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Applicant Supplemental Information

Bonny’s Vineyard Appeal P25-00020-APL
Board of Supervisors Hearing – May 6, 2025



WATER AUDIT CALIFORNIA

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Re: Water Audit California Additional Written Information

Appellant Water Audit California is appealing the Appealing the December 18, 2024, decision of the Napa County Planning Commission to Adopt the BONNY'S VINEYARD (MEYER'S FAMILY WINERY) NEW WINERY USE PERMIT NO. P22-00002-UP and Mitigated Negative Declaration

On behalf of Appellant Water Audit California ("Water Audit"), we provide the following additional legal arguments and information in support of Water Audit's appeal.

Water Audit restates its appeal of the Application set forth in its comment letter of December 17, 2024, as if set forth in full at this location. It additionally appeals as follows.

1. The Application does not address public trust concerns.

Napa County Well Permit Standards and WAA Requirements – (January 2024)
states in part:

Any project which is using groundwater from a well within 1,500 feet of a Significant Stream must complete a Tier 3 or an equivalent analysis regardless of whether more water is being withdrawn from the project well or if there is no net increase or a reduction in water extraction because the County's duties under the Doctrine are ongoing. ^(Footnote omitted) An adequate Tier 3 or an equivalent analysis will allow County to discharge its duty and review a legally defensible project.

(<https://www.countyofnapa.org/DocumentCenter/View/25905/Well-Permit-Standards-and-WAA-Requirements--January-10-2024?bidId=>)

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.
(*Env'tl. 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 state¹ have "a duty to consider the public trust interest² when making decisions impacting water that is imbued with the public trust,"³ and merely complying with CEQA does not discharge that duty.⁴

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."⁵ 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's⁶ 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

¹ *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).

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

³ *Id.* at 863.

⁴ *Id.* at 868.

⁵ *Nat'l Audubon Soc'y v. Superior Ct.* (1983) 33 Cal. 3d 419, 426.

⁶ i.e. people of California

capacity as a trustee for the benefit of the public. Both riparian and appropriative rights 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.

2. A finding that CEQA is inapplicable does not satisfy County public trust duties.

In *San Francisco Baykeeper, Inc. v. State Lands Com.*, 242 Cal. App. 4th 202, the Court held that CEQA compliance does not necessarily satisfy public trust obligations, and that the record must affirmatively demonstrate that the public trust doctrine was considered. CEQA review alone is insufficient if public trust duties are not adequately considered in the process. Brushing the issue aside cannot be considered "adequate." While a CEQA review can be incorporated into a public trust analysis, it does not automatically fulfill the agency's obligations under the public trust doctrine. The adequacy of the CEQA review in addressing public trust duties depends on the specific circumstances and the evidence in the record. In this matter the assessment is simple: no public trust review has been conducted on the basis that no CEQA review is required. That conclusion is in error.

"Napa County has determined that a WAA must be provided to complete the permit Application documents, and that the WAA must comply with the most current policy documents published in January 2024, to fulfill Napa County's duties to protect the public trust as it relates to surface water and groundwater." (Water Availability Analysis) Napa County makes no distinction between new and existing uses in its requirement for review of the surface water / groundwater interface.

To comply with longstanding California Supreme Court and Court of Appeal holdings, Napa County has determined that projects extracting water from wells within 1,500 feet of defined Significant Streams must submit a Tier 3 or equivalent analysis for the County to discharge its legal duties under public trust doctrine, whether the proposed project is proposing to extract more or less groundwater or remain at status quo (e.g., no net increase). Although there is no single method to evaluate impacts to the Napa River, County's groundwater consultants, Luhdorff & Scalmanini Consulting Engineers (LSCE), have determined that complying with the Tier 3 analysis from the County's 2015 Water

Availability Analysis Guidance Document (the 2015 WAA Guidance Document) satisfies its legal obligations. Therefore, **PBES cannot find Applications which use a project well within 1,500 feet of a Significant Stream complete unless accompanied by a Tier 3 analysis or an equivalent analysis.** (Napa County Counsel Memorandum: *Application of Public Trust Doctrine to Projects Dependent on Groundwater*, January 2024.) (Emphasis added).

Conclusion

For all of the reasons set forth herein and those set forth in the Appeal Packet, we urge the Board to grant this appeal.

Respectfully,



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