



WATER AUDIT CALIFORNIA

A PUBLIC BENEFIT CORPORATION

952 SCHOOL STREET #316 NAPA CA 94559

VOICE: (530) 575-5335

EMAIL: GENERAL@WATERAUDITCA.ORG

Emailed comment to meetingclerk@countyofnapa.org

December 2, 2025

RE RE: 7A. STEVEN CONTURSI / ARROW AND BRANCH WINERY / USE
PERMIT MAJOR MODIFICATION P23-00057-MOD

To Napa County Planning Commissioners

Kara Brunzell (District 1),
Walter Brooks (District 2)
Heather Phillips (District 3)
Pete Richmond (District 4)
Megan Dameron (District 5)

Greetings:

INTRODUCTION

If the reader has an extra three minutes of reading time, this tale of two counties is an explanation why one is having great success in repopulating its watercourse with fish, while the other continues to slog through litigation.

The major watercourses in Napa and Solano Counties are roughly equivalent, with the 55 miles of the Napa River supported by a 575 square mile watershed, and the 70 miles of Putah Creek fed by 425 square miles. Both are impaired by major man-made obstructions. Flows in both watercourses vary substantially, with certain reaches of the Napa River, for example adjacent to the City of St. Helena, completely dried by municipal and agricultural diversion for several months a year. Putah Creek remains perpetually wetted, but flows range from peaks of 80,000 cubic feet per second (CFS) down to 5 CFS, the minimum acceptable for the support of healthy salmon. Twenty-five years ago, historically abundant salmon populations in both counties had been reduced to a dozen or so spawning fish a year.

This year Putah Creek is monitoring the return of approximately 2,000 spawning fish. We are unaware of any official measure of the Napa cohort, but a reasonable estimate is about 200 fish, which is a lot better than a dozen counted at the beginning of the century, but hardly anything to brag about.

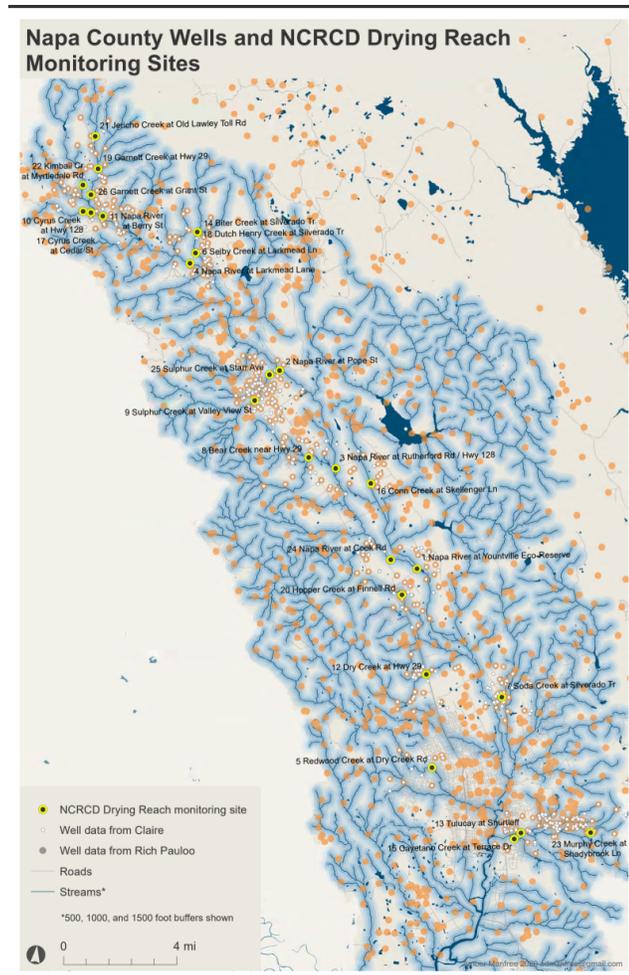
Water Audit has investigated and wish to share our conclusions on the cause of the dramatically different results. In Solana County the government is committed to doing the best they can with what they have and are adaptively adjusting their conduct to succeed. Problems are identified, and over time remediated. In Napa County environmental injury is largely a one-way ratchet, with the best hope being that it won't get much worse. Even volunteer efforts at improvement are intentionally frustrated by the County.

The "public trust" is a legal concept that has held for two thousand years that certain natural components are incapable of private ownership and are equally owned and usable by all persons. Waterways and associated fish have long been recognized as being part of the "public trust." In contemporary California this means that all water is owned by the people, and private rights are merely conditional rights of use,

In 1983 the California Supreme Court rendered a decision confirming that California's fishery was part of the public trust. In *National Audubon* the Court held that, notwithstanding its prior decades drainage of Mono Lake, LA Water and Power had a preemptive duty to allow "sufficient" water to remain in the watercourses to maintain fish downstream of diversions in "good condition." When LA Power later objected that it did not know how much water it was required, the Supreme Court responded in *Cal. Trout II*: "release sufficient water into the streams from its dams to reestablish and maintain the fisheries which existed in them prior to its diversion of water."

Subsequently, to escape Water Board deference to this principle when authorizing extraction permits or licenses, water users transitioned to drilling wells proximate to watercourses, thereby *indirectly* drying connected waterways.

Within the last decade, the courts have held that any water extraction that dries a public trust resource *directly or indirectly* is violative of the law. Whether one dries a watercourse by throwing a suction hose into the water column, or by extractions from an adjacent well, both are impermissible injuries to the public trust.



Napa County has chosen to argue the point. In January 2020 when Water Audit objected that well drilling permits had the effect of drying the Napa River, then director of planning David Morrison announced, in the face of directly contradictory evidence, that there was no evidence of the surface water/groundwater connection. The Board of Supervisors regally decided to ignore the facts, and in preemptory fashion Morrison proclaimed that the County had no duty to the streams. After litigation initiated by Water Audit, in January 2024, the County changed its policy to require inquiry into groundwater/surface water interface when increased extractions were associated with new developments. However, ignoring *National Audubon and Cal. Trout II*, Napa County continues to argue that existing injuries are vested, for example with the recent Sattui, Bonny's Winery and Silverado Resort decisions. This policy has, at times, resulted in fantastical representations and shocking omissions to avow "no net increase."

There are two ways to look at this situation: the practical and the legal. The County and the named applicants have chosen to shelter behind legal arguments before considering the real-world impact. Our position is that new rights cannot take advantage of old injuries. We are not alone in that opinion. In a published decision the Court of Appeal has recently supported our position on the continuous accrual doctrine. Just because a problem exists does not mean it must persist, as the Duckhorn settlement proved.

Here's our bottom line: Five years ago, Solano acknowledged that they had problems and Water Audit assisted in their solution. There has been no litigation, and the problems are being resolved, to obvious good effect. Napa has decided to defend the status quo, at considerable litigation expense, and the problems remain.

PREVIOUSLY UNANSWERED QUESTIONS

Water Audit California reasserts its comments submitted for the hearing of this matter on September 17, 2025, that were not addressed by either County Staff or Applicant:

- Does the project parcel "Silenus" easement well on Parcel One, serve both Parcel Two and Parcel Four?
- Why are no wells on the Silenus Vintners parcel sited on the current project site plan?
- How many wells exist on the Silenus Vintners Parcel?
- Why is the current project providing well water to a parcel with already existing wells?
- Why does the current project omit the Department of Public Works Groundwater Memorandum, and Water Availability Analysis-Phase One Study determination?
- When has Dry Creek recorded no flow?
- Has Napa County Flood Control and Water Conservation District ("NCFWCWCD") repaired or replaced monitors on Dry Creek?
- What maintenance has been addressed?
- Where is the data being managed?
- What communication protocols have been implemented?
- Why does the current project omit the water system feasibility report completeness item requirement?
- Why do the current project Findings omit Department of Public Works review and determination?
- Why is the CDFW Letter not appended to the COA, and why is the Letter not recognized in COA 4.18?
- Why does Staff continue to accept Draft documents?
- Why did staff accept an application packet that omitted the Checklist of Required Materials, Water System Feasibility, List of Adjoining Properties, and Assessor Page?
- Is the Treated Process Wastewater Irrigation Storage Tank above or below ground?

CONDITIONS OF APPROVAL

On the morning of the previous September 17, 2025 hearing staff delivered an “Update Memo” discussing a September 8, 2025 CDFW Letter, but staff does not append the CDFW letter to the Update Memo:

“**CDFW has requested** changes to Mitigation Measure BIO-5, to remove potential ambiguity and **to clarify that no work is proposed within the stream setback**” (September 17, 2025 Update Memo page 1) (emphasis added)

CDFW clearly stated in the aforesaid letter required Lake & Streamed Alteration Agreement terms:

“An LSA Notification, pursuant to Fish and Game Code section 1600 et. seq. is required for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. **The Project has the potential to impact Dry Creek, therefore an LSA Notification may be required as further described below.** Work within streams and riparian areas are subject to LSA notification requirements. CDFW, as a Responsible Agency under CEQA, would consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.” (Planning Commission September 17, 2025 Attachment M Public Comment page 7 CDFW September 8, 2025 Letter page 2) (emphasis in original)

CDFW recommended language included an LSA for work inside the bed, bank, channel, or riparian area of any stream:

“Remove the “to the maximum extent practicable” language. Alternatively, **add the following requirement to MM BIO-5.**

If impacts to the bed, bank, channel, or riparian area of the stream cannot be completely avoided, the Project shall notify CDFW for Project impacts to the stream. More information for the notification process is available at

<https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>. The Project shall comply with all measures of the SAA, if issued, and shall not commence activities with potential to impact the stream until the SAA process has been completed. Restoration to mitigate impacts to the stream shall include a qualified biologist preparing and implementing a restoration plan including, but not limited to success criteria, a minimum of five years of monitoring and maintenance, and achieving success criteria, unless otherwise approved in writing by CDFW.

Timing: Prior to Ground Disturbance

Responsible Party: Project Applicant

Responsible Agency: CDFW”

(See Planning Commission September 17, 2025 Attachment M - Public Comment page 7 “CDFW September 8, 2025 Letter page 2 and 5”) (emphasis added)

At the previous September 17, 2025 hearing staff claimed no work in the creek setback:

“No tree removal and **no work proposed in the stream setback.**” (Planning Commission September 17, 2025 Granicus video 09:55) (emphasis added)

However, the December 3, 2025, Recommended Conditions of Approval has now inserted an additional condition disclosing for the first time the applicant’s intention to perform earthwork inside the stream protected area. At Project Scope 1.1 (i):

“**Riparian restoration** between **Dry Creek** and the proposed barrel storage building;” (Planning Commission December 3, 2025 Attachment B - Recommended Conditions of Approval) (emphasis added)

There is no evidence that CDFW has been informed of this new condition. The Conditions MM BIO-5 does not include the CDFW above recommended language. See pending Recommended Conditions of Approval 6.12 (e):

“BIO-5: Riparian Protection. The Owner/Permittee shall implement the following measures to prevent the inadvertent encroachment into specified stream setbacks during construction:

1. The location of stream setbacks shall be clearly demarcated in the field with temporary construction fencing, which shall be placed at the outermost edge of required setbacks shown on the project plans. Prior to any earthmoving activities, temporary fencing shall be installed: the precise locations of said fences shall be inspected and approved by the Conservation Division prior to any earthmoving and/or development activities, No disturbance, including grading, placement of fill material, storage of equipment, etc. shall occur within the designated areas for the duration of erosion control plan installation and vineyard installation. The protection fencing shall remain in place for the duration of project implementation.
2. All construction and related traffic will remain outside of the protective fencing to the maximum extent practicable to ensure that the stream, buffer zones, and associated woodland habitat remains undisturbed.

Method of Monitoring: The above measures shall be incorporated as conditions of approval of the project (if approved) and apply to associated building and grading permits and shall be implemented in conjunction with all construction activities.

Responsible Agency: Planning, Building, & Environmental Services Department”

The Conditions of Approval also do not condition where the 1500 cubic yards of spoils will be dumped. If material is dumped offsite, then where are the spoils being dumped? Have trucking trips been considered? Why are spoils not addressed in the application?

NO CEQA REVIEW

The Applicant and County state that they will not recirculate the project on CEQA. The Water System Feasibility Study, the Stormwater Control Plan, and the Environmental Noise Assessment have not been submitted to State Clearing House per CEQA, and therefore have

not been reviewed by the Regulatory Agencies (<https://ceqanet.lci.ca.gov/2025080635>).

<Exhibit A>

As previously stated in Water Audit's September 15, 2025 comment, the Water Availability Analysis is incomplete, and data is not supported with evidence on the record. Of special note, the Tier III Analysis by RCS is based on Tier I Analysis data by Applied Civil Engineering:

"RCS prepared this document to provide conformance with Napa County Tier 3 WAA requirements (Napa County, 2015 & 2024a) following a 2022 Tier 1 WAA report prepared by the project engineer, Applied Civil Engineering Incorporated (ACE). ACE prepared that Tier 1 WAA to facilitate acquisition of a Winery Use Permit Modification for the permitted onsite winery, titled "Tier 1 Water Availability Analysis for the A & B Vineyards LLC Winery Use Permit Modification", dated January 6, 2022 (ACE, 2022). Although **RCS relied on data contained within the Tier 1 WAA by ACE** for the subject Tier 3 WAA Memorandum, RCS does not opine herein on that Tier 1 WAA work by ACE, and **RCS does not augment or confirm that Tier 1 WAA work.**" (Planning Commission September 17, 2025 Attachment F - Water Availability Tier I III page 23) (emphasis added)

The Tier I Analysis provides no metering reports and no pumping tests.

FINDINGS

The Findings recognize only one project parcel APN 034-190-040-000. Finding No.12 cites a "neighbor's well located on the project parcel" consuming "8.5 AFY." Is this the "Silenus" well aka the "Easement" well? Finding No. 12 also calculates a water demand at 12.47 AFY:

"The parcel currently includes two wells, the project well and the Silenus Easement Well. **Water Demand Calculations submitted for the project indicate the water demand for existing uses on the property as 12.47 AFY** which includes: vineyard irrigation (3 AFY), landscape irrigation (0.2 AFY), a winery visitation program (0.77 AFY), and a neighbor's well that is located on the project parcel (8.5 AFY). **The proposed groundwater demand** would use the following: vineyard irrigation (2.19 AFY), landscape irrigation (0.2 AFY), a winery visitation program (1.18 AFY), and a **neighbor's**

well that is located on the project parcel (8.5 AFY).” (Planning Commission December 3, 2025 Attachment A - Recommended Findings page 5) (emphasis added)

How is the neighbor’s well 8.5 AFY factor determined? The Water Availability Analysis does not chart this factor. It claims an existing and proposed demand for the Silenus property at 5.36 AF not 8.5 AFY, and for both parcels combined at a proposed total of only 9.74 ac-ft/yr:

“The parcel size is approximately 10.09 acres and therefore the water use screening criteria is calculated as follows... Reduced Water Use Screening Criteria = **3.03 acre-feet per year. Note that these threshold conservatively exclude any allowance associated with the Silenus Vintners property.**

The **total Estimated Water Use** for existing conditions **for both parcels combined** (9.33 ac-ft/yr) and **proposed conditions (9.74 ac-ft/yr)** are both less than the WAA Water Use Screening Criteria (10.09 ac-ft/yr) and both are more than the Reduced Water Use Screening Criteria (3.03 ac-ft/yr).” (Planning Commission September 17, 2025 Attachment F - Water Availability Analysis Tier I III page 3 to 6)

This accounting does not make sense. It would appear that Finding No. 12 “neighbor’s well” at **8.5 AFY** added to the Conditions of Approval 6.15(d)(5)(i) “Annual groundwater usage for Well 1 shall not exceed **3.57 af/yr**” is a **total amount of 12.07 acre feet, and not the WAA reported 9.74 ac-ft/yr**, there exceeding the allowable water extraction on the project parcel.

ENVIRONMENTAL NOISE ASSESSMENT

The December 3, 2025, hearing appends an Environmental Noise Assessment Addendum claiming a future monitoring plan will be performed. The Addendum considers a future event, without any certain data, submitted after the proposed project is determined:

“Illingworth & Rodkin, Inc. (I&R) **will monitor** the sound levels prior to and during a 30 person event with non-amplified background music held at the Arrow and Branch winery covered patio area... These **findings will be submitted in a sound study report, suitable for submission to Napa County.**” (Planning Commission December 3, 2025, Attachment E - Environmental Noise Assessment Addendum page 1) (emphasis added)

The Applicant has not performed its duty to provide sound level measurement prior to the Commission approving the project. The Commission cannot perform its duty to determine compliance without data.

Commissioner Brooks disclosed in the September 17, 2025, hearing that he performs in a band that had been contracted by the Applicant

(https://napa.granicus.com/player/clip/5690?view_id=21&redirect=true) This reveals two things: a clear conflict of interest, and that Commissioner Brooks does not understand the phrase “in an abundance of caution.”

“I also met with Donna Oldford and Mike Muelrath yesterday on site. And **in an abundance of caution the noise ordinance violation that they’re accused of involved a band, and I am a member of that band although I was not at that event.** I did not play at the uh, and so I don’t think that it will effect my ability to look at this proposal.” (September 17, 2025 Granicus video at 05:02) (emphasis added)

For the record, Water Audit incorporates herein all Public Comment letters in opposition to the Arrow & Branch project submitted at the September 17, 2025, hearing and this December 5, 2025, hearing including but not limited to those of Richard Svendsen, Susan Groth, Bill and Dina Falk, Steven Taddei and Christine Beebe, Robert and Alicia Ringstad.

Respectfully,

/s/ William McKinnon

William McKinnon
General Counsel