



CALIFORNIA FARM BUREAU FEDERATION

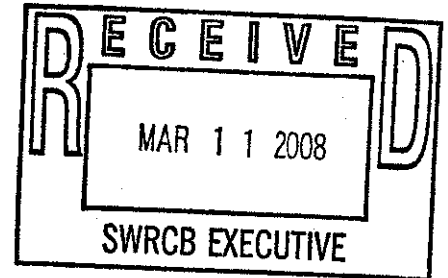
NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

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3/18/08 Bd. Mtg. Item 8
Vineyard Club, Inc.
Deadline: 3/11/08 by 12 p.m.

March 11, 2008

Ms. Jeanine Townsend
Clerk of the Board
State Water Resources Control Board
Cal/EPA Headquarters
1001 I Street, 24th Floor
Sacramento, CA 95814



RE: Comment Letter—Draft Order Adopting Cease and Desist Order and Assessing Civil Liability—The Vineyard Club, Inc., Unnamed Streams Tributary to Gill Creek Thence Russian River, Sonoma County

Dear Ms. Townsend:

The California Farm Bureau Federation (“Farm Bureau”) is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the State of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California’s largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 91,000 members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California’s resources.

Farm Bureau appreciates the opportunity to provide comments on the State Water Resource Control Board’s (“State Board’s”) draft order adopting a cease and desist order and assessing civil liability against the Vineyard Club, Inc., for alleged unauthorized diversions of water in Sonoma County. These comments supplement our previous Water Right Enforcement Workshop Comments submitted jointly with Somach Simmons & Dunn on June 6, 2007 in advance of the Board’s workshop on this item on June 19, 2007. As an individual entity, the Farm Bureau is pleased to present additional comments.

Administrative Civil Liability Should Not Be Imposed For Violations Of Permit Terms Or Conditions

Farm Bureau is not prepared to comment on the particulars of the Vineyard Club, Inc., case, but from a policy perspective, we do not believe the State Board should impose administrative civil liability (“ACL”) penalties in situations such as the one before the State

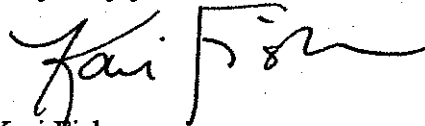
Board. The State Board has the authority to impose ACL pursuant to Water Code section 1052. Section 1052 clearly states, "the diversion or use of water...other than as authorized...is a trespass." Section 1052 further states, "civil liability may be administratively imposed by the board pursuant to Section 1055 *for a trespass*" (emphasis added).

It is clear from Section 1052 that the State Board has the authority to impose ACL penalties for a trespass violation. However, Section 1052 does not go so far as to expressly provide the State Board with the authority to impose ACL penalties for a violation of a term or condition in a permit or license. Therefore, Farm Bureau believes the State Board should refrain from expansive readings of its enforcement authority with respect to permitted water rights to impose onerous penalties in situations that may involve only technical non-compliance with terms and conditions applicable to an otherwise validly-permitted water right. Rather, Farm Bureau believes that the intent of Section 1052 is to reserve ACL penalties for diversions or uses undertaken wholly without right.

In addition to the absence of clear statutory authority in the Water Code for the imposition of ACL penalties as to violations of permit terms or conditions, Farm Bureau also notes that State Board regulations and guidance documents provide that violations of the terms and conditions of a state-issued water right may be subject to cease and desist orders, while violations of that involve diversions of surface water without a basis of right may also be subject to ACL penalties. Importantly, however, no State Board regulation grants the State Board the authority to impose ACL penalties for an alleged violation of a term or condition in a permit or license.

Farm Bureau urges the State Board not to impose ACL penalties as a general matter for violations of permit terms or conditions. Thank you for the opportunity to provide our comments and concerns. We look forward to further discussion with the State Board on this matter.

Very truly yours,



Kari Fisher
Associate Counsel

KF:pkh