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February 13, 2007

Hand-Deliver

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

Re: Notice of Public Hearing – Proposed ACL and CDO against The Vineyard Club, Inc.

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 request additional time within which to submit a Notice of Intent to Appear, and to request a meeting with you, your staff, and the prosecutorial team to discuss whether this matter can be resolved without the need for a hearing.

Without addressing the merits of the allegations contained in the ACL and/or CDO, on or about February 7, 2007, the State Water Resources Control Board (SWRCB) issued a Notice of Public Hearing on the ACL and CDO (Notice), which provided for, among other things, a “noon” February 14, 2007 deadline for filing a Notice of Intent to Appear. The Notice of Intent to Appear must include the names of all witnesses who will testify on a participant’s behalf, along with a brief description of the proposed testimony. According to the Notice, the “staff prosecutorial team” consists of Larry Lindsey and Mark Stretars, both engineers with the SWRCB, and Matthew Bullock, Staff Counsel to the SWRCB.

The Vineyard Club received the Notice on or about February 8, 2007, less than 6 days prior to the deadline for filing a Notice of Intent to Appear. The Vineyard Club promptly sought the advice of counsel regarding the State’s enforcement action, and, in this regard, contacted and retained this firm on Monday, February 12, 2007 (a State holiday). It is simply not possible to adequately review all documents which may be

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relevant to the State's enforcement action, locate and identify potential witnesses, and provide summaries of their proposed testimony by "noon" tomorrow. Moreover, the Vineyard Club may need to conduct discovery, or at least inquire, as to Mr. Bullock's role as Staff Counsel to the SWRCB to determine whether Mr. Bullock, and perhaps others, should be disqualified based upon the recent Sacramento Superior Court decision in *Morongo Band of Mission Indians v. State Water Resources Control Board*, Sacramento Superior Court Case No. 04CS00535. In that case, which is currently pending before the Third District Court of Appeal, the Court held that an attorney "may not simultaneously occupy positions as both an adviser and a prosecutor" before the SWRCB. Due process requires, at a minimum, that the Vineyard Club be provided adequate opportunity to prepare to defend itself against the State's enforcement action. In that regard, and for the reasons set forth below, the Vineyard Club requests that the SWRCB postpone all deadlines set forth in the Notice.

In addition, the Division of Water Rights Report of Compliance Inspection (Report), completed in May 2005, provides, among other things, that, until a new measuring device was installed, "the licensee should be advised that *further diversions* from Oak Flat Creek are subject to ACL and be given a time limit to comply." (Report, page 4, emphasis added.) The "Findings and Recommendations" section of the Report provides the same. (Id., p.6.) The Vineyard Club did not divert water from Oak Flat Creek in 2006.

After reviewing the Report, the Vineyard Club engaged the services of a Registered Professional Engineer to design a Flow Measuring Device/Bypass System consistent with the SWRCB's requirements. The Vineyard Club forwarded that design to the SWRCB, Victoria A. Whitney, Chief, Division of Water Rights, by letter dated February 1, 2007. A copy of the letter is attached hereto for your reference. As explained by the letter, if the design of the flow Measuring Device/Bypass System was satisfactory to the SWRCB, there would be no need to hold a hearing on the CDO, as the Vineyard Club would have cured the alleged defect. The only issue that would remain would be the ACL, for which the Division of Water Rights proposed to fine the Vineyard Club \$4,100.

The Vineyard Club believes that this matter can be resolved without a hearing and would like the opportunity to meet with both the hearing and prosecution teams to discuss disposing of the last remaining issue, namely the ACL. A copy of this letter, including all attachments, is being provided to Matthew Bullock, Staff Counsel and member of the enforcement team. If acceptable to the enforcement team, the Vineyard Club would propose to meet and resolve all issues within the coming weeks, at a time and date convenient to all parties.

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Please let me know whether the SWRCB will postpone, at least temporarily, the deadline for submitting a Notice of Intent to Appear and whether a meeting between all parties in an attempt to settle the remaining issue is appropriate under the circumstances. If you have any questions, or need additional information, please do not hesitate to contact me.

Very truly yours,



Daniel Kelly

DK:yd

Enclosure

cc: Bert Sandell
Margaret Brown
Matthew Bullock

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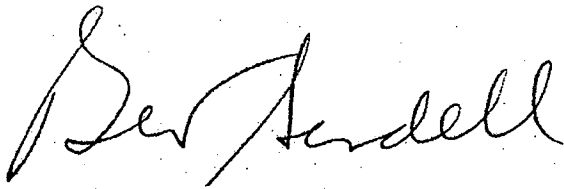
Compliance Plan (titled Measuring Device / Bypass Opening System Design & Calculations). Please note that Exhibit A has also been stamped by P.E. Kelder.

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,

A handwritten signature in black ink, appearing to read "Bert Sandell". The signature is fluid and cursive, with a large initial "B" and "S".

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.

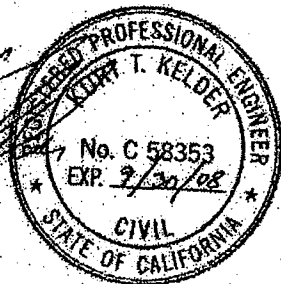
My review of your bypass plan does not include any review of the structural integrity of the flashboard dam, or its corresponding supports. My stamp on the "Measuring Device / Bypass Opening System Design and Calculations" shall be construed solely as my review and approval of said bypass system and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

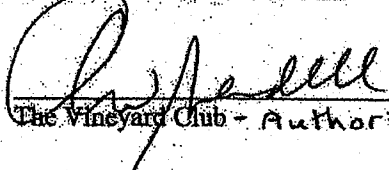
"For the protection of fish and wildlife, the licensee shall bypass at the Oak Flat Creek diversion a minimum of 0.4 cubic foot per second, or the natural flow, whichever is less."

"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



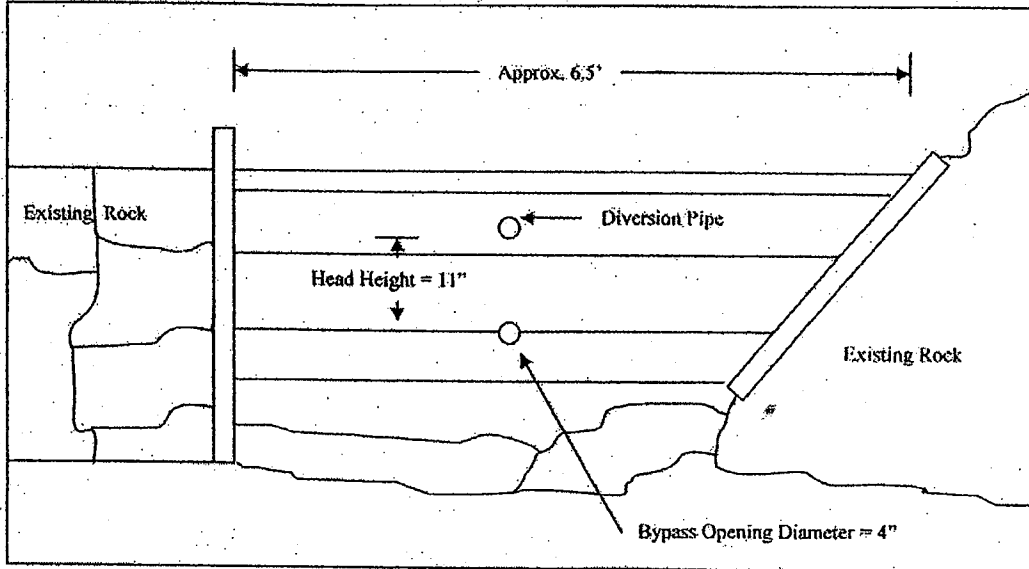
The Vineyard Club - Authorized Agent 2-1-07
Date

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:

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

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

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



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