



# WATER AUDIT CALIFORNIA

A PUBLIC BENEFIT CORPORATION

952 SCHOOL STREET #316 NAPA CA 94559

VOICE: (707) 681-5111

EMAIL: GENERAL@WATERAUDITCA.ORG

June 3, 2025

To Napa County Planning Commission

Sent via email to: [meetingclerk@countyofnapa.org](mailto:meetingclerk@countyofnapa.org)

RE June 4, 2025

7C. SHAFER VINEYARDS, LLC / 6110 SILVERADO TRAIL/  
WILDFOOTE TENTATIVE PARCEL MAP APPLICATION #P23-00076

To whom it may concern:

Water Audit California ("Water Audit") is a public benefit corporation with a mission to protect the public trust. The following comments are submitted on its own behalf, and in the public interest:

The Recommended Conditions of Approval and designation of Responsible Agencies appear to be conforming.

The Tentative Parcel Map Application does not include the Application Completeness Checklists or Adjoining Property Owner List Requirements.

The Graphics included a Site Plan, but omits distances between the well and the septic components.

The Hearing packet omits: Hearing Notice, State Clearing House number, Summary Form for Electronic Document, and Notice of Completion.

The CEQA forms identified appropriate reviewing agencies, including USACE, SWRCB, Division of Drinking Water, District 3. However, Notice does not appear to be given to adjacent communities.

ESA performed an apparently conforming Biological Resources Reconnaissance Report and Appendix A Regulatory Context.

### **The Public Trust**

The public trust is evergreen; every new day of injury or violation creates a new cause of action. “Public rights cannot be lost nor the public trust as to their administration and exercise be destroyed either by adverse possession or by laches or other negligence on the part of the agents of the state or municipality who may from time to time be invested with the duty of their protection and administration.” (*San Diego v. Cuyamaca Water Co.* (1930) 209 Cal. 105, 109.) Public agencies have a ministerial duty to consider the public trust interest, and mitigate harm when feasible, when making its daily decisions to divert water, by the operations and/or permitting of well extractions that impact the Napa River. (See *Envtl. Law Found. v. State Water Res. Control Bd.* (“*Envtl. Law Found.*”) (2018) 26 Cal.App.5th 844, 852.)

Once an appropriation is approved, “the public trust imposes a duty of continuing supervision over the taking and use of the appropriated water.” (*Nat’l Audubon Soc’y v. Superior Court* (“*Audubon*”) (1983) 33 Cal.3d 419, 424.) A public agency is “not confined by past allocation decisions that may be incorrect in light of current knowledge or inconsistent with current needs [and] accordingly has the power to reconsider allocation decisions even though those decisions were made after due consideration of their effect on the public trust.” (*Audubon*, supra, 33 Cal.3d 419, 424; see also *Cal. Trout v. State Water Res. Control Bd.* (1989) 207 Cal.App.3d 585, 629, stating that “the rule in section 5946 pertains to a public trust interest no private right in derogation of that rule can be founded upon the running of a statute of limitations, for the same reasons that one may not acquire an interest in public lands by means of adverse possession.”.)

[T]he determinative fact is the impact of the activity on the public trust resource. If the public trust doctrine applies to constrain fills which destroy navigation and other public trust uses in navigable waters, it should equally apply to constrain the extraction of water that destroys navigation and other public interests. Both actions result in the same damage to the public trust. The distinction between diversion and extraction is, therefore, irrelevant. The analysis begins and ends with whether the challenged activity harms a navigable waterway and thereby violates the public trust.

(*Envtl. Law Found.*, supra, 26 Cal.App.5th 844.)

Tributaries to navigable waterways are also subject to the public trust doctrine. For example, see Fish and Game Code section 711.7. (a) which states in part “The fish and wildlife resources are held in trust for the people of the state ...”

The public trust doctrine imposes independent and unavoidable obligations on trustee agencies overseeing groundwater extraction. California precedent makes clear that subdivisions of the state<sup>1</sup> have “a duty to consider the public trust interest<sup>2</sup> when making decisions impacting water that is imbued with the public trust,”<sup>3</sup> and merely complying with CEQA does not discharge that duty.<sup>4</sup>

The public trust requires reconsideration of past or ongoing water use decisions where those decisions were made “without any consideration of the impact upon the public trust.”<sup>5</sup> Thus, compliance with public trust duties is not discretionary, it is obligatory.

As Napa County is a legal subdivision of the state, it must deal with the trust property for the beneficiary’s<sup>6</sup> benefit. No trustee can properly act for only some of the beneficiaries – for example the trustee must represent them all, taking into account any differing interests of the beneficiaries, or the trustee cannot properly represent any of them. (*Bowles v. Superior Court* (1955) 44 C2d 574.) This principle is in accord with the equal protection provisions of the Fourteenth Amendment to the US Constitution.

Furthermore, there can be no vested rights in water use that harm the public trust. Regardless of the nature of the water right in question, no water user in the State “owns” any water. Instead, a water right grants the holder thereof only the right to use water, a “usufructuary right”. The owner of “legal title” to all water is the State in its capacity as a trustee for the benefit of the public. Both riparian and appropriative rights

---

<sup>1</sup> *Env’t L. Found. (ELF) v. State Water Res. Control Bd.* (SWRCB) (2018), 26 Cal. App. 5th 844, 868 (“Although the state as sovereign is primarily responsible for administration of the trust, the county, as a subdivision of the state, shares responsibility for administering the public trust and may not approve of destructive activities without giving due regard to the preservation of those resources.”) (internal quotation marks omitted).

<sup>2</sup> The Napa River and its tributaries, and the fish within those water ways, are protected public trust resources.

<sup>3</sup> *Id.* at 863.

<sup>4</sup> *Id.* at 868.

<sup>5</sup> *Nat’l Audubon Soc’y v. Superior Ct.* (1983) 33 Cal. 3d 419, 426.

<sup>6</sup> i.e. people of California

are usufructuary only and confer no right of private ownership in the watercourse, which belongs to the State. (*People v. Shirokow* (1980) 26 Cal.3d 301 at 307.)

If at any time the trustee determines that a use of water other than the then current use would better serve the public trust, the State has the power and the obligation to reallocate that water in accordance with the public's interest. Even if the water at issue has been put to beneficial use (and relied upon) for decades, it can be taken from one user in favor of another need or use. The public trust doctrine therefore means that no water rights in California are "vested" in the traditional sense of property rights.

Fish & Game Code, section 1600 provides:

The Legislature finds and declares that the protection and conservation of the fish and wildlife resources of this state are of utmost public interest. Fish and wildlife are the property of the people and provide a major contribution to the economy of the state, as well as providing a significant part of the people's food supply; therefore their conservation is a proper responsibility of the state.

The California Department of Fish & Wildlife (CDFW):

... is California's Trustee Agency for the State's fish, wildlife, and plant resources. CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitats necessary for biologically sustainable populations of those species. For the purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.  
(<https://wildlife.ca.gov/Conservation/Environmental-Review/CEQA>.)

Respectfully,



William McKinnon  
General Counsel  
Water Audit California