

Attachment G
Appellant's Good Cause Request*

[*Request denied by Chair. The attached materials are not part of the record on appeal unless the Chair's decision is overruled.]



WATER AUDIT CALIFORNIA

A PUBLIC BENEFIT CORPORATION
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November 9, 2023

Napa County Board of Supervisors
1195 Third Street, Ste. 310
Napa, CA 94559

Submitted via email to:

Laura.Anderson@countyofnapa.org
Clerkoftheboard@countyofnapa.org

cc. RTooker@fbm.com
CGuido@fbm.com
mckayla.mcmahon@countyofnapa.org

Re: Submittal of good cause request and good cause basis for augmenting the record with extrinsic evidence

Appellant Water Audit California ("Water Audit") is appealing the Rutherford Ranch Winery – June 21, 2023, decision of the Napa County Planning Commission's to adopt the Negative Declaration (ND) for the Rutherford Ranch Winery Major Modification #P19-00126-MOD and Use Permit Exception to the Conservation Regulations #P23-00145 (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Pursuant to the October 30, 2023, pre-hearing conference instructions, the County Policy Manual, PART I: SECTION 8B, the Napa County Appeal Handbook, and Napa County Code sec. 2.88.090(B), Water Audit submits the following and requests that the Napa County Board of Supervisors augments the record for consideration with new evidence.

The basis for the request is for the Board of Supervisors to consider evidence of the legality of the Napa County policy of declining to consider the impacts of existing public trust injuries.

Proposed Supplemental Evidence

Well monitoring data from the City of Napa proximate to Rutherford Ranch Winery.

The evidence is relevant to the impact on groundwater levels of the operation of the Rutherford Ranch Winery.

In the application, the Applicant said that there was no well-monitoring data proximate to their facility. Upon subsequent investigation, Water Audit California discovered that the representation was false.

Standard for Review

A negative declaration is inadequate and an Environmental Impact Report (EIR) is required when substantial evidence supports a fair argument that a proposed project may have a significant effect on the environment. If the initial study uncovers substantial evidence that any aspect of the project may cause a significant effect on the environment, the agency must prepare a full EIR. (*Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310 and *Farmland Prot. Alliance v. Cnty. of Yolo* (2021) 71 Cal.App.5th 300.)

An EIR is required whenever "it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact." (*City of Ukiah v. County of Mendocino* (1987) 196 Cal.App.3d 47; See also *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004 and *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748.) The case of *Visalia Retail, LP v. City of Visalia* ((2018) 20 Cal.App.5th 1) provides additional guidance on the definition of "significant effect on the environment" and the types of evidence that may or may not be considered "substantial evidence" for the purposes of the California Environmental Quality Act (CEQA).

Facts

The proceedings thus far herein have not considered the environmental impact of groundwater extraction utilized by the Rutherford project on the basis that as no additional use is estimated beyond the exiting extractions, there is no need to consider the impact on the public trust. Respectfully, this is an incorrect statement of the law, and fails to correct the cumulative impact of past decisions. The public trust requires consideration of injury and mitigation when development decisions are being made. Past authorizations are not exempt from review.

CEQA is concerned with significant effects on the environment (§ 21100, subd. (b); See Cal. Code Regs., tit. 14, § 15382.) "The state as sovereign retains continuing supervisory control over its navigable waters." (*Nat'l Audubon Soc'y v. Superior Ct.*, (1983) 33 Cal. 3d 419, 445.) This principle "prevents any party from acquiring a vested right to appropriate water in a manner harmful to the interests protected by the public trust." (*Id.*) Further, "The state has an affirmative duty to take the public trust into

account in the planning and allocation of water resources, and to protect public trust uses whenever feasible." (*Id.*, at 446.)

Water Audit is required by the law to prospectively assume that the County will comply with the law. Evidence Code section 664 provides in part: "It is presumed that official duty has been regularly performed." The rebuttable presumption under Evidence Code section 664 "effectuates the policy of relieving governmental officials from having to justify their conduct whenever it is called into question." (*Jackson v. City of Los Angeles* (1999) 69 Cal.App.4th 769, 782.) Appellant was entitled to rely upon the County of Napa to properly obey the law, and when it did not, good cause arose to consider extrinsic evidence.

California defines rebuttable presumptions as those affecting the burden of producing evidence and those affecting burden of proof. That the presumption is rebuttable means "there is a further burden placed upon the party adversely affected by the burden to go forward with sufficient proof to defeat the presumption." (*People e v. Gallardo* (1994) 22 Cal.App.4th 489, 496," (as cited in *Hamilton v. Gourley* (2002) 103 Cal.App.4th 351, 362.)

Good cause

Accordingly, there is good cause to consider the extrinsic evidence of well monitoring data from the City of Napa proximate to the Rutherford Ranch Winery.

Respectfully submitted,



William McKinnon
General Counsel
Water Audit California
Direct: 530.575-5335

11/13/23, 11:40 AM

Water Audit California Mail - Fwd: Wells south of Hennessey



Valerie Stephan <vstephan@waterauditca.org>

Fwd: Wells south of Hennessey

Valerie Stephan <vstephan@waterauditca.org>
To: Valerie Stephan <vstephan@waterauditca.org>

Mon, Nov 13, 2023 at 11:40 AM

From: Joy Eldredge <jeldredge@cityofnapa.org>
Date: Wed, Jul 19, 2023 at 10:52 AM
Subject: Wells south of Hennessey
To: Water Audit California <general@waterauditca.org>

Hello,

Per your request, attached is readily available compiled information (April and October only) that we have regarding the 4 wells the City has historically monitored monthly downstream of our releases.

I have never come across the genesis of our monitoring, but my best guess is it was a requirement by downstream farmers (protestants) as part of securing the City's 1948 water rights.

Joy Eldredge

Deputy Utilities Director



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11/13/23, 11:40 AM

Water Audit California Mail - Fwd: Wells south of Hennessey



WATER AUDIT CALIFORNIA - A California Public Benefit Corporation
952 School Street #316, Napa, CA 94559 / phone: (707) 681-5111

4 attachments

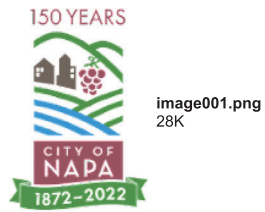


image001.png
28K

 **Coordinates Wells Monitored.xls**
37K

 **Wells Monitored with ortho.pdf**
1378K

 **Well Data near Hennessey-2002-2012.xlsx**
24K

Woods 1 Located NE corner of white house

Woods 2 located next to blue house

C1 located in red tin shed

BV located North side of dirt road
along Vineyard



Well Name	Point ID	Latitude (Global)	Longitude (Global)	Ellipsoid Height (Global)	Google Earth Address	
WELL BV	5669	38d27'56.88176"	-122d23'41.45189"	49.893	8600 Conn Creek Road	Beckstoffer Vineyards
WELL C1	5670	38d28'36.37970"	-122d24'14.30677"	66.244	8906 California 128	The Wood Ranch
WELL Woods 2	5671	38d28'46.20306"	-122d24'28.11487"	65.27	8906 California 128	The Wood Ranch
WELL Woods 1	5672	38d28'48.15611"	-122d24'17.28873"	72.276	8906 California 128	The Wood Ranch

Date (Month - Year)	Depth of Water Below Ground Surface (ft)				
	BV	C1	Woods 1	Woods 2	
Oct-12					
Apr-12	13.2	16.8	18.6	15.3	
Oct-11	dry	27.5	30.1	dry	
Apr-11	7.9	10.2	10.9	6.4	
Oct-10	dry	dry	31	dry	
Apr-10	12.4	15.1	18.3	13.8	
Oct-09	dry	28.3	47.6	dry	
Apr-09	15	19.2	21.4	17.2	
Oct-08	dry	dry	54	dry	
Apr-08	13.3	17.2	20.5	16.6	
Oct-07	dry	29	25.9	dry	
Apr-07	16.4	17.6	20.3	18.2	Jun-07
Oct-06	NA	NA	NA	NA	
Apr-06	7.6	11.8	14.4	8.4	
Oct-05	17.7	28.4	51.5	22.6	
Apr-05	NA	NA	NA	NA	
Oct-04	NA	NA	NA	NA	
Apr-04	8.3	11.6	14	7.8	Mar-04
Oct-03	13.8	15.5	18.5	13.6	Jan-04
Apr-03	10.9	14	17.2	12.7	Mar-03
Oct-02	18	28.1	41.5	22.2	
Apr-02	11.2	14.4	17.5	13.7	

NA - Data not available







