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March 19, 2009

Matt St. John
North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403

Re: Non-profit group SAVE MARK WEST CREEK's
opposition to delayed implementation of
~~environmental protections set forth in the 2008~~
Integrated Report for the Clean Water Act

Dear Mr. St. John:

I am a member of, and legal counsel for the citizen's group SAVE MARK WEST CREEK ("SMWC"), a non-profit formed in early-2008 in an attempt to preserve what little remains of protected and endangered species native to Upper Mark West Creek, a 2006-designated impaired stream which is (or was) a critical tributary to the Russian River. Regular members of SMWC own properties Mark West Creek runs through or serves as a property line boundary, and are therefore uniquely aware of negatives impacting the creek.

SMWC is an entity born of necessity and emergency created by the pending application for a winery and expanded vineyards by Henry Cornell, a New York resident and Managing Director of Goldman Sachs. Mr. Cornell has been working for the past seven years on his vanity project and has planted 27 acres of grapes; he has also clear cut, graded and caused landslides and extensive erosion into Mark West Creek and its tributaries while avoiding obtaining proper permits. At PRMD hearings on the Cornell project, it has been crystal clear the representations and reports supplied by Cornell in the permit process are misleading at best, intentionally false at worse.

During SMWC's investigation into the Cornell project, we confirmed the existing winery to the east of Cornell's 170 m/l acres, Pride Vineyards, again went dry (e.g, sucked out all ground water at the MWC headlands near the Napa County line) in May, 2008, mirroring results in prior years at Pride, which then buys water from a horse ranch (on MWC, five miles m/l west of Pride) and has it trucked to Pride, via numerous tanker loads daily. Amazingly, the Cornell winery applications(s) claims an abundance of ground-water for growing, harvesting and bottling, and makes no mention anywhere of the existence of Pride Vineyards, its (bone dry) neighbor to the

east. Giving predatory operations such as Cornell a ten (10) year window to reek environmental havoc on the declining, hypersensitive environment of MWC would constitute a death sentence for the creek and its Coho and Steelhead occupants, or what remain thereof, along with dozens of lesser known species. Unfortunately, it seems the era of trusting winery developers to honor their word to refrain from environmental harm, and voluntary adherence to regulations restrictive in nature is bygone.

Rather than putting detailed data re Cornell, Pride and MWC in this letter, I have appended hereto as Exhibit "1" my November 3, 2008, letter on behalf of SMWC to the Sonoma County Board of Zoning Adjustments, opposing the Cornell project. Certain specific facts and authorities discussed therein are salient to the subject 2008 Integrated Report for the Clean Water Act and SMWC's opposition to the opposed ten (10) year moratorium on implementation of protective and/or corrective aspects of the report, and I respectfully refer you to the following segments of Exhibit "1" hereto:

1. Misleading information from project applicants can result in public agencies requiring lesser environmental impact assessment (e.g., EIR v. Mitigated Negative Declaration, etc.) than are actually warranted; a moratorium period will be abused by unscrupulous project applicants to bring their projects to fruition, to the detriment of impaired streams such as Mark West Creek. (See pages 2-4.)
2. Frankly, implementation after ten (10) years will be merely a ceremonial act; in the case of Mark West Creek, there will be no creek or habitants left to protect. (See Ex. "1" and attachments thereto.)
3. A ten (10) year delay in implementation will violate and conflict with the purposes and mandates of (a) the California Environmental Quality Act (CEQA), PRC §§ 21000-21177; (b) the federal National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4370 (d); the federal Clean Water Act (CWA), 33 U.S.C. §§ 1251-1387; (e) the California Endangered Species Act, Fish & Game Code §§ 2050-2100; (f) the federal Endangered Species Act (ESA), 16 U.S.C. §§ 1531-1544; and (g) the Z/berg-Nejedly Forest Practices Act of 1973, PRC §§ 4511 et seq. (See pages 11-13.)
4. As evidenced by Pride Vineyards (at the headwaters of Mark West Creek, just above the Cornell project, @ 1800 elevation) exhausting ground water on its 235 acres by May of each year, and thereafter importing water for grape irrigation from May through October, a 10 year implementation delay, absent an enforced moratorium on any further planting or development, will result in irreparable damage and permanent harm to MWC and the species dependent upon it. Pride has recently added unknown acres of grapes to its previously planted 83 acres, and plans to plant many more acres. Cornell admits to 26 planted acres on its 170 + acre property... its pending application with PRMD seeks to construct an 18, 670 sq. ft. winery and a 10,750 sq. ft. 'storage cave', a collective facility for far more than 26 acres of grapes. (See pages 1-5.)
5. Mark West Creek was previously determined by this Board, and as a "major tributary" to the Russian River Basin by the U.S. Environmental Protection Agency, to

contain anadromous fish and to be an impaired waterway under Section 303(d) of the Clean Water Act. (See Ex. C-1 to attached letter.)

6. The Upper Mark West Creek and its watershed was, in July 2008, designated a Priority Conservation Area by the Association of Bay Area Governments ("ABAG"); this designation is determined, in part, upon ABAG's finding that the MWC Upper Watershed involves "...an urgency for environmental protection." (See pages 6-7.)

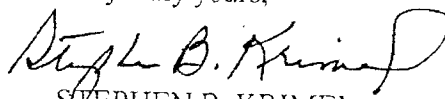
7. The Cornell winery site is not a proper location for expanded vineyards, a winery and caves in light of geologic and hydrologic problems at the location proposed; according to the experts retained by Cornell to support the viability of that project, this undesirable site shows the following: "...winery site was 'grubbed' in 2005 [a major 10,000+ cubic yard landslide followed in early-2006] ...thrust fault extends through a portion of the lands...slopes of 30 to 50 percent...rapid runoff over Franciscan and Goulding soils, with a high hazard of erosion...slope stability is category 'C', relatively unstable rock and soil...slopes greater than 15 percent contain abundant landslides...three landslides within the near vicinity of site with a very large landslide about 250 feet NE of the winery site...ground slopes ranging between 3.5:1 and 7.5:1 are the norm on this property; at 5:1 or steeper surface materials will creep extensively...**natural drainages from the site empties into Mark West Creek off the property**...the winery site is within an area affected by strong seismic activity...site's surface soils have a moderate to high erosion potential depending on slope inclination." (See pages 8-9.)

8. In a 2001 report by Cherie Blatt of NCRWQCB on the Cornell property under a prior application (UPE03-0092) to Sonoma County, when Cornell had 24 acres m/l planted, Ms. Blatt noted the average slope of the 24 planted acres was 27%...visual inspection recently suggested some planted slopes reached a 50% slope.

In conclusion, the members of SMWC vehemently oppose a 10 year delay, or any delay at all, of regulations designed for environmental protection of Mark West Creek or any other waterway in Sonoma County unless a strict, enforceable development moratorium accompanies the delay. This moratorium would need king-sized teeth to penalize its violators; not just monetary penalties since 'too much money' seemingly brings many vanity vintners to our county, but severe limitations on future uses for violators.

Under no circumstances do we believe any implementation delay is warranted or responsible stewardship of our environment. Only if we are diligent and proactive does the MWC have a chance to survive, and we do not intend to allow agencies or developers to deprive future generations of this magnificent resource.

Very truly yours,


STEPHEN B. KRIMEL

enc.