

Subject: Re: The Vineyard Club, Inc. Hearing
Date: Wednesday, February 21, 2007 12:27 PM
From: Matthew Bullock <MBullock@waterboards.ca.gov>
To: <dkelly@lawssd.com>

Dan,
I am disappointed to learn that you continue with the untenable assertion that your client did not commit a trespass under section 1052 of the Water Code. If, after reviewing the ACL, you wish to reconsider, we are still open to the possibility of avoiding the necessity of a hearing.

Regards,
Matt

>>> Dan Kelly <dkelly@lawssd.com> 2/21/2007 10:56 AM >>>
Matt:

I do not believe the SWRCB has the ability to issue an ACL in these circumstances, as set forth in my letter. Moreover, I do not understand what you mean by a "neutral reading of the applicable statutes and regulations." Your interpretation would make every violation of a permit/license term or condition also a trespass, rendering the difference meaningless. If your interpretation was correct - why would the Legislature have made a distinction, as they did in Water Code section 1831? I simply do not see any other way to read the statute.

In any event, here is what I would propose:

Enter into an agreement recognizing/acknowledging that there was a "past" violation of a condition in the license (lack of a measuring device). Ensure future compliance by including language similar to that contained in the CDO, and perhaps require confirmation that the measuring device is operating properly, through some type of initial bypass flow measurements to be provided to the SWRCB. To ensure ongoing compliance, the agreement can include a provision that, in the event its terms are violated, the ACL can be reinstated and the Vineyard Club, Inc. would not contest its issuance. In other words, if they violate the agreement - the SWRCB can simply reinstate the ACL and the Vineyard Club, Inc. will pay it.

This is the only way to develop a settlement that meets the statutory and regulatory requirements, and provides everything the SWRCB needs, or should need, to ensure full compliance. If acceptable, I will take this proposal to the Vineyard Club. Please let me know by the close of business today, otherwise I need to prepare for the hearing.

Regards,
-Dan

Daniel Kelly
Somach, Simmons & Dunn
813 Sixth Street, Third Floor
Sacramento, CA 95814
(916) 446-7979
FAX: (916) 446-8199
www.lawssd.com

THE INFORMATION CONTAINED IN THIS ELECTRONIC MAIL TRANSMISSION IS CONFIDENTIAL AND INTENDED TO BE SENT ONLY TO THE STATED RECIPIENT OF THE TRANSMISSION. IT MAY THEREFORE BE PROTECTED FROM UNAUTHORIZED USE OR

DISSEMINATION BY THE ATTORNEY-CLIENT AND/OR ATTORNEY WORK-PRODUCT PRIVILEGES. If you are not the intended recipient or the intended recipient's agent, you are hereby notified that any review, use, dissemination, distribution or copying of this communication is strictly prohibited. You are also asked to notify us immediately by telephone at (916) 446-7979 or reply by e-mail and delete or discard the message. Thank you.

Although this e-mail and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by Somach, Simmons & Dunn for any loss or damage arising in any way from its use.

On 2/20/07 5:17 PM, "Matthew Bullock" <MBullock@waterboards.ca.gov> wrote:

> Dan,
> I am sorry to hear that you feel we are being resistant to settlement. The
> terms of the ACL and CDO are very reasonable in the light of a neutral reading
> of the applicable statutes and regulations. We are open to an agreement that
> is outside the framework of an ACL and a CDO while acknowledging past
> violations and ensuring future compliance.

>
> Regards,
> Matt

>
> Matthew G. Bullock
> Staff Counsel
> State Water Resources Control Board
> 1001 I St.
> Sacramento, CA 95812

>
> Confidentiality Notice: This e-mail message, including any
> attachments, is for the sole use of the intended recipient(s)
> and may contain confidential and privileged information. Any
> unauthorized review, use, disclosure or distribution is prohibited.
> If you are not the intended recipient, please contact the sender
> by reply e-mail and destroy all copies of the original message.

>
> *****
> MBullock@waterboards.ca.gov
> telephone: (916) 341-5164
> fax: (916) 341-5199

>>>> Dan Kelly <dkelly@lawssd.com> 2/20/2007 5:04 PM >>>

> Matt:

>
> Thank you for the prompt response to my request. As I stated in the letter,
> my attempt to resolve this matter without a hearing was met, in my opinion,
> with significant resistance. Once you've had the opportunity to review and
> perhaps confirm my interpretation of the applicable statutes and
> regulations, I would invite you to propose settlement terms.

>
> Regards,
> -Dan