

**State Water Resources Control Board
Division of Water Rights**

**Cease and Desist Order No. 262.31-14 (CDO) and Administrative Civil Liability
Complaint No. 262.5-44 (ACL)
Regarding Oak Flat Creek, tributary to Gill Creek, thence to Russian River,
Sonoma County**

Written Testimony of Bert Sandell Member and Chair of the Lake Committee, The
Vineyard Club, Inc., Geyserville, CA

Hearing Date: April 4, 2007

This written testimony is submitted on behalf of the Vineyard Club, Inc. (the Club), a social club with 85 members, located in the "Vineyard" development in Geyserville, CA. I have been a member of the Club since 1995, and have been the Chair of the Club's Lake Committee since 2002. The Lake Committee (a volunteer group of Club members) works with the Club Manager, Peter Sagues, in maintaining Vineyard Lake and its dam.

I. CARE OF VINEYARD LAKE AND CONCERN FOR THE ENVIRONMENT

The Vineyard development, Vineyard Lake, and the Club were all created in the early 1960's to preserve open space for the benefit of the local community and the environment. Vineyard Lake covers about 26 acres. It is filled primarily by rainfall into the lake and runoff from surrounding hills. Vineyard Lake is used for recreational purposes (swimming, fishing, and boating; Club rules do not permit the use of power boats for recreational purposes) and is also a source of water for firefighting. Vineyard Lake is home to a variety of birds and fish, and is visited by many migratory birds. Many of our members are devoted to protection of the environment, are enthusiastic birders and hikers, and love to fish in the lake (primarily on a catch and release basis). The lake has a self-sustaining population of large mouth bass, bluegill and minnows. In addition to the migratory / seasonal waterfowl that visit the lake, such as the bufflehead, the lake has a resident population of great blue herons, great egrets, kingfishers and cormorants, among others.

Before I became active on the Lake Committee, the growth of weeds and algae in the lake was primarily controlled by the use of expensive chemicals, sometimes with limited success or unwanted consequences. Many Club members are concerned about the effect of these chemicals on the abundant wildlife population that flourishes in and around the lake, and also on the Club members and their families and guest who swim, boat, or fish in or on the lake. Therefore, over the past several years, the Lake Committee has attempted to manage the lake in more environmentally sensitive manner.

For example, in 2004, we installed a whole-lake aeration system that is used to help control algae, and we regularly remove aquatic weeds from the lake using a manual extraction system instead of introducing chemicals such as copper sulfate into the lake's ecosystem. We have also experimented with adding naturally occurring microbes to the lake in accordance with California Department of Fish & Game guidelines to help control algae blooms and the amount of fecal and other coliform types in the water. We have worked with consultants to select the type of microbes to introduce, the quantities, and the introduction timing. While the microbial treatment has not performed as hoped in all areas, we have achieved fecal counts well below action levels (see my additional comments below). We are in the process of installing a riparian watercourse and filtration system on one of the main seasonal creeks that enters the lake during the rainy season, with the hope of removing nutrients before they enter the lake. Finally, we have worked closely with the owner of a property adjacent to the lake to reduce the number of livestock pastured in the lake's watershed.

Since early 2003, we have also religiously and regularly sampled the water, and we have recorded the measurements of fecal counts, dissolved oxygen, turbidity, pH and temperature (at least semi-annually for total coliform and fecal, and usually once or twice a month for all other measurements). These measurements help us track our success in managing the lake, and they provide background information for our discussions with third party lake consultants. For example, following the initial introduction of microbes, the fecal levels at one of our measuring stations went down from 130 MPN/100 ml to a typical level between non-detect and < 10 MPN/100 ml. While the State of California has conflicting safe fecal limits for swimming, our testing lab, Brelje and Race Laboratories, located in Santa Rosa, California, tells us that we should get concerned when the levels exceed 500 MPN/100 ml. Our dissolved oxygen levels, with samples taken at a depth of 6', have ranged between 5.6 ppm and 11.8 ppm, with a norm of around 8.5 ppm. Were these readings to drop below 4.0 ppm, it would be a sign that we have a severe oxygen deficiency that could affect aquatic life. Our water clarity readings, taken with a turbidity meter known as a Secchi meter, show that the visibility ranges seasonally from a low of 1.5 feet to a high of 11 feet.

II. INSPECTION ON MAY 4, 2005

In late March 2005 the Club re-installed a pipeline to divert water from Oak Flat Creek into the Vineyard Lake. I performed the installation with the help of workers employed by a local landscape company. I knew that the Club had a license to divert this water, but I had not seen the license and was not aware of its terms. (See Exhibit VC-4.)

I was not present when Mr. Larry Lindsay from the State Water Resources Control Board (SWRCB) inspected the pipeline and diversion dam. (See Exhibit VC-6.) Peter Sagues informed me of this inspection after it had taken place. Mr. Sagues told me that Mr. Lindsay had advised him that the Club's license to divert water required the installation of a measurement device and that we would need to install such a device before diverting water in 2006. Mr. Sagues did not indicate that there was any requirement to stop diverting water in May 2005; however, I stopped the diversion on May 29, 2005. I had

not seen the license and did not know that a measurement device was required; if I had realized that the license required this, I would have made sure that we had installed the proper measurement device before diverting water. Mr. Sagues also advised me that the SWRCB would be sending us a Report concerning the inspection and the requirements of the Club's license.

The lake's history has been that we install a pipeline to divert water from Oak Flat Creek into the lake from late-March, through the end of May, if necessary. However, we did not divert any water from the creek in 2006 because the late-season rains kept the lake full well into early May 2006. (See Exhibit VC-9.) So, we did not install or design a measuring device" because we were not going to divert any water. (See Exhibit VC-9.) The Club, through Peter Sagues, even contacted the SWRCB to let the SWRCB know that the club was not going to divert water in 2006 and would provide the necessary compliance documentation before diversions resumed. (See Exhibits VC-8, 9.)

III. DESIGN OF A MEASUREMENT DEVICE

In 2005 we did not receive a copy of Mr. Lindsay's Report, including the information he had told Mr. Sagues he would provide about how the measurement device should be designed and installed. (See Exhibit VC-7.) In fact, we did not receive the Report until I requested it via email to Mr. Lindsay on December 22, 2006, and it was sent to me electronically on December 27, 2006. (See Exhibit VC-13.) My request for a copy of the Report was made at the suggestion of Peter Sagues who informed me that he had asked for the report on several occasions and had yet to receive a copy. (See Exhibit VC-7.) Please note that the Report was first sent to us over two weeks after the SWRCB had sent its notice, Administrative Civil Liability Complaint (ACL), and Cease and Desist Order (CDO) against the Club. (See Exhibit VC-10.) In short, before the SWRCB had sent the Club a written copy of the inspector's Report, the SWRCB had begun enforcement proceedings against the Club.

While the CDO and Report both mentioned the requirement of a measurement device, they did not contain any information about how it should be designed. Even before I had obtained a copy of the Report, on December 21, 2006, I called Mr. Lindsay and discussed the issues raised in the CDO and the ACL. (See Exhibits VC-12, 13.) Later, I attempted by telephone and e-mail to get more information from Mr. Lindsay and Mr. John O'Hagan, Chief Enforcement Section, Division of Water Rights, concerning how we should comply with the SWRCB requirements. (See Exhibits VC-13, 15, 16.) In particular, in an email dated January 17, 2007 to Mr. O'Hagan, I asked "Might it be possible for somebody in your organization to provide a specific example of such a [measuring] mechanism that has been accepted in the past so that it can be used as a guideline with a professional engineer that we engage?" (See Exhibit VC-16.)

Without ever providing an example, or any other design documentation related to an acceptable measuring device, Mr. O'Hagan held firm to what he had told me in an email dated January 16, 2007 in which he said he had "directed Larry [Mr. Larry Lindsay] to discontinue communication with you [me] while we are preparing testimony

for the hearing requested by [The] 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 advise [advice] at this time.” (See Exhibit VC-16.) This communication was preceded by another email, sent to me by Mr. Lindsay on January 11, 2007, in which he states “At this point I believe we are starting to cross the line” and “... until the hearing is resolved, or unless [The] Vineyard Club pays the ACL in full and retracts its hearing request, I will not assist the Vineyard Club further in this matter.” (See Exhibit VC-15.) Apparently, Mr. Lindsay felt I was no longer just asking for “some minor help and direction” but instead he was “beginning to design this project for you.” (See Exhibit VC-15.) This was not my intent.

I find all this puzzling, since both Mr. Lindsay and Mr. O’Hagan knew that I was only attempting to comply with the SWRCB requirements. It appears that because the Club requested a hearing on whether the ACL and CDO were justified, the Club could not obtain assistance concerning how to comply with the draft CDO and the specific requirement of our license requiring a measuring device. As a California taxpayer, I find this sequence of events to be distressing. Copies of relevant e-mails with Mr. Lindsay and Mr. O’Hagan are attached as Exhibits 11, 13, 15 and 16. The Club is also troubled that the “Prosecution Team” refused to resolve the Draft CDO unless the Club agreed to pay the fine associated with the ACL Complaint in full, and give up their right to a hearing on the ACL Complaint. (See Exhibits VC-15, 16, 18.)

Mr. Lindsay had indicated in one of his messages that I should contact a civil engineer to have the measurement device properly designed. (See Exhibit VC-15.) I then contacted Kurt T. Kelder, P.E., a Civil Engineer, and he helped design a measurement device that he and I thought would satisfy the SWRCB requirements. By letter dated February 1, 2007, I sent this design to Victoria A Whitney, Division Chief, at the SWRCB. (See Exhibit VC-18.) This device appears to be similar to the only originally installed for the diversion, as evidenced by the SWRCB’s own files. (See Exhibit VC-5.)

As of March 12, 2007, we have received no communication or correspondence whatsoever related to the proposed compliance plan and design delivered to Division Chief Victoria A. Whitney. (See Exhibits VC-18, 19.) The Club would be happy to correct any deficiencies in the design before the device is installed.

IV. CONCLUSION

I agree with Mr. Sagues’ statement in his testimony that the Vineyard Club is always very careful to follow the requirements imposed on it by all government agencies. I have worked closely with Mr. Sagues and other Club members over the years to comply with all laws and regulatory requirements. We did not divert any water in 2006. In short, we have attempted to meet the license requirements and we have not diverted more water than is permitted under our license. As Mr. Sagues notes in his testimony, our Club did not divert water without any right to do so; instead, we inadvertently failed to comply

with one of the license requirements, through our ignorance of the terms of the license.
Imposition of a fine and Cease and Desist Order on our small Club seems unwarranted.

**BERT SANDELL
QUALIFICATIONS**

The Vineyard Club:

2002-Present **VINEYARD CLUB LAKE COMMITTEE**

Chairperson - The Lake Committee is responsible for overseeing all maintenance activities related to an approximately 26 surface acre lake. The lake is viewed by the membership as one of the most important assets of the club.

1995-Present **VINEYARD CLUB MEMBER IN GOOD STANDING**

Employment:

1999-Present **SAND HILL COMPANIES** - 220 State Street, Suite 219, Los Altos, CA 94022

Managing Director and Co-Founder - The Sand Hill family of companies acquire, develop, lease, and manage Class A commercial real estate properties.

Education: **BS Industrial Engineering/Operations Research** 1981, University of California, Berkeley, CA

Licenses: **California Real Estate Brokers License:** Identification Number 01027102

Affiliations: **Certified Property Manager (CPM)**, Institute of Real Estate Management 1994

Other: Little League Manager/Coach , 1998-2004 seasons
AYSO Girls Soccer Coach, 1999-2005 seasons
Assistant Coach – Southern Marin Lacrosse, 2007 season