

**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 Peter Sagues, Manager, 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 am one of three managers of the Club and my responsibilities include maintaining the Club's clubhouse, 25 acre lake (Vineyard Lake), dam, and other Club facilities. I have been a member of the Club since 1999 and have been one of the Club managers since 2003.

I. BACKGROUND

The Vineyard development, Vineyard Lake, and the Club were all created in the early 1960's. The Vineyard development contains about 100 homes; not all residents of the development are members of the Club. The total budget for the Vineyard Club for 2005 was just under \$146,000, which covered maintenance of buildings and grounds, insurance, state permits, professional services, management fees, and utilities. Only a few thousand dollars are available each year for "discretionary" expenses such as improvements.

Vineyard Lake covers about 25 acres. It is filled primarily by rainfall into the lake and runoff from surrounding hills. However, as discussed below, the Club also has a license to divert water into the lake from Oak Flat Creek during the rainy season, prior to June 1. (See Exhibit VC-4.) When late rains do not fill the lake, or do not keep it full, the Club installs a pipeline at Oak Flat Creek to "top off" the lake any time prior to May 31 in a given year. The actual date of installation of the pipeline depends on the water level of the lake, and conditions at Oak Flat Creek. The diversion dam and pipeline cannot be installed until after the last heavy rains of the season have passed or the pipeline could be washed out and damaged by high water. If we install the pipeline, it is usually in late-March or early April.

Vineyard Lake is used for recreational purposes (swimming, fishing, and boating; power boats are not allowed) and is also a source of water for firefighting. (See Exhibit VC-4.) Over the years that I have lived here, the California Department of Forestry (CDF) has drawn water from Vineyard Lake using helicopters carrying large buckets, in order to fight fires in the area. We do not keep track of CDF visits to our lake, and as far

as I know, we do not have a formal agreement with CDF for use of our lake water. Each year, we seem to get at least one visit from a CDF helicopter. Vineyard Lake is home to a variety of birds and fishes, and is visited by many migratory birds.

I am assisted in maintaining Vineyard Lake and the dam by a group of volunteers from the Club who constitute the Lake Committee. Bert Sandell, the chair of the Lake Committee, will also submit testimony in this proceeding. (See Exhibit VC-1.) Mr. Sandell's testimony will cover the efforts the Club has made over the past several years to measure water quality and maintain the lake in an environmentally sensitive way, through the use of microbes, mechanical and manual weed harvesting, and aeration rather than chemicals.

II. INSPECTION ON MAY 4, 2005

In late-March or early April 2005, we installed a pipeline to Oak Flat Creek (I am not sure of the exact date of installation). On or before May 4, 2005, I received a call from Mr. Larry Lindsay from the State Water Resources Control Board (SWRCB), Division of Water Rights. He asked if I would be available to accompany him on an inspection of the water diversion dam and pipeline. I made arrangements to go with him and agreed to meet him in the parking lot at the Vineyard Club. I am not aware of any previous inspections of our water diversions by the SWCRB.

Mr. Lindsay offered to drive me in his vehicle to a location near the pipeline. He and I walked from the road down into the creek where we saw the pipeline, and then hiked about 400 yards upstream to the point on Oak Flat Creek to the diversion dam where the Club pipeline had been installed. He inspected the pipeline and dam and advised me that the Club's license for water diversion required that a measuring device be installed to allow 0.4 cubic feet per second (cfs) of water to bypass the dam before we could take our allowance. I told him in the two years that I had been manager that I had not seen the license and had not been aware of this requirement. I have since obtained a copy of the license (License 12831, issued on March 26, 1991) and I agree with the statement in Mr. Lindsay's Report that the license requires that "the licensee shall bypass at the Oak Flat Creek diversion a minimum flow of 0.4 cubic feet per second, or the natural flow, whichever is less." (See Exhibit VC-4.)

I assisted Mr. Lindsay in installing a 3-inch Montana flume in the gravel creek bed. Mr. Lindsay's Report states that the "flow below the diversion dam was very close to the minimum of 0.4cfs." (See Exhibit VC-6, page 4, paragraph (3)). He also states that "about 50% of the total stream flow was directed through the flume." (*Id.*, see caption on one of the four photos attached to the Report). I do not agree with these statements. I observed that the Montana flume was probably bypassed by much more than twice the water that went through the flume. (See Exhibit VC-6, see photos attached to exhibit.) Water went under the flume and on both sides of the flume, in spite of our efforts to build dams of rock, gravel and sand to divert water into the flume. (*Id.*) It is my opinion that the total creek flow in the area of the diversion dam was probably closer to 1.0cfs and could have been more than 2.0cfs, considering the water going under the

dam (the dam appears to be built on a gravel base, not on bedrock), and water flowing through gravel and then surfacing at a spot lower in the creek where the gravel bed is thinner over the bedrock. The actual flow of the creek at the one point where the Montana flume was installed was difficult to measure exactly, and furthermore the flow at that point might be quite different from the flow of water either upstream or downstream of the flume, due to the topography of the area. The pictures attached to the Report show a large volume of water flowing in the creek both above and below the point of water diversion. (*Id.*) At the time of the inspection, I did not voice any opinions about his method of measuring the water flow

The Report states that "licensee should be advised that further diversions from Oak Flat Creek are subject to ACL [Administrative Civil Liability], and be given a time limit to comply."(*Id.*, at 4.) It also states the "licensee should be advised to cease diversions." (*Id.* at 5.) These statements suggest that Mr. Lindsay advised the Club to stop diverting water at the time of the May 4, 2005 inspection, or soon thereafter. This is not correct. At the time of the inspection, Mr. Lindsay told me that we should install a bypass measurement device before we used the dam and diverted water the following year, 2006. He did not suggest or advise me to stop diverting water at the time of the May 2005 inspection. He said that there was not enough time before the end of our diversion period (which ends May 31) to get a bypass measurement device engineered and installed for use in 2005. Thus, he indicated that our diversion of water could continue during the remainder of May, 2005 but that we should install a proper measurement device before diverting any water in 2006. Mr. Lindsay also told me that he had a file of drawings and/or photos of approved bypass devices which he would send me to aid us in getting such a device engineered and built.

Several times during the inspection, Mr. Lindsay thanked me for helping with such matters as carrying some of his heavy gear into and out of the creek, helping to dig out, by hand, a location for the Montana flume, and building stone and gravel "diversion dams" to direct water to the flume. We were both wading in the stream and moving materials in very cold water. He told me that he does not get offers of such help very often during inspections. I personally enjoyed meeting with him and felt that the inspection was completed with mutual respect and amiability.

On or about August 16, 2005 I called Mr. Lindsay and asked for a copy of the license. (See Exhibit VC-7.) He promptly faxed me a copy of the license. I also asked him about the letter or report about the inspection he had told me he would be sending, and in particular about the material he had offered to send concerning the bypass measurement device. (*Id.*) I requested that he send these things; I explained that I wanted to get the device designed and built before April of 2006 in case the Club needed to divert water. He did not send either the Report or any materials concerning the device.

I have been told that in the SWRCB files there is a "Contact Report" by Mr. Lindsay concerning this call, and that Mr. Lindsay indicates in this "Contact Report" that he told me that the SWRCB was considering enforcement action against the Club because of the Club's failure to have a measurement device in place. (*Id.*) I have also

been told that the "Contact Report" states that he had also told me during the May 2005 inspection that enforcement action was possible and "that he [i.e., I on behalf of the Club] needed to correct the discrepancy as soon as possible." (*Id.*) I do not recall that he said anything about a possible enforcement action during the August 2005 telephone call, and I am certain he did not tell me during the May 2005 inspection that the Club should take any immediate action concerning the absence of a measurement device. Indeed, he indicated at that time that the Club did not need to take immediate action.

On March 29, 2006 I called him again to tell him that I had still not received a report of the inspection, nor had he sent me any information about the bypass measurement device he had offered to send. (See Exhibit VC-8.) As I recall, he told me at that time that "smaller diversion projects similar to the Vineyard Club's were 'on hold' until the SWRCB "decided what to do about enforcement." He said that he was embarrassed about not being able to answer my questions until "funding becomes available". I asked him for his e-mail address and later that day sent him a "Test of address" e-mail confirming our conversation, and telling him that we would not divert water until his department approved our plans for a bypass device. (*Id.*) Since the winter rains in 2006 were sufficient to fill the lake, and since the Club had not received any information about the measurement device, the Club did not divert any water from Oak Flat Creek in 2006. (See Exhibit VC-9.)

On May 16, 2006, I e-mailed Larry Lindsey to let him know that we did not divert water during that (2006) season. (*Id.*) He responded and thanked me for the information. (*Id.*)

On December 20, 2006, after we had received the notice of the Administrative Civil Liability Complaint and Cease and Desist Order (CDO), I e-mailed Mr. Lindsay and asked him for help in understanding the charges filed against the Vineyard Club and what we could do to avoid a formal hearing. (See Exhibit VC-11.) His reply indicated that he could not help us. (*Id.*)

The Club did not receive a copy of Mr. Lindsay's Report until after it received the Administrative Civil Liability Complaint and CDO in December 2006, more than 19 months after the inspection in May, 2005. (See Exhibit VC-10.) Mr. Sandell's testimony will cover his efforts to have an engineer design a proper measurement device and his communications with the SWRCB about this subject.

III. OTHER ERRORS IN THE REPORT

The Report indicates that Vineyard Lake is used for recreational purposes. (See Exhibit VC-8.) As I mention above, the lake is also a source of water for firefighting and has been used several times in recent years as a water source by the CDF. (See Exhibit VC-4.) The lake is also home to, or visited by, a variety of fish, birds, and other wildlife.

IV. DAM INSPECTIONS

I have been present at the inspections of the Vineyard Lake dam by the Division of Safety of Dams, in November, 2005, November, 2004 and December 2003. (See Exhibit VC-29.) At those inspections, the inspectors have complimented the Club on its good maintenance of the dam and spillway and have indicated what additional actions, such as removal of brush and weeds near the dam, were necessary. The Club has immediately complied with all such recommendations.

V. CONCLUSION

The Vineyard Club is always very careful to follow the requirements imposed on it by all government agencies. We were not advised to stop diverting water in 2005; instead, Mr. Lindsay accepted my statement that I had not known of the requirement to install a measurement device, indicated that his measurements showed we were within the limits required by our license and there was insufficient time to install a proper measurement device before the end of May, 2005, and told me we should install a measurement device before diverting any water in 2006. 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 allowed under our license.

**PETER SAGUES
QUALIFICATIONS**

The Vineyard Club:

2002-Present **VINEYARD CLUB LAKE COMMITTEE**

Member - The Lake Committee is responsible for overseeing all maintenance activities related to an approximately 25 surface acre lake. As a volunteer member of the Lake Committee as well as Manager of the Vineyard Club facilities, I work with Bert Sandell to keep the lake and the surrounding property attractive and safe for our members and their guests. My lake duties include landscaping, mowing and maintenance of the dam, the island, and other grounds; maintenance of the dock, floats, spillway, emergency water release valve; and chasing geese away from our beaches and lawns.

1999-Present **VINEYARD CLUB MEMBER IN GOOD STANDING**

Employment:

2003-Present Vineyard Club, Geyserville, CA 95441, Facilities Manager.

As the Facilities Manager, I take direction from and report to the V.C. Board of Directors. In addition to overseeing maintenance of the clubhouse, grounds, and lake, I supervise , new construction and remodels of Vineyard Club buildings and am the contact person for State and local inspectors. I am paid \$750.00 per month by the Vineyard Club, a semi-volunteer position..

1984-Present Sagues Construction, 390 Dear Path Drive, Geyserville, CA *Owner,*

Sagues Construction is involved in residential and light commercial remodeling. Duties include preparing plans for submittal to City and County agencies and coordination with architects, engineers, and building officials. Since 1984, we have had a perfect record with no violations of State or local laws, regulations or licensing requirements, and no conflicts with customers.

1972-1980 Sacomo-Sierra, Inc. 960 Fairview Dr, Carson City, NV Plant Manager

Sacomo-Sierra was a small manufacturer of high temperature gaskets and seals. Duties as plant manager included factory safety for a 90 employee factory. Worked closely with OSHA and NIOSH (Nevada Industrial Occupational Safety and Health) and company engineering to monitor and reduce employee exposure to asbestos fibers.

The firm was never cited or fined by any Governmental Agency.

Education: BA, Economics, 1964, San Jose State University,

Licenses: California Contractors State License Board, #423610, exp. 06/30/08