



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Rights
1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
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Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC HEARING

**The State Water Resources Control Board will hold a Hearing
to Determine Whether to Issue an Order Consistent with Draft Cease and Desist
Order No. 262.31-14**

and

**Whether to Impose Administrative Civil Liability as Proposed in
Administrative Civil Liability Complaint No. 262.5-44**

against

The Vineyard Club, Inc.

Unnamed Streams tributary to Gill Creek thence Russian River, Sonoma County

Commencing at 10:00 a.m. on Wednesday, April 4, 2007

at

Joe Serna, Jr./Cal-EPA Building

1001 I Street, Second Floor, Coastal Hearing Room

Sacramento, CA

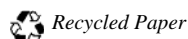
SUBJECT OF HEARING

The purpose of this hearing is for the State Water Resources Control Board (State Water Board or Board) to receive evidence relevant to determining whether to issue an order consistent with draft Cease and Desist Order No. 262.31-14 and whether to impose administrative liability as proposed in Administrative Civil Liability Complaint No. 262.5-44 issued by the Chief of the Division of Water Rights (Division) against the Vineyard Club, Inc. (Vineyard Club).

BACKGROUND

Water Code section 1831, subdivision (a), provides that when the State Water Board determines that any person is violating, or threatening to violate, any requirement described in subdivision (d) of section 1831, the Board may issue an order to that person to cease and desist from that violation. The State Water Board may issue a cease and desist order (CDO) only after notice and an opportunity for hearing. Such notice shall be by personal notice or by certified mail, and shall inform the person allegedly engaged in the violation (respondent) that he or she may request a hearing within 20 days after the date of receiving the notice. The notice shall contain a statement of facts and information showing the violation. Unless the State Water Board receives a timely written request for a hearing, the State Water Board may adopt a CDO without a hearing. In the case of the draft CDO to be considered in this hearing, the respondent requested a hearing.

California Environmental Protection Agency



Water Code section 1055, subdivision (a), authorizes the Executive Director of the State Water Board to issue a complaint to any person on whom administrative civil liability may be imposed under section 1052. By memorandum dated May 17, 1999, the Executive Director of the State Water Board delegated this authority to the Chief of the Division. 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.) In the case of Administrative Civil Liability Complaint No. 262.5-44 to be considered in this hearing, the respondent requested a hearing.

The Vineyard Club, Inc.

License 12831 (Application 26224) was issued to 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 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 may be used for recreation and fire protection purposes.

On May 4, 2005, Division staff conducted an on-site inspection of the project authorized under License 12831, during which staff allegedly found Vineyard Club is violating certain conditions of its license. On December 11, 2006, the Division Chief issued Administrative Civil Liability Complaint No. 262.5-44 (complaint) and draft CDO No. 262.31-14 against Vineyard Club regarding alleged violation of License 12381. The complaint and draft CDO allege that Vineyard Club 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." The basis of the complaint and draft CDO is Vineyard Club's alleged failure to comply with the terms of License 12831. This alleged failure would be an unauthorized diversion and consumptive use of water from Oak Flat Creek, tributary to Gill Creek, to offstream storage in Vineyard Lake. The complaint would impose liability in the amount of \$4,100. The draft CDO would require Vineyard Club to take specific corrective actions under a time schedule. Copies of Complaint No. 262.5-44 and draft CDO No. 262.31-14 are enclosed with this notice and can be found on the Division's website at http://www.waterrights.ca.gov/Hearings/vineyardclub_hearing.html.

By letter dated December 23, 2006, Vineyard Club requested a hearing on the draft CDO and complaint.

KEY ISSUES

- 1.) Should the State Water Board issue a Cease and Desist Order to the Vineyard Club, Inc. in response to draft CDO No. 262.31-14? If a cease and desist order should be issued, what modifications if any, should be made to the measures in the draft order, and what is the basis for such modifications?
- 2.) Should the State Water Board order liability in response to Administrative Civil Liability Complaint No. 262.5-44 against the Vineyard Club, Inc.? If the State Water Board orders liability, should the amount be increased or decreased, and if so on what basis?

ABOUT THIS HEARING

In this hearing, there will be a staff prosecutorial team who will be a party in the hearing. The prosecutorial team members will be Larry Lindsay, Senior Water Resources Control Engineer; Mark Stretars, Senior Water Resources Control Engineer; and Matthew Bullock, Staff Counsel. The prosecutorial team is separated by an ethical wall from the hearing team, and is prohibited from having *ex parte* communications with members of the hearing team regarding substantive issues and controversial procedural issues within the scope of this proceeding. The hearing team consists of the Board members and the staff assisting the Board members with the hearing.

State Water Board Member and Vice Chair Gary Wolff will preside as hearing officer over this proceeding. Other Board members may be present during the hearing. State Water Board staff hearing team members will include Barbara Katz, Senior Staff Counsel; and Jean McCue, Water Resources Control Engineer. The hearing staff will assist the hearing officer and the other members of the State Water Board during the hearing.

HEARING PARTICIPATION

IF YOU WANT TO TAKE PART IN THIS HEARING, you should carefully read the enclosure titled "Information Concerning Appearance at Water Right Hearings." As stated in that enclosure, parties intending to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than **noon on Wednesday, February 14, 2007**.

On or about **Friday, February 16, 2007**, the State Water Board will mail out a list of parties who have indicated intent to participate in the hearing in order to facilitate exchange of testimony, exhibits and witness qualifications. Copies of witnesses' proposed testimony, exhibits, list of exhibits, and qualifications must be **received** by the State Water Board and served on each of the parties who have indicated their intent to appear, no later than **noon on Tuesday, March 6, 2007**.

PARKING, ACCESSIBILITY, AND SECURITY

The enclosed maps show the location of the Joe Serna Jr./Cal-EPA Building and public parking sites in Sacramento. The Joe Serna Jr./Cal-EPA Building Coastal Hearing Room is accessible to persons with disabilities.

Due to enhanced security precautions at the Cal-EPA Headquarters Building, all visitors are required to register with security staff prior to attending any meeting. To sign in and receive a visitor's badge, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take from three to fifteen minutes. Please allow adequate time to sign in before being directed to your meeting.

IF YOU HAVE ANY QUESTIONS

During the pendency of this proceeding and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants regarding substantive or controversial procedural matters within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters (Gov. Code, § 11430.20, subd. (b)) should be directed to Barbara Katz, at (916) 341-5192 or Jean McCue, at (916) 341-5351.



Song Her
Clerk to the Board

Date: February 7, 2007

Enclosures

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.

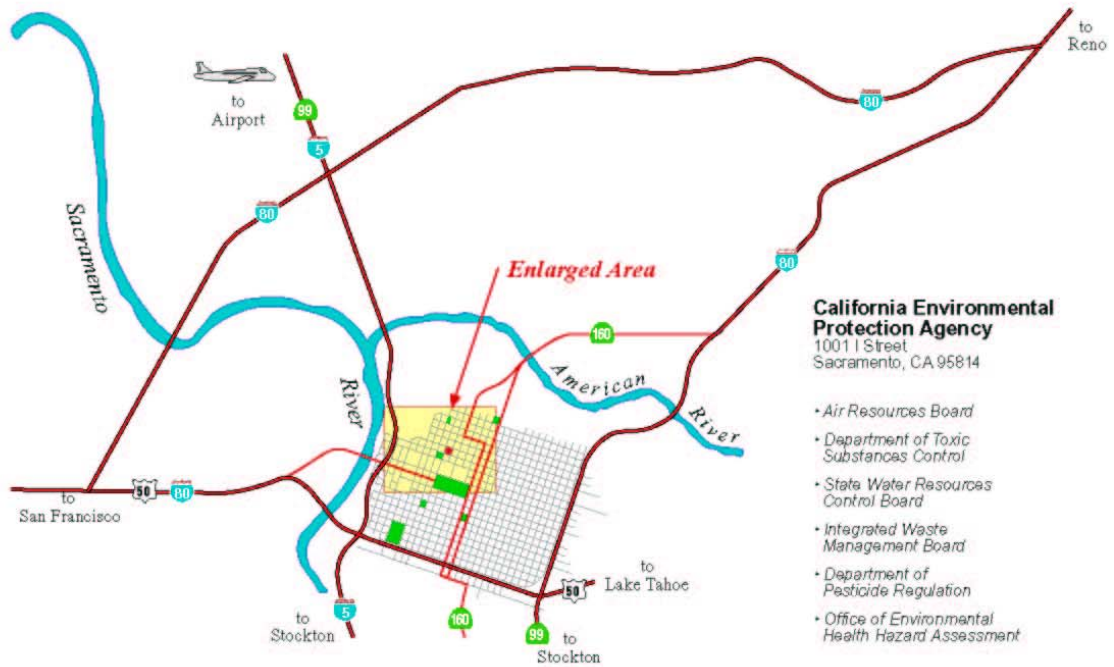
Upon the failure of any person to comply with a CDO issued by the State Water Board pursuant to chapter 12 of the Water Code (commencing with section 1825), the Attorney General, upon the request of the State Water Board, shall petition the superior court for the issuance of prohibitory or mandatory 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:

Enclosure 1



Parking Lot Locations



Parking Lot Locations

- Lot 1 (7th & G St.)
- Lot 2 (7th & G St.)
- Lot A (7th & Capitol)
- Lot C (14th & H St.)
- Lot G (3rd & L)
- Lot H (10th & L)
- Lot I (10th & I, 11th & I)
- Lot K (6th & J/L, 7th & K)
- Lot P (2nd & I)
- Lot U (5th & J)
- Lot W (2nd & I St.)

INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced for purposes of the above-mentioned hearing.

1. **HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site: http://www.waterboards.ca.gov/water_laws/index.html.

Each party has the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. The hearing officer may extend these rights to a non-party participant or may limit the participation of a non-party participant.

Any requests for exceptions to the procedural requirements specified in this notice shall be filed in writing. To provide time for other participants to respond, the hearing officer will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

2. **PARTIES:** The parties are the Vineyard Club, Inc., the Division of Water Rights' Prosecutorial Team, and any other persons or entities authorized by the hearing officer to participate in the hearing as parties. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence. A person or entity that appears and presents only a policy statement will not be allowed to participate in other parts of the hearing. The rules for policy statements are discussed below.
3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file two copies of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **noon on Wednesday, February 14, 2007**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the State Water Board as intent not to appear.

The Notice of Intent to Appear must state: (1) the name and address of the participant, (2) the name of each witness who will testify on the participant's behalf, (3) a brief description of the proposed testimony, and (4) an estimate of the time (not to exceed 20 minutes) that the witness will need to present a brief oral summary of the witness' testimony. The witness' testimony must be submitted in writing as described in Section 4 below. Participants who do not intend to present a case-in-chief but who may wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear. Participants who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the State Water Board and the other participants as soon as possible.

In order to expedite the exchange of information and lower the cost of participating in the hearing, the State Water Board encourages participants to submit written policy statements, written opening statements, written testimony, exhibits, and Exhibit Identification Indexes to the State Water Board in electronic form. In addition, participants may exchange the foregoing documents in electronic form. Hearing participants are not required to submit these documents in electronic form or accept electronic service; however, those who choose to submit these documents electronically must comply with the requirements described in section 5, below. If you are willing to accept electronic media service in lieu of receiving hard copies of items, please check the appropriate box on the Notice of Intent to Appear.

The State Water Board will mail a service list of parties to exchange information to each hearing party who has submitted a Notice of Intent to Appear. Hearing participants who intend to make only policy statements are not required to exchange information and will not receive testimony or exhibits from the parties. The service list will indicate which participants agreed to accept electronic service. No later than **noon on Tuesday, March 6, 2007**, each participant shall serve a copy of its Notice of Intent to Appear on each of the participants identified on the service list and shall also serve on the State Water Board and the participants on the service list a statement of service that indicates the manner of service. If there is any change in the hearing schedule, only those persons or entities that have filed a Notice of Intent to Appear will be informed of the change.

4. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each participant proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.¹ Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A participant who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each participant shall submit to the State Water Board either: six paper copies of each of its exhibits or four paper copies and one electronic copy of each of its exhibits. Each participant shall also serve a copy of each exhibit on every participant on the service list. Participants may serve those parties who agree to electronic service with an electronic copy of exhibits. Participants must serve paper copies of exhibits on those participants who do not agree to electronic service.

With its exhibits, each participant must submit to the State Water Board and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should submit to the State Water Board and serve on the other participants an electronic copy, as well as a paper copy of the Exhibit Identification Index. Please see Section 5 for details regarding electronic submissions.

¹ The hearing officer may make an exception to this rule if the witness is adverse to the participant presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement. In such a case, the hearing officer may allow presentation of the oral direct testimony without requiring written testimony.

A statement of service with manner of service indicated shall be filed with each participant's exhibits. The exhibits and indexes for this hearing, and a statement of service, must be **received** by the State Water Board by **noon on Tuesday, March 6, 2007**, and served on the other participants on or before that date.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
 - b. The hearing officer has discretion to receive in evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A participant offering an exhibit by reference shall advise the other participants and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the participant relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.
 - c. A participant seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other participants prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a participant waives the opportunity to obtain a copy of the exhibit, the participant sponsoring the exhibit will not be required to provide a copy to the waiving participant. Additionally, such exhibits may be submitted to the State Water Board in electronic form, using a file format readable by Microsoft Office 2000 software.
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
 - e. Large Format Exhibits: Participants submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, participants may supply, for the hearing record, a reduced copy of a large format original if it is readable.
5. **ELECTRONIC SUBMISSIONS**: Participants are encouraged to submit the following documents to the State Water Board in electronic form: written opening statements, written policy statements, written testimony, exhibits, and Exhibit Identification Indexes. In addition, the foregoing documents may be served electronically on those participants who have agreed to accept electronic service. Paper copies of all other documents must be submitted to the State Water Board and served on the other parties, unless the hearing officer specifies otherwise.

Any documents submitted or served electronically must be in Adobe™ Portable Document Format (PDF), except for Exhibit Identification Indexes, which must be in a version supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 15 megabytes (incoming mail server attachment limitation) in total size may be sent via electronic mail to: wrhearing@waterboards.ca.gov with a subject of "Vineyard Club CDO/ACL Hearing". Electronic submittals to the State Water Board of documents greater than 15 megabytes in total size should be sent by regular mail in PDF format on compact disk (CD™) media. Electronic service on participants shall be in the same format as submittals to the State Water Board, and should be submitted to the other participants by mail on CD.

Participants who agree to electronic service may request that specific documents be provided to them in paper copy. Requests should be made to the participant who submitted the document, not to the State Water Board. Participants who receive such a request shall provide a paper copy of the requested document within five days of the date the request is received. The State Water Board will post a list of all exhibits submitted for the hearing on its website at http://www.waterrights.ca.gov/Hearings/vineyardclub_hearing.html.

6. **ORDER OF PROCEEDING:** The State Water Board member serving as hearing officer will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events.
 - a. **Policy Statements:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of nonevidentiary policy statements or comments by interested persons who are not participating in the hearing. Policy statements will be heard at the start of the hearing, immediately after a hearing officer identifies the parties and other participants. Policy statements are subject to the following provisions in addition to the regulation:
 - i. Policy statements are not subject to the prehearing requirements noted above for testimony or exhibits, except that persons wishing to make policy statements are requested to file a Notice of Intent to Appear, indicating clearly an intent to make only a policy statement.
 - ii. The State Water Board requests that policy statements be provided in writing before they are presented. Please see Section 5, above, for details regarding electronic submittal of policy statements. Oral summaries of the policy statements will be limited to five minutes or such other time as established by the hearing officer.
 - b. **Presentation of Cases-In-Chief:** Each participant may present a case-in-chief addressing the key issues identified in the hearing notice. The case-in-chief will consist of any opening statement provided by the participant, oral testimony, introduction of exhibits, and cross-examination of the participant's witnesses. The hearing officer may allow redirect examination and recross examination. The hearing officer will decide whether to accept the participant's exhibits in evidence upon a motion of the participant after the case-in-chief has been completed.

- i. **Opening Statements:** At the beginning of a case-in-chief, the participant or the participant's attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to 20 minutes per participant. A participant may submit a written opening statement. Please see section 5, above, for details regarding electronic submittal of written opening statements. Any policy-oriented statements by a participant should be included in the participant's opening statement.
 - ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed up to 20 minutes to summarize or emphasize their written testimony on direct examination.² Each participant will be allowed up to two hours total to present all of its direct testimony.³
 - iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters. If a participant presents multiple witnesses, a hearing officer will decide whether the participant's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to one hour per witness or panel of witnesses. The hearing officer has discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Any redirect examination and recross examination permitted by a hearing officer will be limited to the scope of the cross-examination and the redirect examination, respectively. Witnesses may be cross-examined on relevant subjects that are not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) Ordinarily, only a participant or the participant's representative will be permitted to examine a witness, but a hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. State Water Board members and the State Water Board's counsel may ask questions at any time, and the State Water Board members and staff may cross-examine any witness.
- c. **Rebuttal:** After all participants have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer will allow participants to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another participant's case-in-chief. Rebuttal testimony and exhibits need not be submitted prior to the hearing. Rebuttal evidence is limited to evidence that is responsive to evidence presented in a case-in-chief, and it does not include evidence that should have been presented during the presenter's case-in-chief. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.

² The hearing officer may allow additional time for the oral direct testimony of the witness if the witness is adverse to the participant presenting the testimony and the hearing officer is satisfied that the participant could not produce written direct testimony for the witness.

³ The hearing officer may, for good cause, approve a party's request to use more than two hours total to present direct testimony during the party's case-in-chief.

- d. **Closing Statements and Legal Arguments**: At the close of the hearing or at other times if appropriate, a hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If a hearing officer authorizes the participants to file briefs, four copies of each brief shall be submitted to the State Water Board, and one copy shall be served on each of the other participants on the service list. A participant shall not attach a document of an evidentiary nature to a brief unless the document is at the time in the evidentiary hearing record or is the subject of an offer of the document in evidence. Every participant filing a brief shall file a statement of service with the brief, indicating the manner of service.
7. **EX PARTE CONTACTS**: During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications between either State Water Board members or State Water Board hearing team staff and any of the other participants regarding substantive issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding non-controversial procedural matters are permissible, and should be directed to the State Water Board staff attorney on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled, “Ex Parte Questions and Answers” is available upon request or from our website at <http://www.waterboards.ca.gov/docs/exparte.pdf>.
8. **RULES OF EVIDENCE**: Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.
9. **SUBMITTALS TO THE STATE WATER BOARD**: Notices of Intent to Appear, written testimony and other exhibits submitted to the State Water Board should be addressed as follows:

Division of Water Rights
State Water Resources Control Board
P.O. Box 2000, Sacramento, CA 95812-2000
Attn: Jean McCue
Phone: (916) 341-5351
Fax: (916) 341-5400
Email: WrHearing@waterboards.ca.gov
With Subject of “Vineyard Club CDO_ACL Hearing”

NOTICE OF INTENT TO APPEAR

_____ plans to participate in the water right hearing
regarding:
(name of party or participant)

Vineyard Club CDO and ACL Hearing
Scheduled for
Wednesday, April 4, 2007

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we agree to accept electronic service of hearing-related materials.
- I/we plan to call the following witnesses to testify at the hearing.

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

Name, Address, Phone Number and Fax Number of Attorney or Other Representative

Signature: _____ Dated: _____

Name (Print): _____

Mailing Address: _____

Phone Number: () _____ Fax Number: () _____

E-mail Address: _____

Vineyard Club CDO and ACL Hearing

Exhibit Identification Index

Participant _____

Exhibit No.	Description	Status as Evidence		
		Introduced	Accepted	By Official Notice