand that you have changed jobs. Therefore, please let me know if I should direct this proposal to another individual within the State Water Resources Control Board.

Thank You & Best Regards,

Bert Sandell

(on behalf of The Vineyard Club)

Att. 2

**The Vineyard Club, Inc.
c/o Bert Sandell
3348 Paradise Drive
Tiburon, CA 94920
(415) 435-9828**

February 1, 2007.

Victoria A. Whitney
Division Chief
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

**RE: Compliance Documentation
Cease and Desist Order No. 262.31-14**

Dear Victoria A. Whitney, Division Chief:

The Vineyard Club, located in Geyserville, CA, received a letter from you on or about December 15, 2006. The letter included an Administrative Civil Liability Complaint No. 262.5-44, and a Cease and Desist Order No. 262.31-14 (the "CDO"). This letter is written on behalf of The Vineyard Club, pursuant to the authorization provided in a letter sent to you on December 23, 2006 by Jan Drayer, The Vineyard Club President. The purpose of this letter is to provide the necessary compliance documentation to satisfy the CDO.

The CDO requires that "Within 90 days of the date of this order, The Vineyard Club shall:

Submit documentation that a contract has been signed with a registered engineer to design and install a measuring device in Oak Flat Creek that will meet the approval of the State Water Board. The documentation shall also include a time schedule for installation of the device, including consideration of time to secure appropriate Sonoma County and Department of Fish and Game approvals ..."

The Vineyard Club contracted with Kurt T. Kelder, P.E., Kelder Engineering, to help design a measuring device / bypass system intended to meet with the approval of the State Water Board. Attached please find an original stamped letter from P.E. Kelder, a Compliance Plan signed by The Vineyard Club, and an Exhibit A attached to the

Letter to Chief Victoria A. Whitney
The Vineyard Club
February 1, 2007
Page 2 of 2

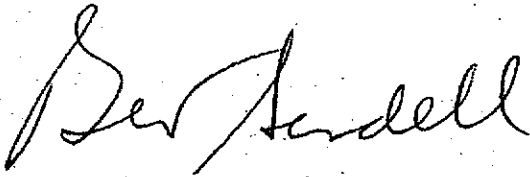
Compliance Plan (titled Measuring Device / Bypass Opening System Design & Calculations). Please note that Exhibit A has also been stamped by P.E. Kelder.

In addition to conforming to the attached Compliance Plan, and the installation schedule described therein, The Vineyard Club intends to independently secure the appropriate Sonoma County and Department of Fish and Game approvals before installing the seasonal diversion system.

Assuming the attached materials meet with the approval of the CDO, then The Vineyard Club would like to withdraw its December 23, 2006 request for a hearing on whether to adopt the Draft CDO. However, we ask that the hearing scheduled for April 4, 2007 related to the Administrative Civil Liability Complaint No. 262.5-44 remain on the schedule.

Thank you for your consideration of this matter. Please contact me at (415) 435-9828 should you have any questions.

Sincerely,



Bert Sandell
Authorized Agent - The Vineyard Club, Inc.

Attachments

KELDER ENGINEERING
CIVIL ENGINEERING - LAND PLANNING

January 25, 2007
07-06

Mr. Bert Sandell
The Vineyard Club, Inc.
3348 Paradise Drive
Tiburon, CA 94920

Re: Flow Measuring Device/Bypass System
The Vineyard Club, Geyserville

Dear Mr. Sandell:

It was a pleasure speaking with you about your Flow Measuring Device/Bypass System. Based on our conversation, it is my understanding that:

- The Vineyard Club currently uses a flashboard dam and pipe type of diversion at Oak Flat Creek to fill The Vineyard Club's pond.
- The flashboard dam and diversion pipe have been successfully installed and used by The Vineyard Club for a number of years.
- The flashboard dam and diversion pipe and corresponding impoundment of water have been permitted by the appropriate governmental agencies (i.e. California Dept. of Fish and Game, the State Water Resources Control Board, Sonoma County, etc.).
- The State Water Resources Control Board requires a bypass device that will allow bypass of a minimum 0.4 cubic feet per second, or the natural flow, whichever is less.
- Any and all future permits that are or will be required by the various local, State, and Federal agencies shall be obtained by The Vineyard Club, Inc.

You contacted me solely to review your flow measuring and bypass plan and to provide comments of such plan. As such, my review of your plan consists solely of reviewing the bypass opening and corresponding calculations.

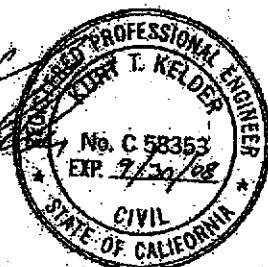
My review of your bypass plan does not include any review of the structural integrity of the flashboard dam, or its corresponding supports. My stamp on the "Measuring Device / Bypass Opening System Design and Calculations" shall be construed solely as my review and approval of said bypass system and the corresponding calculations.

Please call me at (707) 894-0862 if you have any questions or comments.

Thank you.

Sincerely,


Kurt T. Kelder, P.E.



Enclosures

Cc: File

**Compliance Plan
Draft Cease and Desist Order No. 262.31-14**

**The Vineyard Club, Inc.
P.O. Box 347
Geyserville, CA 95441**

It is the intent of the Vineyard Club to meet the requirements of License No. 12831 by designing and installing a measuring device / bypass opening system for the seasonal dam installed to divert water as described in the License. The purpose of this Compliance Plan is to provide sufficient details on the proposed system to obtain approval from the State Water Resources Control Board for continued operation under the License.

License No. 12831 (Application 26224), issued to The Vineyard Club on March 26, 1992, states that:


"For the protection of fish and wildlife, the licensee shall bypass at the Oak Flat Creek diversion a minimum of 0.4 cubic foot per second, or the natural flow, whichever is less."

"No water shall be diverted under this license unless licensee has installed a device in Oak Flat Creek, satisfactory to the State Water Resources Control Board, which is capable of measuring the flows required by the conditions of this license. The measuring device shall be properly maintained."

Therefore, the following shall apply:

1. The measuring device / bypass opening, as described in the attached EXHIBIT A, shall be installed each season as part of the temporary dam installation. At the time of installation, and whenever requested by a State Water Resources Control Board representative, a physical flow test will be performed by a Vineyard Club representative using a hand held flow meter to demonstrate that the Bypass Opening is allowing a minimum of .4 cubic feet per second (or the natural flow, whichever is less) of bypass flow when water is being diverted.
2. The dam shall be inspected and flow tested with a hand held flow meter at least monthly during all periods of operation to ensure that the Bypass Opening remains clear of debris and is fully operational. All such inspections shall be noted in a log maintained by representatives of The Vineyard Club. This log will be presented to a State Water Resources Control Board representative upon request.

APPROVED & ACCEPTED



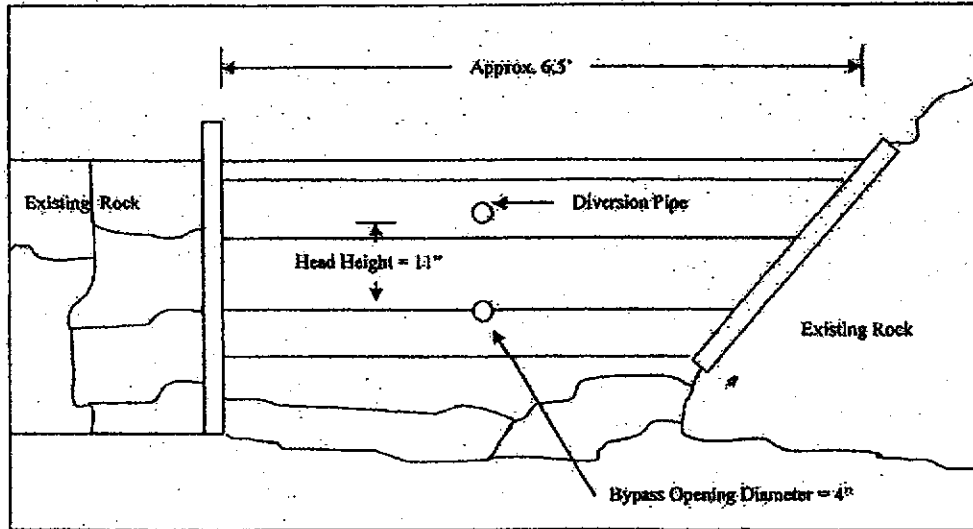
The Vineyard Club - Authorized Agent 2-1-07
Date

State Water Resources Control Board

Date

EXHIBIT A
Measuring Device / Bypass Opening System Design & Calculations

Seasonal Dam Design – Not To Scale



Calculations:

Bypass Opening Flow is calculated using a simplified version of Bernoulli's equation which yields the following:

$$Q = A \times V \times SC; \quad A = \pi \times r^2; \quad V = \text{sqrt}(2gh)$$

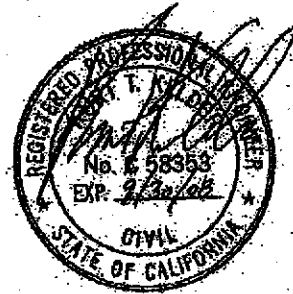
Where:

- Q = Flow
- A = Bypass Opening Area
- V = Velocity
- SC = Shear Coefficient = .60
- g = Gravitation Acceleration = 385.83 in./sec.²
- h = Head Height (measured from the center of the Bypass Opening to the bottom of the Diversion Pipe)

Therefore:

Bypass Opening Diameter = 4 inches
 Head Height = 11 inches

$$\begin{aligned} Q &= (\pi \times r^2) \times \text{sqrt}(2gh) \times SC \\ &= (3.14 \times 4) \times \text{sqrt}(2 \times 385.83 \times 11) \times .60 \\ &= 12.56 \times 92.13 \times .60 \\ &= 702.15 \text{ cu. inches / second} \\ &= .402 \text{ cu. ft. / second} \end{aligned}$$



A flow of .402 cu. ft. / second exceeds the bypass requirement of License No. 12831

Att. 3

Subject: RE: Letter for Victoria A. Whitney, Division Chief
Date: Monday, March 19, 2007 1:19 PM
From: Bert Sandell <bertsandell@earthlink.net>
To: <JMCCUE@waterboards.ca.gov>
Cc: 'Dan Kelly' <dkelly@lawssd.com>

Dear WRC Engineer McCue,

I would like to make a few changes to the letter that I sent to you earlier today for delivery to Division Chief Victoria A. Whitney. Therefore, please delete the email that I sent you earlier. I will send the appropriate letter directly to Division Chief Whitney.

Thank You & Best Regards,

Bert Sandell

-----Original Message-----

From: Bert Sandell [mailto:bertsandell@earthlink.net]
Sent: Monday, March 19, 2007 12:28 PM
To: 'JMCCUE@waterboards.ca.gov'
Cc: 'Dan Kelly'; 'timpeggybrown@sbcglobal.net'; Peter Sagues
(apsagues@sonic.net)
Subject: Letter for Victoria A. Whitney, Division Chief

Dear WRC Engineer McCue,

As I do not have Division Chief Victoria A Whitney's email address, I was hoping that you could forward the attached letter and attachment to her attention.

Thank You & Best Regards,

Bert Sandell
Agent - The Vineyard Club

Att. 4

Subject: RE: Letter for Victoria A. Whitney, Division Chief
Date: Tuesday, March 20, 2007 11:14 AM
From: Jean McCue <jmccue@waterboards.ca.gov>
To: <bertsandell@earthlink.net>
Cc: Barbara Katz <BKatz@waterboards.ca.gov>

Dear Mr. Sandell, I will delete your earlier e-mail as you requested. Will you please cc Barbara Katz (bkatz@waterboards.ca.gov) and me on your replacement e-mail to Victoria Whitney? Thank you.

Sincerely,

Jean McCue
WRC Engineer
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

(916) 341-5351 Phone
(916) 341-5400 Fax

jmccue@waterboards.ca.gov

>>> "Bert Sandell" <bertsandell@earthlink.net> 03/19/07 1:19 PM >>>
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hoping that you could forward the attached letter and attachment to her attention.

Thank You & Best Regards,

Bert Sandell

Agent - The Vineyard Club

Att. 5

Subject: RE: Letter for Victoria A. Whitney, Division Chief

Date: Tuesday, March 20, 2007 1:19 PM

From: Barbara Katz <BKatz@waterboards.ca.gov>

To: <bertsandell@earthlink.net>, Jean Mccue <JMCCUE@waterboards.ca.gov>

Please copy Matt Bullock too. Thanks.

>>> Jean Mccue 3/20/2007 11:14 AM >>>

Dear Mr. Sandell, I will delete your earlier e-mail as you requested. Will you please cc Barbara Katz (bkatz@waterboards.ca.gov) and me on your replacement e-mail to Victoria Whitney? Thank you.

Sincerely,

Jean McCue
WRC Engineer
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

(916) 341-5351 Phone

(916) 341-5400 Fax

jmccue@waterboards.ca.gov

>>> "Bert Sandell" <bertsandell@earthlink.net> 03/19/07 1:19 PM >>>

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Sent: Monday, March 19, 2007 12:28 PM

To: 'JMCCUE@waterboards.ca.gov'

Cc: 'Dan Kelly'; 'timpeggybrown@sbcglobal.net'; Peter Sagues
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Bert Sandell

Agent - The Vineyard Club

Att. 6

SOMACH, SIMMONS & DUNN

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

813 SIXTH STREET
THIRD FLOOR
SACRAMENTO, CA 95814-2403
1916) 446-7979
FACSIMILE 1916) 446-8199
WEBSITE: www.lawssd.com

March 21, 2007

Via Electronic Mail, Original Via First Class Mail

Barbara Katz
Division of Water Rights
State Water Resources Control Board
1001 I Street
Sacramento, CA 95812-2000

Re: Vineyard Club Enforcement Proceeding

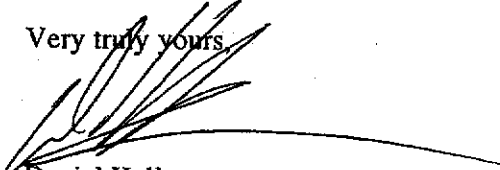
Dear Ms. Katz:

As you are aware, this firm represents the Vineyard Club, Inc., with regard to Draft Cease and Desist Order No. 262.31-14 and Administrative Civil Liability Complaint No. 262.5-44.

I understand that you and Ms. McCue, both members of the "Hearing Team" in the above-referenced matter, directly contacted Bert Sandell, a member of the Vineyard Club, requesting copies of his communications with Victoria Whitney. You also requested that he provide a copy of his communications to Matthew Bullock, SWRCB staff attorney, who is acting as the SWRCB' prosecutor on behalf of the "Enforcement Team" in this proceeding. The e-mails are attached. I was not informed of any of these communications until I recently learned of them from my client. Please provide me with an explanation as to why these communications took place. In the future, please send all communications to the Vineyard Club through me.

If you have any questions, please do not hesitate to contact me.

Very truly yours,


Daniel Kelly

DK:yd

cc: Matthew Bullock
Enclosure

Wed, Mar 21, 2007 2:23 PM

Subject: RE: Letter for Victoria A. Whitney, Division Chief

Date: Tuesday, March 20, 2007 1:19 PM

From: Barbara Katz <BKatz@waterboards.ca.gov>

To: <bertsandell@earthlink.net>, Jean Mccue <JMCCUE@waterboards.ca.gov>

Please copy Matt Bullock too. Thanks.

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Dear Mr. Sandell, I will delete your earlier e-mail as you requested. Will you please cc Barbara Katz (bkatz@waterboards.ca.gov) and me on your replacement e-mail to Victoria Whitney? Thank you.

Sincerely,

Jean McCue
WRC Engineer
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

(916) 341-5351 Phone

(916) 341-5400 Fax

jmccue@waterboards.ca.gov

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Dear WRC Engineer McCue,

As I do not have Division Chief Victoria A Whitney's email address, I was hoping that you could forward the attached letter and attachment to her attention.

Thank You & Best Regards,

Bert Sandell

Agent - The Vineyard Club

AH.7

Subject: Fwd: FW: Vineyard Club Letter

Date: Wednesday, March 21, 2007 10:30 AM

From: Jean McCue <JMCCUE@waterboards.ca.gov>

To: Matthew Bullock <MBullock@waterboards.ca.gov>

Cc: <bertsandell@earthlink.net>, <DKelly@lawssd.com>, Barbara Katz <BKatz@waterboards.ca.gov>

Attached is an e-mail from Bert Sandell, the Vineyard Club, Inc., to Victoria Whitney.

Also attached is the service list for the Vineyard Club Inc. hearing which contains the e-mail addresses of both you and the Vineyard Club, Inc.'s attorney, Daniel Kelly.

Sincerely,

Jean McCue
WRC Engineer
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

(916) 341-5351 Phone
(916) 341-5400 Fax

jmccue@waterboards.ca.gov

From: "Bert Sandell" <bertsandell@earthlink.net>

Date: Tue, 20 Mar 2007 20:36:51 -0700

To: <jmccue@waterboards.ca.gov>, <bkatz@waterboards.ca.gov>, "";" <bkatz@waterboards.ca.gov>

Subject: FW: Vineyard Club Letter

WRC Engineer McCue,

Per your request, attached please find a copy of the letter that I sent Division Chief Victoria A. Whitney yesterday. By way of this message, I am also sending a copy of the letter to Ms. Barbara Katz.

Ms. Katz asked via email that I also send a copy to Matt Bullock. Unfortunately, I do not have Mr. Bullock's email address. Perhaps one of you could forward this message to him?

Thank You & Best Regards

Bert Sandell

-----Original Message-----

From: Bert Sandell [mailto:bertsandell@earthlink.net]
Sent: Monday, March 19, 2007 3:26 PM
To: 'VWhitney@waterboards.ca.gov'; 'JTipps@waterboards.ca.gov'
Subject: FW: Vineyard Club Letter

Division Chief Victoria A. Whitney,

Please see the attached letter and attachment. An original will be sent via US Mail.

Best Regards,

Bert Sandell

Att. 8

DIC copy



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

Fax: 916.341.5400 ♦ www.waterrights.ca.gov

Linda S. Adams

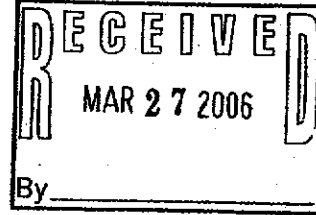
Secretary for

Environmental Protection

Arnold Schwarzenegger

Governor

MAR 23 2007



Victoria A. Whitney, Chief
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95814-2000

Dear Ms. Whitney:

NOTICE OF CEASE AND DESIST ORDER NO. 262.31-14 AND ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. 262.5-44

This letter is submitted in response to the March 19, 2007 communication sent by Mr. Bert Sandell of the Vineyard Club, Inc. In that letter Mr. Sandell requests approval of his proposed design for a measuring device in Oak Flat Creek or, in the alternative, suggests the Vineyard Club would re-install a device like the one installed when the project was licensed.

The Prosecution Team has concerns with either proposal, and would ask that these concerns be considered before accepting or rejecting Mr. Sandell's proposals.

While the proposed design for the new measuring device is adequate in terms of the calculations, there are aspects of the design upon which the Prosecution Team requested clarification and additional information. Such information has not been provided to date. As stated in Prosecution Team Exhibit WR-18, the design should include the material used to construct the device, detail of the weir or orifice cross section, and detail of the method used to anchor the device in the channel. Additionally, the Prosecution Team recommends that the device be installed by a professional engineer so that downstream submergence conditions are checked and the device is properly calibrated.

The Prosecution Team believes that the same information should be provided before reinstallation of a device based on the previous design allowed in 1992. The Prosecution Team's review of the 1992 design confirms the calculations for that weir can satisfactorily meet the bypass conditions of the license. However, installation of this design should still meet the above criteria. Further, the Prosecution Team does not recommend constructing the device of wood because the old wooden device likely deteriorated, due to exposure to water.

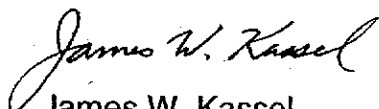
Victoria A. Whitney, Chief
Division of Water Rights

- 2 -

MAR 23 2007

Lastly, any plan should include a schedule for approval by the Department of Fish and Game.

Sincerely,



James W. Kassel
Assistant Deputy Director
Prosecution Team

cc: Dan Kelly
Somach, Simmons & Dunn
813 Sixth Street, Third Floor
Sacramento, CA 95814-2403