



California Regional Water Quality Control Board

San Diego Region



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July 28, 2011

In reply refer to:
755683:rstewart
SM-28815:rstewart

Sent via email

Jessica Newman, Esq.
Staff Counsel
State Water Resources Control Board
Office of Chief Counsel
P.O. Box 100
Sacramento, California 95812-0100

Dear Ms. Newman:

PROSECUTION TEAM REBUTTAL TO JACK EITZEN'S SUBMITAL OF EVIDENCE FOR ACL COMPLAINT NOS. R9-2010-0084 AND R9-2010-104

On April 18, 2011, Mr. Paul Cliff, counsel representing Mr. Jack Eitzen, submitted the following documents as its "Evidence and Policy Statements" with regards to ACL Complaint No. R9-2010-0084:

1. Attachment 1 – Containing a site map, twelve pages of photographs, and a document titled "Appendix C, Receipts for BMP Implementation and Maintenance and Letter from Mr. & Mrs. Kaami", all of which were previously submitted as part of Mr. Eitzen's response to the San Diego Water Board's March 24, 2010 request for Technical Report pursuant to California Water Code section 13267.
2. Attachment 2 – Pages 1-25 of the Technical Report referred to in item 1 above, previously submitted on May 18, 2010.
3. Attachment 5 – Financial documentation to support and inability to pay claim for Jack Eitzen.

On April 18, 2011, Mr. Cliff, submitted the following documents as "Evidence and Policy Statements" with regards to ACL Complaint No. R9-2010-0104:

1. Attachment 1 – Containing a site map, twelve pages of photographs, and a document titled "Appendix C, Receipts for BMP Implementation and

California Environmental Protection Agency

Prosecution Team Rebuttal

ACL Complaint Order No. R9-2010-0084

ACL Complaint Order No. R9-2010-0104

Maintenance and Letter from Mr. & Mrs. Kaami”, all of which were previously submitted as part of Mr. Eitzen’s response to the San Diego Water Board’s March 24, 2010 request for Technical Report pursuant to California Water Code section 13267.

2. Attachment 2 – Pages 1-25 of the Technical Report referred to in item 1 above, previously submitted on May 18, 2010.
3. Exhibit 5 - Financial documentation to support and inability to pay claim for Reggie Ragsdale.

On June 1, 2011 the San Diego Water Board Prosecution Team (Prosecution Team) served Mr. Eitzen with a Subpoena Duces Tecum containing a detailed list of the documents needed in order to complete the analysis of his inability to pay claim.

On June 16, 2011, Mr. Cliff, submitted a variety of financial documents.

Pursuant to the Revised Hearing Procedure dated June 2, 2011, the Prosecution Team submits this Rebuttal with one attachment. The Prosecution Team provided the financial documentation submitted by Mr. Eitzen to Gerald Horner, an Economist employed by the State Water Resources Control Board to conduct an ability to pay analysis. Based on Mr. Horner’s professional judgment, the Prosecution Team has concluded that Mr. Eitzen has failed to submit adequate evidence to support his inability to pay the recommended liability. The Prosecution Team herein submits one document, a memorandum from Gerald Horner detailing the findings of his ability to pay analysis.

In the subject line of any response, please include the requested “**In reply refer to:**” information located in the heading of this letter. For questions pertaining to the subject matter, please contact Rebecca Stewart, Prosecution Team Technical Staff at rstewart@waterboards.ca.gov or 858-467-2966, or David Boyers, Counsel for Prosecution Team at dboyers@waterboards.ca.gov or 916-341-5276.

Respectfully,



REBECCA L. STEWART

Sanitary Engineering Associate

Ms. Jessica Newman, Esq.
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Exhibit: July 26, 2011 Gerald Horner memorandum to David Boyers, Esq.

cc: (via email)

Paul Cliff, Lobb & Cliff, LLP, pcliff@lobbcliff.com

Jack Eitzen, jackeno@hotmail.com

James Smith, San Diego Water Board, jsmith@waterboards.ca.gov

David Boyers, Office of Enforcement, State Water Resources Control Board
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Linda S. Adams
Acting Secretary for
Environmental Protection

State Water Resources Control Board

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Edmund G. Brown Jr.
Governor

TO: David Boyers
Supervising Staff Counsel III
Office of Enforcement

FROM: Gerald Horner
Economist

DATE: July 26, 2011

SUBJECT: Ability to Pay: Jack Eitzen, Administrative Civil Liability Complaint No. R9-2010-0104, and Administrative Civil Liability Complaint No. R9-2010-0084.

This memo is in response to your request for an analysis of the financial ability of Jack Eitzen (Eitzen), an individual, to pay \$301,950 for the civil liability detailed in the California Regional Water Quality Control Board, San Diego Region, Complaint No. R9-2010-0104 dated November 15, 2010, and \$381,450 for the civil liability detailed in the California Regional Water Quality Control Board, San Diego Region, Complaint No. R9-2010-0084 dated September 28, 2010.

I have not been able to determine Eitzen's financial ability to pay the amounts specified in the ACLCs due to inadequate information. I made this determination after reviewing information submitted by Eitzen on February 22, 2011 in support of his claim of inability to pay the ACLCs. This submission contained IRS income tax returns for 2008 and 2009 but critical pages of the returns were missing. The missing information and IRS income tax returns for 2007 and 2010 were requested by subpoena on June 1, 2011 (list attached). The subsequent submission made by Eitzen on June 16, 2011 did not include any of the requested documents; therefore, I was unable to make a proper evaluation of Eitzen's financial ability to pay.

Attachment: Additional documents needed to determine Jack Eitzen's ability to pay the proposed ACLCs.

Additional documents needed to determine Jack Eitzen's ability to pay the proposed ACLCs.

May 4, 2011

1. Complete 2010 IRS income tax return and supporting documentation.
2. Complete 2007 IRS income tax return and supporting documentation.
3. All documents relating to the calculation of the amount of -\$15,990 shown on line 12 of the 2008 IRS Form 1040.
4. All documents relating to the calculation of the amount of -\$457,925 shown on line 21 of the 2008 IRS Form 1040 (Statement 1 in not attached).
5. All documents relating to the calculation of the amount of \$2,400 shown on line 1 of the 2008 IRS Form 1040, Schedule B, labeled "LOT SALES INCOME".
6. All documents relating to the calculation of the amount of \$327,000 shown on line 1 of Part I, of the 2008 IRS Form 1040, Schedule C, for "LAND DEVELOPMENT & SALES".
7. All documents relating to the calculation of the amount of \$315,027 shown on line 4 of Part I, of the 2008 IRS Form 1040, Schedule C, for "LAND DEVELOPMENT & SALES".
8. All documents relating to the calculation of the amount of \$15,480 shown on line 13 of Part II, of the 2008 IRS Form 1040, Schedule C, for "LAND DEVELOPMENT & SALES".
9. All documents relating to the calculation of the amount of -\$42,800 shown on line 27 of Part II, of the 2008 IRS Form 1040, Schedule C, for "LAND DEVELOPMENT & SALES" (Statement 2 is not attached).
10. All documents relating to the calculation of the amount of \$948 shown on line 13 of Part II, of the 2008 IRS Form 1040, Schedule C, for "JACK'S CELLARS".
11. Page 2 of the 2008 IRS Form 1040, Schedule C, for "JC PRODUCTIONS".
12. All documents relating to the calculation of the amount of -\$47,567 shown on line 12 of the 2009 IRS Form 1040.
13. All documents relating to the calculation of the amount of -\$3,000 shown on line 13 of the 2009 IRS Form 1040.
14. All documents relating to the calculation of the amount of -\$473,915 shown on line 21 of the 2009 IRS Form 1040.
15. All documents relating to the calculation of the amount of \$55,070 shown on line 1 of Part I, of the 2009 IRS Form 1040, Schedule C, for "LAND DEVELOPMENT & SALES".
16. All documents relating to the calculation of the amount of \$50,103 shown on line 4 of Part I, of the 2009 IRS Form 1040, Schedule C, for "LAND DEVELOPMENT & SALES".
17. All documents relating to the calculation of the amount of \$4,233 shown on line 13 of Part II, of the 2009 IRS Form 1040, Schedule C, for "LAND DEVELOPMENT & SALES".
18. All documents relating to the calculation of the amount of -\$13,201 shown on line 27 of Part II, of the 2009 IRS Form 1040, Schedule C, for "LAND DEVELOPMENT & SALES" (Statement 2 is not attached).