

Philip Ceriani MD

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July 7, 2016

Dick Wolf
State Engineer
Colorado Division of Water Resources
1313 Sherman St., Ste. 821
Denver, CO 80203

SUBJECT: Request for an inquiry into the activities of Stephen Tuck, (Water Commissioner District IV) surrounding his use of extortion to force the resignation of Philip Ceriani MD, President of the Overland Ditch and Reservoir Company.

ENCLOSURES:

1. Affidavit of Philip Ceriani MD
2. Resignation Letter, Philip Ceriani MD
3. Contact list..potential witness's
4. E-mail – Bob Hurford

Mr. Wolfe,

This request is pursuant to our phone conversation on June 28, 2016 regarding the activities of Steve Tuck, Water Commissioner in District 4, who has I believe, engaged in unprofessional and possibly criminal activities (Extortion-Blackmail) while discharging his duties as an employee of the State and more importantly as a servant of the people.

I am requesting an investigation by your office into this matter. As the State Engineer you are ultimately responsible for the activities of your people. Due to the gravity of the situation, one could make the case that Mr. Tuck should be suspended from his duties and put on administrative leave until the results of this investigation are completed. This is unfortunate, but the gravity of the offence simply cannot be overlooked.

Facts:

Mark Twain said ***"First gather the facts...then we can all distort them at our leisure"***

In an effort to gather the facts, I have enclosed an affidavit of my recollection of the events. I have also provided you with contact information on other parties that are knowledgeable about the problem. I urge you to speak with them and get other viewpoints and positions and statements if desired. Three of these people are board members present at the resignation meeting. Tom Howe is past president of the Overland and has insights about dealing with Water Commissioners. Reg Creidler is president of the Redlands Mesa Water Users and very involved in the more recent intervention of the District 4 Water Commissioners in the internal workings of the company.

The Incident (See Personal statement for full version)

Mr. Tuck, was apparently very unhappy over a conversation I had with two of his junior water commissioners regarding a matter in another company (The Overland Ditch and Reservoir Company) of which I am President. Mr. Tuck came to our home on the morning of June 16th under the auspices of wishing to discuss a Water Replacement Plan for the Stucker Mesa Domestic Water Company with my wife, Jean Ceriani who is President of that company. I am also the water treatment plant operator and involved with the engineering department. He requested that I attend that meeting. The SMDWCo had been working with Mr. Tuck for some months on the plan and was near an agreement that was focused on a company meeting the following Tuesday. Mr. Tuck would moderate that meeting.

We were under the impression that this meeting would concern a Water Replacement Plan for the domestic company that had been worked on for months. We met at the kitchen table of our home. Mr. Tuck started the conversation saying how unhappy he was with me for having "words" with his two junior water commissioners the previous week. I offered apologies. He then, speaking to my wife (President of the SMDWCo) stated that the water supply of the company was out of priority and he was planning to shut the supply water off that day. 16 families including elderly people with no water storage would be cut off. He then turned to me and said that if I would immediately resign my position as President and board member of the ODRC he would not shut off the domestic water and assure the domestic company that the water plan would be accepted. Further he demanded a signed statement immediately that I would do that.

When questioned about this startling demand, Mr. Tuck opined that he had never, in 30 years of water management shut down a domestic water company but was prepared to do it immediately in our case if I didn't resign my position as President of the Overland Ditch and Reservoir Company. We were shocked at the blatant use of blackmail and extortion against our domestic water company in return for a vengeful desire to have me

removed for scolding two of his 40 year old water commissioners in a totally unrelated matter in another company.

A number of families in our domestic water have no cisterns and no recourse to survival water in the event of a total shut down as proposed by Mr. Tuck. Thinking of them, I viewed their water supply and safety was more important than my job at the Overland. Mr. Tuck wanted a handwritten statement immediately. I refused and said I would resign that afternoon to resign that afternoon at a regularly scheduled Overland Board meeting. Mr. Tuck said he would be there to make sure that would happen. Mr. Tuck and Mr. Schmucker did show up at the meeting unannounced. (It is a public meeting and they have a right to be there if they wish..But it was an unusual appearance)

It is my opinion that Mr. Tuck used vulnerabilities in the SMDWCo which he regulates, as a lever to achieve my resignation from the Overland Ditch Board for totally unrelated issues. In addition to being unethical, this activity (blackmail/extortion) violates policy codes of behavior for State Employees. According to legal scholars I have consulted, this act could be a violation of Colorado State law punishable by a court judgment.

Injury

Not only has this activity caused injury and insult to my reputation and leadership abilities in a job that I dearly loved. But it has also affected the operations and management of other companies as well. As President of the Overland Ditch for more than 5 years and board member for more than 8 years, I was involved as the project manager for a number of ongoing complex projects that are now devoid of leadership. Remaining board members are very concerned about this.

Mr. Tuck's unprofessional activities have also destroyed the relationship between the Roberts Stucker Ditch Association (RSD), and the Stucker Mesa Domestic Water Company (SMDWCo). Both these organizations are tributary to the Roatcap Creek drainage and currently under the administration of Mr. Tuck. These organizations have serious questions about Mr. Tuck's continued ability to fairly administer water in this drainage. Nobody in these organizations trusts him anymore.

Questions that need answers:

1. *Abuse of power and the public trust:*

Did Mr. Tuck use his power and authority as a Water Commissioner to extort and blackmail a forced resignation of Philip Ceriani MD from his position as President of the Overland Ditch because of the alleged reason that Mr. Tuck didn't like how he spoke with two of his water commissioners?

2. District 4 management team aware?

Was this act supported by Mr. Tuck's supervisor, Bob Hurford (Division 4 chief)? If so, this suggests you have a senior management team that supports this behavior in District 4. Managers that support this sort of activity should most likely be terminated or certainly demoted.

3. Disciplinary Action:

In the matter of Mr. Tuck, if these allegations are proven to be true, what is the DNR proposal for disciplinary action? Extortion is a legally chargeable offense in the civil courts. This behavior violates all manner of rules established for State employees. Mr. Tuck is more than 70 years old and he appears to be failing in his ability to discharge his duties in a responsible manner. He has a stressful job, no doubt, but it appears that because of his advancing age and his behavior exhibited in this incident, he may not be well. Perhaps he should seriously consider voluntary retirement at the end of this water season. If he doesn't do it voluntarily, perhaps the State should mandate the action as a disciplinary proceeding.

4. Relationship of Water Commissioners with water companies.

Do Water Commissioners have the right to bully their way into a board room of a water company (such as the Overland Ditch) and demand policy changes as was done in this case?

In this case, Mr. Tuck and Mr. Schmucker sat in our board meeting and demanded my resignation. They refused to accept my apologies in front of the board and demanded my resignation. Incidentally, this is the second time this year we have seen activity of this sort directed by the District 4 management team led by Mr. Hurford and promoted by Mr. Schmucker. Earlier in the year, Mr. Kuntz (Board Member and now President) enlisted the help of Paul Schmucker to bring an action by District 4 against the Overland Ditch Board stating that Mr. Kuntz had been "injured" by the water management policies of the Redlands Mesa Water Users Association. This action allowed Mr. Schmucker to go "down ditch" and get directly involved in the internal water management strategies of the Redlands Mesa Water Users. The majority of both boards opposed these interventions. Ultimately, the two boards crafted an agreement that appears to have solved the problem although Mr. Kuntz remains unhappy with the outcome.

Members of the boards of both organizations have been very unhappy with the interventions of water commissioners in their corporate business. And in particular the activities of Paul Schmucker in this and other matters. It is well known that Mr. Schmucker and Mr. Kuntz have a cozy business relationship during the off season. (Mr. Schmucker allegedly has done thousands of dollars worth of concrete and general contracting work). It raises the question of a serious conflict of interest between these parties.

Conclusion:

This is an unfortunate set of circumstances. My wife (ditch rider for the Roberts Stucker Ditch) and I (President of the Overland, Board Member of the Roberts Stucker Ditch, Board and Operator in Responsible charge for the Stucker Mesa Domestic Water Co) have known and respected Mr. Tuck for more than 15 years. On balance he has been an excellent commissioner and is seriously concerned about the global view of water administration. It's unclear what pushed him over the edge on this one. This activity that could result in censure and possibly the loss of his job? Mr. Tuck is more than 70 years old now and people that have dealt with him lately have noticed that he is a bit more forgetful and tends to change his mind a lot on water management decisions. His job is very stressful and demands that you be on your "game" all the time. Perhaps it is time for Mr. Tuck to gracefully retire at the end of the water season?

Regarding the matter of the behavior of the other commissioners, Doug Christner and Paul Schmucker. You would think that a couple of seasoned 40 year old water commissioners that were yelled at would have tougher skins and simply ignore the ranting and move on. Instead they chose to complain to Mr. Tuck who, possibly with the assistance of Mr. Schmucker, cooked up a clever scheme to remove me from my position as the President of a major water company in the North Fork by the use of blackmail and extortion. It's unclear if this was a rogue event on the part of Mr. Tuck or whether this behavior was sponsored and approved by the District 4 Engineer. If so, then you have other serious matters to tend to.

It would be nice to overlook this matter; however I simply cannot accept the use of Blackmail and Extortion as a management tool in the State water community. In most cases in the water world, "angry" words over water issues are overlooked. I have seen it for more than 15 years as a farmer, water user, and volunteer water administrator for various organizations. My time at the Overland is over. My interest in this matter is making sure this sort of thing never happens to a private water company president in the future. I urge you to speak with persons on the contact list.

I look forward to the results of your investigation.



Philip Ceriani MD
Past President, Overland Ditch and Reservoir Company.

Potential other parties to interview:

1. Jean Ceriani, President

Stucker Mesa domestic Water Company

iceriani@paonia.com

970.208.7257

+Jean Ceriani was present at the meeting wherein he stated that if I did not resign from the Overland Board that day, all domestic water to 26 people would be shut off

2. Deb Christner

akunamatada@tds.net

Secretary-Treasurer Overland Ditch and Reservoir Company

970.872.4446

+Deb Christner was present at the Overland Board Meeting wherein I resigned and very knowledgeable about the operation of the ODRC.

3. Gerry Adams

Board of Directors Member

970.872.4660 970.872.2132 Mobile

4. Reg Creidler

rgdi@tds.net

President, Redlands Mesa Water Users

970.872.4519 970.250.3234

+ Mr. Creidler has extensive experience at the board level of Overland and RMWUA about the activities of the company and water commissioners. He is very familiar with the last episode of District 4 intervention into the private affairs of water companies.

5. Bryan Klassen

Cedarvista@sopris.net

970.640.7054 Mobile

Mr. Klassen is board member for years, ditch manager for Redlands Mesa Water Users and a previous ditch rider for the Overland Ditch and Reservoir Company.

6. Tom Howe

Past President, Overland ditch and reservoir company (4 years)

howet@tds.net

970.872.7575

970.872.7373 (mobile)

Philip Ceriani MD

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STATEMENT OF FACTS REGARDING THE DEMAND BY STEPHEN TUCK, (WATER COMMISSIONER -DISTRICT 4) FOR PHILIP CERIANI, PRESIDENT OF THE OVERLAND DITCH, TO RESIGN HIS POSITION AS A RESULT OF CONVERSATIONS HELD BETWEEN PAUL SCHMUCKER (WATER COMMISSIONER) AND DOUG CHRISTNER ON JUNE 14, 2016.

June 14, 2016, 6PM: Robert Stephenson (Ditch Rider for the Overland Ditch) called stating he wanted to release some spill water into the ditch. He was wondering why the Oak Mesa Satellite was not yet up and running as it helped his water management. At a previous meeting of the board several months prior the State offered to take over the site and reported they would have it "up and running" as soon as the snow melted. I was upset over the fact that the State was not doing what they said they were going to do. I reported to Robert I would find out.

Paul Schmucker (PS) and Doug Christner (DC) manage the lower portion of the Overland ditch for the state, so I thought PS would be a good place to start. I called Paul and asked about the condition of Leroux Creek and the status of the installation. He reported that the Overland would soon fall out of priority on Leroux Creek that he had no idea when the installation would take place. He further suggested that frankly he didn't think it was all that important. I suggested it was important and it was even more annoying that the Overland had shut down a perfectly good measuring site waiting for the State to get off its ass and do what it promised. This was a heated interchange.

Trying to get to the bottom of this, I called Doug Christner and asked him the same questions. The conversation went along the same path. I suggested that perhaps Doug could run of the ditch every day and report the flume readings at Oak Mesa so we could manage the ditch. This was a heated conversation as well.

June 14, 2016 8.56 PM: Frustrated I penned an email to Bob Hurford expressing my displeasure and wondered when the installation would happen. (Copy of e-mail and response enclosed.)

June 15, 2016 Morning: Bob Hurford (BH) called the next morning on a conference call with Jason. He gave a long and mournful explanation that the State was busy, had only one guy working and it could be another month before the site was up. I politely expressed my displeasure (the sun was up) and said we may consider turning on the existing hardware.

June 15, 2016 5.39 PM: I received an e-mail from BH late in the day responding to my previous mail the day before. He scolded me for bad behavior and made some observations about future interactions. At this juncture I thought the problem had resolved. I vowed to take BH's suggestion and have these conversations when the sun was up. I thought the issue was over.

June 16, 2016 9am: Jean Ceriani is the ditch rider for the Roberts Stucker ditch and also president of the Stucker Mesa Domestic Water Company. Steve Tuck encountered my wife

on the Roatcap ditch and immediately began railing on her in an aggressive manner about my behavior the previous day. According to her, he was apparently very upset that I had verbally abused his two 40 year old water commissioners the day before and requested an "immediate" meeting with the two of us later that morning.

This is where it gets bizarre. Jean Ceriani is president of the Domestic Water Company (Stucker Mesa Domestic Water) and has been working with Tuck for the last several months on an Augmentation plan for the company. The company has very junior decrees in Roatcap Basin (Steve Tuck manages that basin) and subject to being "called out". Jean had met with Tuck the previous week and had a company meeting scheduled for Tuesday June to finalize the plan. For some reason, Tuck was getting very aggressive about small companies such as ours (16 taps) with junior water decrees to provide Augmentation plans. He said that without a plan domestic water companies could potentially be shut off, although he pointed out that he had never personally shut off a domestic water company for lack of an augmentation plan.

Steve Tuck came to our home late in the morning. Both my wife (as president of the domestic water company and the ditch rider) and I were present. Steve Tuck was livid about my verbal abuse of his two water commissioners and said it was inexcusable. I apologized but he said "not good enough". At that point he stated that our Domestic Water Company decrees had fallen out of priority that day and subject to being shut off since we didn't have an augmentation plan in place. At this point he said that he would not shut us off if I would resign immediately as President and Board Member of the board. He wanted me to execute the papers at my kitchen table. !

My wife and I were shocked as this exhibition of blackmail- extortion-bribery. I attempted again to apologize for my behavior, which was admittedly aggressive, but he would not budge. He was visibly enraged and I had no doubt the domestic water to my neighbors on Stucker Mesa would be curtailed that day. I was unwilling to create a lot of hardship for my friends and neighbors, and agreed to resign at the afternoon meeting of the Overland Board scheduled that day.

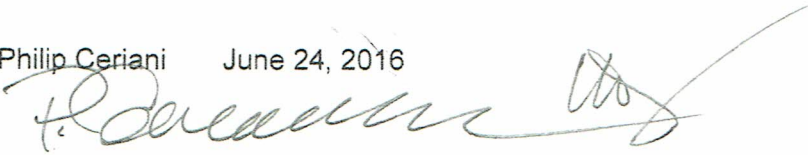
June 16, 2016 4PM Board Meeting. I conducted the meeting and went into executive session. Both Steve Tuck and Paul Schmucker were present. They were not invited but our meetings are open to the public. The board went into executive session with WC's present. I offered the resignation. Board members were shocked. Despite efforts to find a solution, Both WC's made statements demanding my resignation. I left the board.

David Kuntz was aware of my resignation: The following Monday DK called wanting me to continue working on the satellite relay at the reservoir. I had suspicions that Paul Schmucker and DK were knowledgeable about my resignation prior to the board meeting. I had told no one else other than Deb Christner of my intent. DK confirmed that he had a conversation with Paul Schmucker, and was aware of what had happened to me prior to the meeting. This suggests to me a cozy relationship between Schmucker and Kuntz that was well known over the course of the last year. Paul Schmucker is I believe conflicted, as he has done thousands of dollars of work for DK in the off season. PS was also the instigator of the District 4 engineer getting involved in the business of water distribution on Redlands Mesa..A position which I opposed at the board level.

Comment: There is no doubt my aggressive phone behavior was inappropriate in the setting. Blackmailing me to resign, by using a vulnerable position in another company, is quite another matter. In my tenure on the board every sitting President, Kaspar, Kuntz, Church has all had

encounters of an angry kind with the WC's in the district. This one was no different. ***WC's do not have the right to dictate policy in the board room, and certainly cannot use extortion and blackmail strategies to get their way.*** This certainly violates the trust placed in public officials and their responsibility to the public. Steve Tuck breeched the trust, and in my opinion should be censured or possibly retired.

Philip Ceriani June 24, 2016

A handwritten signature in dark ink, appearing to read "Philip Ceriani", with a long, sweeping horizontal line extending to the right.

Philip Ceriani

From: Hurford - DNR, Bob [bob.hurford@state.co.us]
Sent: Wednesday, June 15, 2016 5:39 PM
To: Philip Ceriani
Cc: Tuck - DNR, Stephen; Christner - DNR, Douglas; paul benington; Jason Ullmann - DNR; Jerry Thrush - DNR; Bryan Klassen; akunamatada tds.net; Gerry Adams
Subject: Re: Where is the F _____ Oak Mesa Measuring Device?

Phil,

Wow, the tone of your email is a little disturbing to me, but I understand that I am not special because you apparently communicate this way to everybody. So I won't take it personal.

First, the equipment installation delay is something out of our control. David Hutchins, the hydro technician installing the equipment, was unfortunately delayed and the installation is now scheduled to occur Tuesday the 21st, instead of last week.

Second, you are venting as if this is a mission critical situation. There is no need to call people and chew them out, no need to send me a nasty email. The whole system ran for a hundred years without a satellite gage. The system is full of direct flow water and there are plenty of measures in place and three water commissioners and a ditch rider looking at the system. Its not running wild and your shareholders are in fine shape. You won't be on reservoir water just yet. You need to learn your system better so you don't unnecessarily get uptight and start trashing people for no reason. Listen to the water commissioners, they are allies, not enemies.

Finally, we are upholding our end of the agreement and if you re-read the agreement you will note that we did not specify the exact date the new equipment was going to be installed. At the Board meeting we attended, we explained it would be installed as soon practically possible after the snowmelt.

Next time, sleep on it before you hit the SEND button.

ps....Deb, would you please forward this to the other Board members not in the CC list? Thanks

Bob W. Hurford, P.E.

Division Engineer

Water Division 4, Montrose



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bob.hurford@state.co.us | www.water.state.co.us

On Tue, Jun 14, 2016 at 8:56 PM, Philip Ceriani <pceriani@paonia.com> wrote:

Bob,

Where is the electronics for the Oak Mesa Measuring Flume that we agreed to? The Dynaco system the Overland had was at least giving us baseline information that allowed us to manage the ditch and was accurate to within a few feet. We now have nothing.

It was unfortunate that the water commissioners could not read the manual and figure out how the really simple Dynaco system works.....but hey... math is not a requirement these days for anything.

The Overland has delayed turning on our satellite waiting for your "hydro" guy in Denver to get off his ass and get this system on line. I have made two calls to Christener and Schmucker about the problem., and managed to vent my Italian anger at two good people that are not responsible for this delay. They of course say it is a "hydro" problem. Now it is your problem.

We need to start taking FREE spill water from the reservoir ASAP as the Hubbard's are falling out and the LC water assets are falling out as well. The Oak Mesa reading is extremely helpful in managing our Reservoir Releases. At this time of year shit happens very quickly and I need measurement information to manage the ditch. I understand that your hydro guys in Denver are probably on vacation, and are in "therapy" because of the stressful nature of their work.

We need some action here. Is it going to happen this week?.... I am going to go up and try and recalibrate the Dynaco unit this weekend for our own use. If you can't provide me a day when this is going to happen...let's forget it. Do what you publically said you were going to do.

Grrrrr.....

Philip Ceriani MD, President

Overland Ditch and Reservoir Company

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June 17, 2016

Board of Directors
Overland Ditch and Reservoir Company
28444 Redlands Mesa Rd.
Hotchkiss, Co 81419

Subject: Letter of Resignation

Board,

Effective this date I am resigning as President of the Company for personal reasons. I have enjoyed my more than ten years with the company and believe that my efforts have left this company in a much better position that when I arrived.

I will be happy to assist the board in any way I can during this transition.

Good Luck

Sincerely

A handwritten signature in dark ink, appearing to read "P. Ceriani MD", with a long, sweeping horizontal line extending to the right.

Philip Ceriani MD