



State Water Resources Control Board



Linda S. Adams
Secretary for
Environmental Protection

Division of Water Rights
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Arnold Schwarzenegger
Governor

In Reply Refer to:
363:LL:262.0(49-44)

DEC 11 2006

CERTIFIED MAIL

#1831 4906

The Vineyard Club, Inc.
c/o Jan Drayer
P.O. Box 347
Geyserville, CA 95441

Dear Mr. Drayer:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. 262.5-44 AND NOTICE OF CEASE AND DESIST ORDER REGARDING UNAUTHORIZED DIVERSION OF WATER WITHIN THE RUSSIAN RIVER WATERSHED IN SONOMA COUNTY

Enclosed is an Administrative Civil Liability (ACL) Complaint and a draft Cease and Desist Order (CDO). This letter serves as notice to you of the intent of the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) to proceed with these enforcement actions. Therefore, this matter requires your immediate attention.

On May 4, 2005, Division staff conducted an inspection of the water right License 12831 (Application 26224), held by the Vineyard Club. The purpose of the inspection was to determine existing beneficial use of water and overall compliance with the terms and conditions of the license.

During the inspection, Division staff determined that a violation of the terms and conditions of License 12831 existed. The license requires that no water shall be diverted unless a measuring device is installed and maintained in order to comply with the 0.4 cubic foot per second (cfs) minimum bypass flow requirement at the Oak Flat Creek POD. The device installed when the license was issued was removed and apparently not available to be reinstalled.

I have determined that the diversion of water to storage in violation of the terms of License 12381 is an unauthorized diversion and constitutes a trespass against the State subject to a civil liability of up to \$500 for each day of unauthorized diversion or use of water.

I signed the enclosed ACL complaint against the Vineyard Club imposing a liability of **\$4,100** for unauthorized diversion and use of water. Pursuant to the enclosed ACL complaint, the \$4,100 is due and payable within 20 days of receipt of the complaint unless the Vineyard Club requests a hearing before the State Water Board in accordance with Water Code section 1055, subdivision (b).

VC-10

The Vineyard Club, Inc.
c/o Jan Drayer

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DEC 11 2006

The request must be delivered to or received by mail by the State Water Board within 20 days after the receipt of the complaint. At any hearing, the State Water Board may reexamine and adjust the proposed ACL higher or lower, not to exceed the maximum allowed by statute.

Also enclosed is a draft CDO that requires the Vineyard Club to cease and desist from violating the conditions of License 12831 and take specified corrective actions within a specified time schedule. If the Vineyard Club disagrees with the facts or time schedules for the corrective actions set forth in the enclosed draft CDO, it may request a hearing before the State Water Board no later than 20 days from the date of receipt of this notice. Unless a written request for hearing regarding the draft CDO signed by or on behalf of the Vineyard Club is delivered to or received by mail by the State Water Board within 20 days after the receipt of this letter, the State Water Board may adopt the CDO, with the statement of facts and information set forth in the enclosed draft CDO, without a hearing. (Water Code, § 1834.) If the Vineyard Club requests a hearing, the Vineyard Club will be notified of the hearing date. Prior to the hearing the Vineyard Club will be required to submit any written testimony and other evidence the Vineyard Club would like the State Water Board to consider.

Therefore, the Vineyard Club should take immediate action to:

- (1) Remit payment of the ACL, or request a hearing with regard to the ACL;
- (2) Comply with the conditions of License 12831 and identify the specific corrective actions to be taken to correct the violation in accordance with the provisions of the draft CDO, or request a hearing with regard to the CDO.

If the specified corrective actions are not taken within 90 days of receipt of this letter, the State Water Board may consider additional enforcement without further notice. If there are any questions concerning this matter, please contact Mr. Mark Stretars of this office at (916) 341-5389.

Sincerely,

ORIGINAL SIGNED BY

Victoria A. Whitney
Division Chief

cc: Peter Sagues
P.O. Box 44
Geyserville, CA 95441

Enclosures:

- Draft Cease and Desist Order
- Administrative Civil Liability Complaint

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

Administrative Civil Liability 262.5-44

THE VINEYARD CLUB, INC.

SOURCE: Unnamed Streams tributary to Gill Creek thence Russian River

COUNTY: Sonoma County

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The Vineyard Club, Inc. (herein referred to as the Licensee) is alleged to have violated Water Code section 1052, subdivision (a), which states:

"The diversion or use of water subject to this division other than as authorized in this division is a trespass."
2. Water Code section 1052, subdivision (b), provides that the State Water Resources Control Board (State Water Board) may administratively impose civil liability in an amount not to exceed \$500 for each day that a trespass occurs.
3. Water Code section 1055, subdivision (a), provides that the Executive Director of the State Water Board may issue a complaint to any person or entity on whom administrative civil liability (ACL) may be imposed. On May 17, 1999, the Executive Director delegated to the Chief of the Division of Water Rights (Division) the authority to issue a complaint to impose administrative civil liability under Water Code section 1055, subdivision (a). On May 16, 2002, the State Water Board delegated authority to the Division Chief to issue an order imposing administrative civil liability when a complaint has been issued and no hearing has been requested within 20 days of receipt of the complaint. (State Water Board Resolution 2002-0106.)

ALLEGATIONS

4. The following facts provide the basis for the alleged trespass:
 - a) License 12831 (Application 26224) was issued to The Vineyard Club, Inc. on March 26, 1992. The license allows collection of 245 acre-feet per annum (afa) of water by 1) onstream storage at Vineyard Lake, and 2) diversion to storage from an unnamed stream (aka Oak Flat Creek), an offstream source, at a rate not to exceed 0.25 cubic feet per second (cfs). The diversion season is from October 1 to May 31 of the following year. The water is for recreation and fire protection uses.
 - b) License 12831 includes terms 40, 400 and 62 which state:

"After the initial filling of the reservoir, licensee's right under this license extends only to water necessary to keep the storage reservoir full by replacing water lost by evaporation and seepage, and to refill if emptied for necessary maintenance or repair."

(0000040)

"For the protection of fish and wildlife, the licensee shall bypass at the Oak Flat Creek diversion a minimum flow of 0.4 cubic foot per second, or the natural flow, whichever is less."
(1400400)

"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."
(0060062)

- c) On May 4, 2005, Division staff conducted an on-site inspection of the project authorized under License 12831. Staff observed that Vineyard Lake was full with a slight amount of water flowing over the spillway. The diversion of water from Oak Flat Creek to offstream storage in Vineyard Lake was occurring at the rate of approximately 0.13 cfs. Staff also observed that a measuring device was not installed in Oak Flat Creek and there was no sign of a measuring device in the vicinity of the point of diversion that could have been installed.
- d) The Agent for the Licensee was informed of the violation and advised that they should retain a registered engineer to design and certify proper installation of a measuring device.
- e) Contact with the Licensee in the spring of 2006 resulted in the disclosure that a measuring device had not been designed or installed. However, according to the Licensee, water was not diverted from Oak Flat Creek during the 2005-2006 diversion season.

PROPOSED CIVIL LIABILITY

5. The basis of this Complaint is the Licensee's unauthorized diversion of water from Oak Flat Creek to offstream storage in Vineyard Lake as a result of violating the terms of License 12831. The maximum civil liability that can be imposed by the State Water Board in this matter is \$500 for each day in which the trespass occurred. According to the Licensee, the diversion system is installed in late March after the winter high flows have passed and it is safe to work in Oak Flat Creek. After installation, diversion of water into Vineyard Lake commences immediately. Therefore, based on a two-month period (April 1 to May 31, 2005 or 60 days) a civil Liability of \$30,000 could be considered (\$500 per day x 60 days) for the trespass.
6. In determining the amount of civil liability, Water Code section 1055.3 requires that the State Water Board consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and any corrective action taken by the violator. In this case, the Licensee diverted water to storage from Oak Flat Creek during the spring of 2005, in violation of the terms of License 12831. Licensee's unauthorized diversions reduced the amount of water available for appropriation by downstream water right holders. Additionally, while the adverse impacts of unauthorized water diversions on the steelhead trout fishery have not been quantified for this case, past unauthorized diversions of water have been shown to contribute to the cumulative impact of reducing habitat for steelhead trout in the Russian River and its tributaries. On August 18, 1997, the National Marine Fisheries Service listed the steelhead trout as endangered under the Federal Endangered Species Act. As of the date of this Complaint, Licensee has failed to take corrective actions.
7. Licensee received an economic advantage over other legal users of water by foregoing the cost of building, installing, and maintaining a measuring device. The Licensee may also have failed to maintain the minimum bypass amount required by the license and caused harm to the environment while diverting water. The Division calculates that the Licensee received at a minimum, 16 acre-feet of water through the Oak Creek diversion in 2005. The water diverted without regard to compliance with the terms of License 12831 was stored in Vineyard Lake and later used for the beneficial needs of the Licensee. The Division estimates that the minimum cost of purchasing water in Sonoma County is \$45 per acre-foot, excluding delivery and distribution costs. Finally, the Division estimates that its staff costs to conduct the field inspection, prepare an inspection report and the enforcement documents total \$3,218.

8. Having taken into consideration all the factors described above, the Division Chief recommends an ACL in the amount of **\$4,100**. This amount discounts the maximum liability in this case to achieve settlement with the licensee, streamline the enforcement process, and avoid the expense of a hearing before the State Water Board. This liability amount is the minimum liability recommended by the Division, and the State Water Board may consider the maximum liability, if this matter goes to a hearing.

RIGHT TO HEARING

9. Licensee may request a hearing on this matter before the State Water Board. Any such request for hearing must be received or postmarked within 20 days of the date this notice is received. (Water Code, § 1055, subd. (b).)
10. If Licensee requests a hearing, it will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of an ACL by the State Water Board. If a hearing is requested, separate notice setting the time and place for the hearing will be mailed not less than 10 days before the hearing date.
11. If Licensee requests a hearing, the State Water Board will consider at the hearing whether to impose the civil liability, and if so, whether to adjust the proposed liability within the amount authorized by statute. Based on the evidence received at the hearing, the State Water Board may take any appropriate action in accordance with sections 100, 275, and 1050 et seq. of the Water Code, and its responsibilities under the public trust doctrine. Any State Water Board order imposing an ACL shall become final and effective upon issuance.
12. If Licensee does not wish to request a hearing, please remit a cashier's check or money order within 20 days of the date of this Complaint for the amount of the ACL set forth in paragraph 8 above, to:

State Water Resources Control Board
Division of Water Rights
Enforcement Section
P.O. Box 2000
Sacramento, CA 95812-2000

13. If Licensee does not request a hearing and does not remit the ACL, the State Water Board will be authorized to seek recovery of the ACL pursuant to Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

Victoria A. Whitney, Chief
Division of Water Rights

Dated: December 11 2006

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2006-00XX-DWR

In the Matter of Unauthorized Diversion by the
The Vineyard Club Inc.

Cease and Desist Order No. 262.31-14

SOURCE: Unnamed Streams tributary to Gill Creek thence Russian River

COUNTY: Sonoma County

The State Water Resources Control Board (State Water Board) is authorized under California Water Code section 1831 to issue a Cease and Desist Order (CDO) when it determines that any person is violating or threatening to violate any of the following:

- (1) The prohibition set forth in section 1052 against the diversion or use of water subject to division 2 (commencing with section 1000) of the Water Code other than as authorized by division 2.
- (2) Any term or condition of a permit, license, certification, or registration issued under division 2 of the Water Code.
- (3) Any decision or order of the board issued under part 2 (commencing with section 1200) of division 2 of the Water Code, section 275, or article 7 (commencing with section 13550) of chapter 7 of division 7 of the Water Code, in which decision or order the person to whom the cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

On {DATE}, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board, Division of Water Rights (Division) provided notice of the CDO against The Vineyard Club, Inc. (The Vineyard Club) for the violation and threatened violation of the prohibition against unauthorized diversion and use of water.

FACTS AND INFORMATION

The facts and information upon which this CDO is based are as follows:

1. License 12831 (Application 26224) was issued to The Vineyard Club on March 26, 1992. The license allows collection of 245 acre feet per annum (afa) of water by 1) onstream storage at Vineyard Lake, and 2) diversion to storage from Oak Flat Creek, an offstream source, at a rate not to exceed 0.25 cubic foot per second (cfs). The diversion season is from October 1 to May 31 of the following year. The water is for recreation and fire protection uses.
2. License 12831 includes terms 40, 400 and 62 which state:

"After the initial filling of the reservoir, licensee's right under this license extends only to water necessary to keep the storage reservoir full by replacing water lost by evaporation and seepage and to refill if emptied for necessary maintenance or repair."

(000040)

"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."

(1400400)

"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."

(0060062)

- 3. On May 4, 2005, Division staff conducted an on-site inspection of the project authorized under License 12831. Staff observed that Vineyard Lake was full with a slight amount of water flowing over the spillway. The diversion of water from Oak Flat Creek to offstream storage in Vineyard Lake was occurring at the rate of approximately 0.13 cfs. Staff also observed that a measuring device was not installed in Oak Flat Creek and there was no sign of a measuring device in the vicinity of the point of diversion that could have been installed.
- 4. The Agent for the Licensee was informed of the violation and advised that they should retain a registered engineer to design and certify proper installation of a measuring device.
- 5. Contact with the Licensee in the spring of 2006 resulted in the disclosure that a measuring device had not been designed or installed. However, according to the Licensee, water was not diverted from Oak Flat Creek during the 2005-06 diversion season.

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the Water Code, that:

- 1. Commencing on the date of this Order, The Vineyard Club shall cease its violation of the terms of License 12831.
- 2. Within 90 days of the date of this Order, The Vineyard Club shall:
 - a) 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, or,
 - b) Submit a request for removal of the point of diversion to offstream storage from Oak Flat Creek and amendment of License 12831. The request shall include a plan and time schedule to remove any existing diversion structure in Oak Flat Creek and at least 500 feet of the pipeline back from the point of diversion.

Upon the failure of any person to comply with a CDO issued by the State Water Board pursuant to chapter 12 of the Water Code (commencing with section 1825), the Attorney General, upon the request of the State Water Board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Wat. Code, § 1845 subd. (a).) Any person or entity that violates a CDO issued pursuant to chapter 12 may be liable for a sum not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs. (Wat. Code, § 1845, subd. (b).) Civil liability may be imposed by the superior court or administratively by the State Water Board pursuant to Water Code section 1055.

STATE WATER RESOURCES CONTROL BOARD

*Victoria A. Whitney, Chief
Division of Water Rights*

Dated: