



WATER AUDIT CALIFORNIA

A PUBLIC BENEFIT CORPORATION

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WaterAuditCA.org

November 16, 2020

The Honorable Geoff Ellsworth
Mayor, City of Saint Helena
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Dear Mayor Ellsworth and others:

Re: NOTICE OF POTENTIAL LITIGATION
City of Saint Helena breach of duties to the public trust

The City of Saint Helena (CSH) is a political subdivision of the State of California. Accordingly, the city has trustee duties when making decisions and engaging in conduct that have a potential impact to the public trust. These include the concurrent duties to preserve the public trust from avoidable harm, and to make no unnecessary injury to the trust.

Water Audit California (Water Audit) is an advocate for the public trust.

Following several months of investigation and research, Water Audit has come to the conclusion that CSH misunderstands its public trustee duties, and that it is grossly derelict in its performance of its trustee duties, both by its own improper extraction of groundwater, and by its failure to properly perform acknowledged administrative duties.

To the extent that groundwater extraction causes diminution of protected surface flows the excessive extraction is an offense against the public trust. It is unacceptable for a trustee to take benefit from the trust that it manages, and yet CSH has directly contributed to dewatering of the Napa River by obtaining 30% of its water supply by extractions from the Stonebridge wells complex.

For over a decade CSH has been informed of this injury, and yet the city has chosen to ignore the problem, building its water policy and authorizing development based upon water obtained by misappropriation of the public trust.

To be clear, Water Audit's mission does not encompass other important impacts of development such as community character, traffic, or infrastructure demands. Our only concern is that the city's development does not injure the commons by its misappropriation of the water necessary to sustain the environment. Federal and state law does not permit such conduct.

CSH Ordinance Chapter 13.16 provides the city with the authority and duty to issue well drilling permits. It provides that the city will receive annual reports monitoring the extraction from each of the wells within its jurisdiction. Further, the Ordinance establishes a process to properly abandon existing wells so as to preclude the possibility of contaminated surface water intrusion into the groundwater aquifer. Water Audit is informed and believes that CSH has a pattern of exercising no discretion over the issue of well drilling permits, fails to consider the cumulative impacts of wells, allows abandoned wells to exist without remediation, and maintains no comprehensive monitoring over groundwater extraction. Additionally, although the Ordinance imposes a duty on CSH staff to consider whether a new well will injure a neighbor or the aquifer, it does not at the same time impose a duty to address potential injury to the public trust.

Subject to receipt of exculpatory evidence, Water Audit has concluded that CSH is in violation of its duties to the public trust by extraction of water from the Stonebridge well complex, and by the dereliction of its duties to control and monitor groundwater extraction within its jurisdiction.

We offer the following alternatives. CSH may within the next forty-five (45) days propose and adopt by resolution a course of conduct to (1) modify its extractions from the Stonebridge well complex to cease injury to the public trust; *and* (2) modify its administration of well permits to (a) approve applications only following consideration of cumulative extractions on public trust flows; and (b) determine procedures for properly monitoring new well permits and monitoring existing wells, including but not limited to determining cumulative extraction impacts and ensuring the proper decommissioning of wells.

Should CSH elect to stay its course, after forty-five days Water Audit will commence appropriate litigation without further notice. Water Audit remains open to communication in any form on any matter.

Respectfully,

A handwritten signature in blue ink, appearing to read "Grant Reynolds".

Grant Reynolds
Director
Water Audit California

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