

DELAY REDUCTION CASE

**ENDORSED**

JUN 15 2021

Clerk of the Napa Superior Court  
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CASE MANAGEMENT CONFERENCE  
DATE: 12/1/2021  
TIME: 8:30am  
PLACE: Courtroom B  
825 Brown Street, Napa CA 94559

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

19 WATER AUDIT CALIFORNIA,  
20 A Public Benefit Corporation,  
21  
22  
23 Plaintiff and Petitioner,

26 v.

29 THE CITY OF SAINT HELENA  
30 AND DOES 1 to 1,000,

33 Defendants and Respondents.

) Case No. 21CV000859  
)  
)  
)  
) VERIFIED  
) COMPLAINT FOR NEGLIGENT  
) AND INTENTIONAL BREACH  
) OF TRUSTEE DUTIES; FOR  
) DECLARATORY JUDGMENT;  
) PETITION FOR WRIT OF  
) MANDATE AND PRELIMINARY  
) AND PERMANENT INJUNCTION  
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) Jury trial requested  
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**I. INTRODUCTION**

1. Plaintiff and Petitioner Water Audit California (“Petitioner”) brings this action to challenge the failure of the City of Saint Helena ("CSH") to manage groundwater resources interconnected with the Napa River in a manner consistent with the public trust doctrine of California. Petitioner brings this action on its own behalf, on behalf of the general public and in the public interest.
2. The CSH has the authority to issue permits to extract groundwater. Concurrently, the CSH has the duty under the public trust doctrine to protect various public trust resources on behalf of the people of California.
3. By issuing permits to extract groundwater interconnected with the Napa River and its tributary streams without adequate analysis of the impacts on public trust uses and resources, the CSH is acting in a manner contrary to their duties under the public trust doctrine.
4. By its own extraction from waters of the public trust, the CSH is taking advantage of the trust it has a legal duty to protect.
5. Petitioner seeks an order from the Court that groundwater interconnected with the surface water features are within the CSH’s authority and duty under the Public Trust Doctrine.
6. Petitioner seeks an order from the Court setting forth the duties that the CSH owes the people of this state.
7. Petitioner seeks a judgment that the CSH has been negligent in its public trust duties, and an award of damages in an amount required to remediate the injuries to the public trust as a result of this negligence.

1 8. Petitioner seeks a writ compelling the County to provide an accounting  
2 of the cumulative impact of Respondent’s water extraction decisions on the  
3 public trust, and enjoining the CSH from issuing or renewing well-  
4 drilling permits until such a time as the CSH has provided said  
5 accounting and established permitting and other management practices  
6 that will protect public trust resources.

7  
8 **II. PARTIES**

9 9. The plaintiff and petitioner, WATER AUDIT CALIFORNIA, (“Water Audit” or  
10 “Petitioner”) is a California public benefit corporation organized and existing  
11 under the laws of the State of California. Water Audit is a “person” under  
12 California Corporations Code Sections 18 (“Person’ includes a corporation as  
13 well as a natural person”); 15901.02(y) (“Person’ means an individual . . .  
14 corporation . . .”); and 25013 (“Person’ means an individual, a corporation . .  
15 .”). Water Audit brings this action as a private attorney general advocating for  
16 the interests of all of the people of California.

17 10. The defendant and respondent, CITY OF SAINT HELENA (“CSH,” “City” or  
18 “Respondent”) is a city authorized by the California Constitution and as set  
19 forth in *Government Code § 3400 et seq.*

20 11. Water Audit does not know the true names of defendants and respondents  
21 DOES 1 to 1,000, inclusive, and therefore sues them by these fictitious  
22 names. Water Audit is informed and believes, and on the basis of such  
23 information and belief alleges that each of these parties is in some manner

1 legally responsible for the events and happenings alleged herein. Water Audit  
2 is further informed and believes, and on the basis of such information and  
3 belief alleges, that at all times mentioned the respondents were the partners,  
4 agents, coventurers, and/or employees of their co-respondents and  
5 defendants, and in doing the things herein alleged were acting within the  
6 course and scope of such agency and employment. Alternatively, the DOES  
7 have acted in reliance on permission granted by the CSH to extract  
8 groundwater, and their future action must be equitably amended to avoid  
9 injury to the public trust. Alternatively, the DOES have acted without  
10 permission to extract groundwater, and their future action must be equitably  
11 amended to avoid injury to the public trust. The Petitioner will seek leave to  
12 amend to insert the true names of the DOES when such parties have been  
13 identified.

14 12. The CSH and DOE defendants/respondents will collectively be referred to as  
15 “defendants.”

16 13. The real party in interest STATE WATER RESOURCES CONTROL BOARD  
17 (“SWRCB” or “Water Board”) is an agency of the State of California, with a  
18 stated mission to preserve, enhance, and restore the quality of California's  
19 water resources and drinking water for the protection of the environment,  
20 public health, and all beneficial uses, and to ensure proper water resource  
21 allocation and efficient use, for the benefit of present and future generations.

1 The administrative offices of the SWRCB are located in the County of  
2 Sacramento, California.

3 14. The real party in interest DEPARTMENT OF FISH & WILDLIFE (“CDFW,”  
4 formerly Department of Fish & Game (“CDFG”)) is an agency of California,  
5 with a stated mission to manage California’s diverse fish, wildlife, and plant  
6 resources, and the habitats on which they depend, for their ecological values  
7 and for their use and enjoyment by the public. The administrative offices of  
8 CDFW are located in the County of Sacramento, California.

9 15. The real party in interest NATIONAL OCEANIC AND ATMOSPHERIC  
10 ADMINISTRATION FISHERIES OFFICE (“NOAA FISHERIES,” formerly  
11 National Marine Fisheries Service (“NMFS”)) is a scientific agency within the  
12 United States Department of Commerce that focus on the conditions of the  
13 oceans, major waterways, and the atmosphere. NOAA FISHERIES California  
14 Coastal Region maintains offices in the City of Santa Rosa, California.

15 16. The real party in interest the US FISH and WILDLIFE SERVICE (“USFWS”) is  
16 a federal government agency dedicated to the conservation, protection, and  
17 enhancement of fish, wildlife and plants, and their habitats. USFWS Pacific  
18 Southwest Regional Headquarters are located in the City of Sacramento,  
19 California.

1           **III.     VENUE**

2           17. Venue is proper in this court under California *Code of Civil Procedure* (“CCP”)  
3           §395(a) because the *res* of the public trust discussed herein and the offices of  
4           defendants are within the City of St. Helena, County of Napa, California.

5  
6           **IV.     JURISDICTION**

7           18. The writ relief sought in this action is pursuant to the California *Code of Civil*  
8           *Procedure* (“CCP”) §1085. Plaintiffs have performed all conditions precedent  
9           to filing suit or are excused from such conditions. *Water Code* § 1851.

10          19. Additionally, this Court has subject matter jurisdiction because the causes of  
11          action arise, *inter alia*, under the California *Constitution*; the California *Fish &*  
12          *Game Code*, (“FGC”); the California *Water Code*; the *CCP*; the California  
13          *Public Resources Code*; and the California public trust doctrine. Common law  
14          imposes public trust considerations upon the defendant’s decisions and  
15          actions. *Center for Biological Diversity, Inc. v. FPL Group, Inc.* (“*Bio*  
16          *Diversity*”) 166 Cal.App.4th 1349 (2008); *Environmental Law Foundation v.*  
17          *State Water Resources Control Board* (“*ELF*”) 237 Cal.Rptr. 3d 393 (Cal. Ct.  
18          App. 2018) 26 Cal.App.5th 844.

19          20. If trustee agencies fail to adequately consider the public trust, whether due to  
20          conflicting priorities, limited financial resources, political considerations, or for  
21          any other reason, a private person has standing to commence an action to  
22          protect the public trust, including the right to obtain preliminary relief.

1 California's Supreme Court has stated "[A]ny member of the general public ...  
2 has standing to raise a claim of harm to the public trust." *National Audubon*  
3 *Society v. Superior Court* ("Audubon") (1983) 33 Cal.3d 419, 435 fn. 11,  
4 citations omitted.) A plaintiff may commence an action challenging a  
5 permitting entity or "any other state agency or subdivision of the state [that]  
6 failed to discharge its responsibilities under the public trust." *Bio Diversity,*  
7 *1370.*

## 9 **V. PRIOR TO LITIGATION**

10 21. In May 2016, after unproductive discussions, Water Audit filed a notice of  
11 claim to CSH concerning the operation of Bell Canyon Dam and Reservoir.  
12 No offer of remediation was made, and in August 2016 an action was filed:  
13 *Water Audit California v. City of St. Helena, et al.*, Napa County Superior  
14 Court Case number 16CV000680 ("Action"). The Action alleged that the City  
15 had not performed its duties pursuant to FGC §5937 and the public trust  
16 doctrine to monitor flows and bypass sufficient water to keep fish downstream  
17 in good condition. In August 2017 Water Audit and the City entered into a  
18 settlement agreement to conclude the Action. The agreement provided, *inter*  
19 *alia*, for the digital monitoring and monthly reporting of inflows, outflows and  
20 changes in reservoir storage. It also provided for a downstream fisheries and  
21 hydrological study to be undertaken to determine a starting point for adaptive  
22 management.



1 22. In November 2016, after unproductive discussions, Water Audit gave CSH  
2 notice of its intention to sue regarding the York Dam, an obsolete 19<sup>th</sup> century  
3 earthen structure that had been without beneficial use for several decades.  
4 For more than a decade, CSH had paid NOAA FISHERIES a \$70/day fine for  
5 its failure to remove the dam. A pre-litigation settlement was made with Water  
6 Audit wherein CSH committed to removing the dam by the end of 2018. CSH  
7 did not perform. In January 2019, Water Audit gave a renewed notice of intent  
8 to sue and, in response, CSH finally contracted for removal of the structure.  
9 The dam was removed in 2020,<sup>1</sup> opening several miles of prime spawning  
10 grounds.

11 23. In August and November 2020, Water Audit wrote to CSH expressing the  
12 opinion that CSH's conduct constituted a violation of public trust duties by its  
13 operation of the Pope Street (also known as "Stonebridge") well complex and  
14 its failure to consider the public trust in issuance of well drilling permits. The  
15 first communication expressly stated that it was not a notice of anticipated  
16 litigation. When CSH did not respond the second communication gave  
17 express notice of intent to sue.

18 24. In February 2021, Water Audit and CSH issued a Joint Public Statement  
19 ("Joint Statement") that constituted a commitment to collect and publish data  
20 necessary to assess injury to the public trust. The aspirational statement was

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<sup>1</sup> *Small Dam, Big Deal: York Dam Removed in Napa Valley*. UC Davis California Water Blog (11-08-2020) <https://californiawaterblog.com/2020/11/08/small-dam-big-deal-york-dam-removed-in-napa-valley/>

1 not intended to be a settlement of disputed claims, providing for no more than  
2 the collection and sharing of information. It concluded “All future decisions of  
3 the City will be subject to any available legal review processes.”

4 25. CSH did not provide data anticipated by the Joint Statement, and through  
5 public statements of its elected representatives has avowed that the City has  
6 the legal right to continue conduct that will injure the public trust. Specifically,  
7 CSH has not posted operating reports for Bell Canyon for over a year and has  
8 ceased posting monthly omnibus water reports.

9 26. Water Audit has by several processes sought information from the defendants  
10 regarding the extraction of water, including but not limited to requests made  
11 pursuant to the Public Records Act. (*Gov’t Code* §6250-6268).

12 27. This litigation has resulted.

13  
14 **VI. REGULATORY BACKGROUND**

15 28. California Constitution Article X, section 2, requires “that the water resources  
16 of the State be put to beneficial use to the fullest extent of which they are  
17 capable, and that the waste or unreasonable use or unreasonable method of  
18 use of water be prevented.” *Water Code* § 1243 provides that the “use of  
19 water for recreation and preservation and enhancement of fish and wildlife  
20 resources is a beneficial use of water.”

1 29. California law distinguishes between surface water and groundwater. Both  
2 surface and groundwater may be put to beneficial use, but any use of water  
3 without a water right is a trespass against the State of California.

4 30. In some locations surface and groundwater water sources are hydrologically  
5 connected. A location where this occurs is described as a  
6 groundwater/surface water interface. In such a situation groundwater  
7 extraction can diminish or eliminate the surface water features, and thereby  
8 impermissibly injure the public trust. *ELF, at p. 393.*

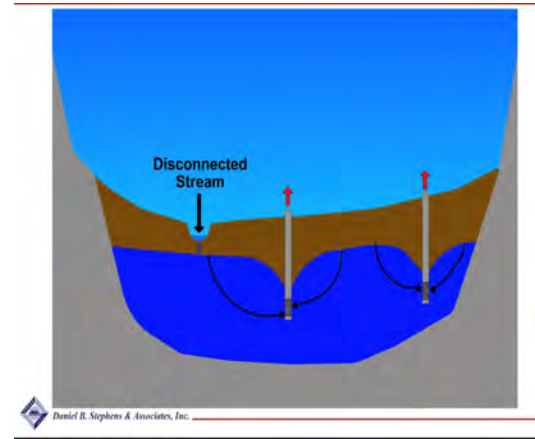
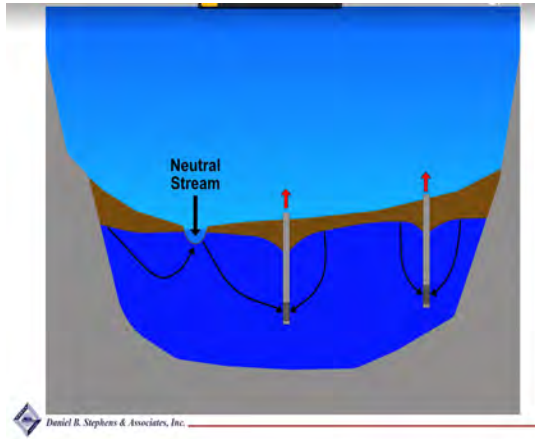
9 31. Surface water rights are administered by the Water Board. Within the Water  
10 Board the Division of Water Rights (“DWR”) acts on day-to-day matters. The  
11 SWRCB is the only agency with authority to administer surface water rights in  
12 California. The Water Board shares concurrent jurisdiction with the state  
13 courts to enforce surface water rights. *Audubon, supra.* Only the courts may  
14 adjudicate both surface water and groundwater. A referral process allows the  
15 courts to access the surface and allocation expertise of the Water Board while  
16 concurrently utilizing their *Article X section 3* reasonable use jurisdiction to  
17 consider groundwater extraction. “In any suit brought in any court of  
18 competent jurisdiction in this State for determination of rights to water, the  
19 court may order a reference to the board, as referee, of any or all issues  
20 involved in the suit ... [or] ... for investigation of and report upon any or all of  
21 the physical facts involved.” *Water Code § 2000-2001*

1 32. Similar principles govern rights to water in an underground basin. First priority  
2 to use goes to the landowner whose property overlies the ground water.

3 These "overlying rights" are analogous to riparian rights in that they are based  
4 on ownership of adjoining land, and they confer priority. *City of Barstow v.*  
5 *Mojave Water Agency* (2000) 23 Cal.4th 1224, 1240, 99 Cal.Rptr.2d 294, 5  
6 P.3d 853. Surplus groundwater also may be taken by an appropriator, and  
7 priority among "appropriative rights" holders generally follows the familiar  
8 principle that "the one first in time is the first in right." *Id.* at p. 1241.

9 33. The State permit and licensing requirements that apply to in-stream water  
10 rights do not apply to groundwater. *City of Pasadena v. City of*  
11 *Alhambra* (1949) 33 Cal.2d 908, 933–934, 207 P.2d 17.

12 34. Groundwater gives rise to a third category of rights. Under certain  
13 circumstances, an appropriator may gain prescriptive rights by using  
14 groundwater to which it is not legally entitled in a manner akin to squatting,  
15 that is actual, open and notorious, hostile and adverse to the original owner,  
16 continuous and uninterrupted for the statutory period of five years, and under  
17 claim of right. This situation will typically present itself when a well is drilled  
18 substantially deeper or better placed than its neighbors thereby allowing the  
19 new well to draw water from the adjacent property.



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Image 1: From the presentation of Dr. Douglas (Gus) Tolley  
Napa Water Forum 02.07.2020

35. Those wishing to drill a well within the jurisdiction of CSH must first obtain a permit pursuant CSH Ordinance 13.16, then obtain a second permit pursuant to Napa County Ordinance 13.12. CSH has no provision in its ordinances or procedures to determine if the cone of depression surrounding a well is injurious to the public trust. This applies to both its own extractions from the Pope Street wells, and the extractions of others authorized by the CSH.

36. Property rights are not absolute, however, and remain subject to the public trust. *Audubon, supra.*

## VII. FACTS

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37. The Napa River Watershed is a 426 square mile drainage flowing from north to south, with its outlet at San Pablo Bay, near Vallejo. It is roughly 50 miles long and 10 miles wide, reaching its highest elevation on Mt. St. Helena, at about 3,900 feet. The climate is Mediterranean, with warm, dry summers and

1 most precipitation falling as rain in cool winter months. Proximity to the ocean  
2 - and its coastal fog - moderates summer air temperatures.

3 38. Natural surface water abundance is strongly seasonal, with high flows  
4 following atmospheric river events, and otherwise moderate to low flows.  
5 Natural summer flow conditions in waterways range from drying in smaller  
6 reaches, groundwater and spring-fed perennial flow in mountain canyons,  
7 continuous or intermittent flow where tributaries cross alluvium in the floor of  
8 Napa Valley, and perennial flow primarily fed by subsurface flow in lower  
9 reaches of larger tributaries and the mainstem Napa River.

10 39. Today, the Napa River is important for maintaining native aquatic animals  
11 because it is the least urbanized of the sizable watersheds directly feeding  
12 San Francisco Bay. It is larger and has more summer flow than Petaluma,  
13 Sonoma, and other bay-frontage creeks. Perhaps most importantly,  
14 anadromous fishes migrating to and from the Napa River avoid perils of the  
15 Sacramento-San Joaquin Delta, such as confusing flow patterns, predation,  
16 and poor habitat quality. By virtue of its location and overall condition, the  
17 Napa River is now a keystone watershed for native fishes and other aquatic  
18 animals.

19 40. The Napa River watershed presently supports a diverse assemblage of native  
20 aquatic species, though many populations are smaller than they were  
21 historically, and some now have special status. The Napa River, historically  
22 and presently, supports the greatest steelhead spawning runs of any tributary

1 to San Francisco Bay estuary. In the past, USFWS estimated that 6,000 to  
2 8,000 steelhead returned annually (USFWS 1968). Chinook have recently  
3 returned to the watershed, and native fishes such as Pacific, western river,  
4 and brook lamprey, hitch, and Sacramento splittail are also present. Other  
5 special status aquatic animals relying on surface water resources in Napa  
6 County are California freshwater shrimp, California giant salamander, foothill  
7 yellow-legged frog, and northwestern pond turtle.

8 41. The Napa River watershed is under constant development pressure.

9 Historically, agricultural and urban development have eliminated habitat,  
10 introduced fish passage barriers, altered surface flow regimes, and affected  
11 groundwater contributions to streams. Ongoing conversion FROM wildland to  
12 agriculture is occurring at a rate averaging 200 acres per year, county-wide.  
13 Newly planted vineyards are routinely permitted to extract groundwater water  
14 at an average annual rate of 0.5 acre-foot of water for each acre planted,  
15 Vineyards require additional water in droughts and when vines are young.  
16 Once grapes reach wineries, wine production requires approximately 6  
17 gallons of water per gallon of finished wine.

18 42. These changes in use have steadily increased water demand, with wineries  
19 relying on a mix of municipal and groundwater sources. Winery demands on  
20 municipal water supplies can compete with potable use by residents, and  
21 groundwater extractions can compete with environmental flows.

1 43. Federally designated critical steelhead habitat<sup>2</sup> includes all of the Napa River  
2 reaches and estuarine areas accessible to steelhead.<sup>3</sup> Three identified  
3 salmonid habitats within the jurisdiction of the CSH are Bell Canyon, York,  
4 and Sulphur creeks, and their tributaries. Under the Endangered Species Act,  
5 steelhead found in the Napa River watershed belong to the Central California  
6 Coast evolutionarily significant unit (“ESU”). This steelhead population is  
7 reproductively isolated from other populations and represents an important  
8 component of the evolutionary legacy of the species.

9 44. Since 1929, United States Geological Services (USGS) gauge no. 1145600  
10 has monitored stream flows at Pope Street crossing of the Napa River in St.  
11 Helena. Proximately located are two monitoring wells operated by the County,  
12 and the two Pope Street potable water production wells.

13 45. In 1971, Napa County first reports groundwater extraction from the Pope  
14 Street well site when an irrigation well was drilled. That well had no  
15 measurable effect on the public trust, as from 1929 to 2000 the Napa River is  
16 reported to have dried just once. Since 2001, after the Pope Street wells  
17 reached full production, USGS monitoring shows that the adjacent segment of  
18 the Napa River has dried up in more than half of the ensuing years.

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<sup>2</sup> *Critical habitat*: Identifies specific areas occupied by threatened or endangered species at the time of their listing that contain physical or biological features essential to conservation of the species and that may require special management considerations or protection.

<sup>3</sup> Stillwater final technical report 2002 p23



1 46. CSH has known for decades that its operations of the Pope Street wells were  
2 dewatering the Napa River. In November 1994, CSH commissioned a report  
3 from Richard C. Slade and Associates titled "Hydrogeologic Assessment for  
4 Water Well Feasibility for City of St. Helena, Napa Valley, California"  
5 ("Hydrological Assessment"). This report presented information and  
6 conclusions that indicate a hydrologic connection between the groundwater  
7 system and surface water contained in the Napa River. It concluded that the  
8 Napa River recharges the groundwater system pumped by production wells  
9 even if the wells are screened only in the deeper volcanic rocks. Production  
10 wells screened and/or gravel packed in the alluvium, or in the alluvium and  
11 deeper volcanics, can draw directly from the alluvium that is in direct contact  
12 with the Napa River. Seasonal groundwater level fluctuations for monitoring  
13 wells screened in the alluvium near the river may be subdued as a result of  
14 recharge from the Napa River, thereby giving false indications of groundwater  
15 levels further from the watercourse.



Image 2: The Napa River proximate to the Pope Street wells, June 2021  
Image by Dr. Amber Manfree for Water Audit California

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5 47. In 2002, the Watershed Information & Conservation Council (“WIIC”) was  
6 created by Napa County “to assist the Supervisors in their decision-making  
7 process.” Members include representatives of the councils of Napa Valley  
8 cities and County Board of Supervisors. Since inception CSH has  
9 continuously had representatives participating in WIIC proceedings.

10 48. Also, in 2002, the California Department of Drinking Water did a Drinking  
11 Water Source Assessment for Stonebridge (AKA Pope Street) Well No. 1.

12 49. In 2009, Napa County began a study of its groundwater resources to meet  
13 identified action items in the County’s 2008 General Plan update. The study,

1 by Luhdorff and Scalmanini Consulting Engineers (“LSCE”), stated that it was  
2 intended to emphasize developing a sound understanding of groundwater  
3 conditions and implementing an expanded groundwater monitoring and data  
4 management program.

5 50. In 2011, the CSH Safe Yield Committee published a report that stated that  
6 average demands exceeded the average supply. The Report gave no  
7 consideration to impact from the Pope Street wells on the Napa River, and did  
8 not provide for the Bell Canyon Dam bypass called for by the Department of  
9 Fish and Game, as DFW was then called. (Enforcement of the unfulfilled  
10 DFG bypass demand underlay the earlier litigation between Water Audit and  
11 the CSH.) The Study relied upon injury to the public trust as an assumption.

12 51. In 2011, Napa County appointed members to the Groundwater Resources  
13 Advisory Committee (“GRAC”). The CSH had from inception to dissolution  
14 representatives in GRAC. Over a period of three years, under the direction of  
15 the County Board of Supervisors, GRAC represents that it developed the  
16 foundation of the County’s groundwater program. GRAC is the predecessor to  
17 Groundwater Sustainability Plan Advisory Committee (“GSPAC”) discussed  
18 below.

19 52. In September 2014, the state adopted three bills that are collectively referred  
20 to as the Sustainable Groundwater Management Act (“SGMA”). The stated  
21 objective of SGMA is to halt groundwater overdraft in high and medium

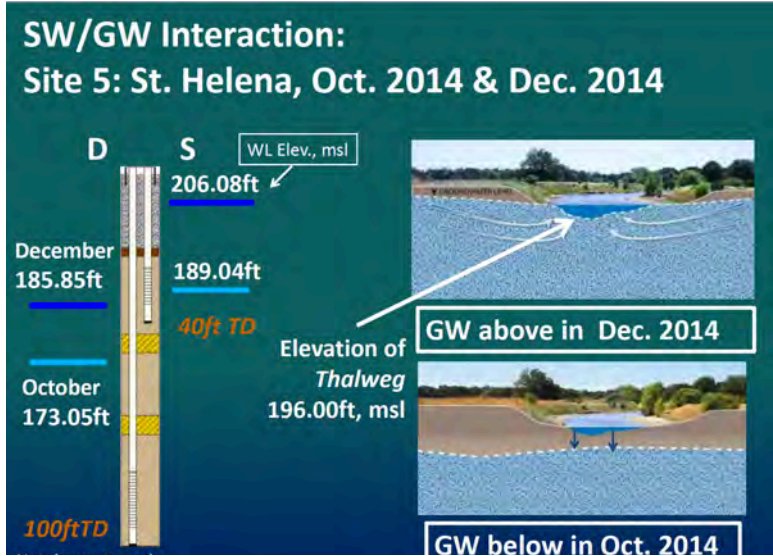
1 priority basins and bring them into balance within twenty years. Napa Valley  
2 Subbasin was identified as a high priority basin.

3 53. In October 2014, a single borehole was drilled proximate to the Pope Street  
4 wells by the Napa County Department of Environmental Health to install  
5 shallow and deep groundwater level monitoring, as reported below in  
6 paragraph 55.

7 54. In 2014, an analysis by LSCE detailed the relationship between groundwater  
8 extraction and river dewatering at the Pope Street wells. In the same year,  
9 GRAC considered and rejected a proposition to examine in greater detail the  
10 surface water/groundwater interface and the related problem of well-to-well  
11 impairment. Two CSH representatives voted in the minority.

12 55. In 2015, LSCE reported to WIIC the cause of the Napa River drying at Pope  
13 Street in St. Helena with graphic clarity, showing in two slides the relationship  
14 between a lowered groundwater level and a dry river, and the relationship  
15 between groundwater extraction and a lower groundwater level. *Res ipsa*  
16 *loquitur*. No remedial action was taken by any party.

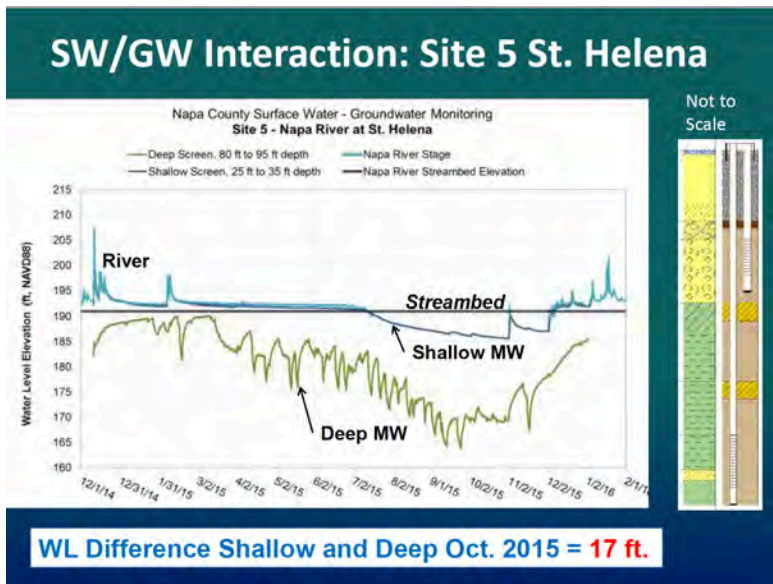
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Image 3: LSCE to WIIC



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Image 4: LSCE to WIIC

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56. In 2016, LSCE recommended that Napa County install additional monitoring of groundwater/surface water interactions in areas where data were lacking. No additional monitoring was installed. Although CSH knew that it was causing dewatering of the Napa River, no effort was made to measure and

1 monitor, and no mitigation for injury to the public trust was undertaken.  
2 Further, CSH permitted and authorized additional groundwater extraction  
3 proximate to the recognized salmonid habitats of Bell Canyon, York, and  
4 Sulphur creeks without consideration of the potential impacts on the public  
5 trust.

6 57. In December 2016, the County submitted to the state an alternative  
7 groundwater sustainability plan (Alt-Plan) intended to preclude the SGMA  
8 process of developing a groundwater sustainability plan. A condition of  
9 approval was that the County had been sustainably managed for at least ten  
10 years. The Napa River's drying condition was disclosed in the Alt-Plan, but no  
11 mitigation was proposed. The County asserted that the watercourse drying  
12 had occurred for such a long time that mitigation was not required. The state  
13 rejected the Alt-Plan and the argument that mitigation was not required.

14 58. In December 2019, County Supervisors appointed themselves the sole  
15 directors of a newly formed Groundwater Sustainability Agency, ("GSA") and  
16 assigned it the task posed by SGMA to develop a Sustainable Groundwater  
17 Plan by January 2022. As stated above, in June 2020 the GSA appointed the  
18 GSPAC, a renewed version of GRAC.

19 59. SGMA does not displace the public trust doctrine and does not require inquiry  
20 or assessment of injury to the public trust. The Napa Valley Subbasin SGMA  
21 review encompasses a 71.8 square mile area, which is 17% of the Napa

1 River watershed and 9% of the county's total area. In contrast, the scope of  
2 the public trust is all-inclusive.

3 60. Further, "many requirements in SGMA do not take effect for a number of  
4 years, and even then, only for some subset of the total corpus of groundwater  
5 in the state." *ELF*, 407-08. The urgency to protect threatened species does  
6 not allow a leisurely twenty years for remedy. "[W]e have found no legislative  
7 intent to occupy the field and thereby to dissolve the public trust doctrine  
8 within the text or scope of SGMA." *ELF*, 411

9 61. The Annual Report of the GSA published in April 2021 ("2021 Groundwater  
10 Report") reported on Napa groundwater conditions in 2020. Not once in this  
11 document do the words "public trust," "fish," "salmon," "steelhead," or  
12 "Chinook" appear.

13 62. Notwithstanding the need for additional monitoring earlier called for by LSCE,  
14 and the CSH's actual knowledge of the waterway drying caused by its  
15 conduct, in 2020 Napa County measured the groundwater-surface water  
16 interface only in the same five locations as in years previous. The furthest  
17 downstream monitoring location is influenced by tidal waters and is not  
18 directly reflective of groundwater contributions to surface waters.

19 63. The furthest upstream monitoring location, USGS gauge no. 1145600 at Pope  
20 Street in the CSH, reports that, in addition to increased drying *frequency*,  
21 there has been an increase in *duration* of periods when the Napa River is dry.  
22 Dry periods that, a decade ago, lasted for a month or less now frequently last

1 several months in a row. In 2020, the Napa River at Pope Street was reported  
2 dry from the third week of June until the third week of December; a new  
3 record. This factor indicates an urgency of action required for the very survival  
4 of the public trust. California’s native aquatic species have historically  
5 survived many droughts. They make it through dry periods by retreating to  
6 deep pools, or “refugia” when flows naturally slow or channels begin to dry. If  
7 refugia dry completely, fishes and aquatic invertebrates, including special  
8 status fishes, are extirpated.

9 64. Napa County admits “[t]he lack of well pump test information makes hydraulic  
10 properties ... difficult to access.” (2021 Groundwater report, p. 24) Such  
11 limited data as were collected reported there were “losing stream conditions  
12 (flow from surface water into groundwater) throughout 2015.” 2021  
13 Groundwater Report, p. 28

14  
15 **VIII. CAUSES OF ACTION**

16 **FIRST CAUSE OF ACTION**  
17 **(Negligent Breach of Trustee Duties – City of St. Helena**  
18 **and Does 1 to 1,000)**  
19

20 65. The Petitioner incorporates and restates paragraphs 1 to 64 above as if set  
21 forth in full here.

22 66. The public trust arises from the fundamental relationship between a  
23 government and its citizens, and from the basic expectation that renewable  
24 natural resources should remain abundant, justly distributed, and available to



1 future generations. Such resources form a perpetual trust to sustain the  
2 present and future generations of citizens.

3 67. Over a century ago the U.S. Supreme Court defined the public trust as  
4 property that "is a subject of concern to the whole people of the state." *Illinois*  
5 *Central R.R. Co. v. Illinois*, 146 U.S. 387, 454 (1892) at p. 455.

6 68. The public trust provides that certain natural resources, including water  
7 resources, are held by the state "as trustee of a public trust for the benefit of  
8 the people." *Audubon*, at p. 434.

9 69. The state as sovereign is primarily responsible for administration of the public  
10 trust. A city is a legal subdivision of the state and references to the "state"  
11 includes cities. Gov. Code, §§ 53208.5, 53217.5 & 53060.1 [setting various  
12 limits on benefits for "members of the legislative bodies of all  
13 political subdivisions of the state , including charter cities and charter  
14 counties"], 8557, 8698, 12650 & 12424 ["political subdivision " includes  
15 "any city , city and county [or] county"], 37364, subd. (e) ["[t]he provisions of  
16 this section shall apply to all cities, including charter cities"]. *City of Redondo*  
17 *Beach v. Padilla* (2020) 46 Cal.App.5th 902, 912

18 70. A public trust trustee "may not approve of destructive activities without giving  
19 due regard to the preservation of those [public trust] resources." *Center for*  
20 *Biological Diversity, Inc. v. FPL Group, Inc.* (2008) 166 Cal.App.4th 1349,  
21 1370, fn. 19, 83 Cal.Rptr.3d 588.

1 71. When standing for public office, a candidate by necessary implication  
2 declares him or herself willing to faithfully perform the legal duties implied by  
3 the office sought. Their election is conditioned upon this affirmation. *Cal*  
4 *Constitution Article XX section 3.*

5 72. The beneficiaries of the public trust are the people of California, and it is to  
6 them that the trustee owes fiduciary duties. The trustee deals with the trust  
7 property for the beneficiary's benefit. No trustee can properly act for only  
8 some of the beneficiaries – he/she must represent them all, taking into  
9 account any differing interests of the beneficiaries, or he/she cannot properly  
10 represent any of them. *Bowles v. Superior Court* (1955) 44 C2d 574.

11 73. "No discussion is necessary to establish that the conditions placed by the  
12 Legislature on public trust land granted by the state for the benefit of 'all of the  
13 people of this state' (Pub. Resources Code, § 6009.1 , subd. (b)) are a matter  
14 of statewide concern." *Madden v. City of Redwood City* (Nov. 25, 2020,  
15 A156288) \_\_\_ Cal.App.1st \_\_\_ [pp. 21]

16 74. A state law on a matter of statewide concern prevails over conflicting  
17 provisions of local law. *Johnson v. Bradley* (1992) 4 Cal.4th 389, 399-  
18 400; *City of Huntington Beach v. Becerra* (2020) 44 Cal.App.5th 243, 271,  
19 273, 277.)

20 75. The duties of a trustee for the public trust are:

- 21 a. The duty of loyalty;
- 22 b. The duty of care;

- 1 c. The duty of full disclosure;
- 2 d. The duty to keep clear and adequate records and accounts;
- 3 e. The duty to administer the trust solely in the interest of the
- 4 beneficiaries;
- 5 f. The duty to act impartially in managing the trust property;
- 6 g. The duty to not use or deal with trust property for the trustee's own
- 7 profit or for any other purpose unconnected with the trust, and to not
- 8 take part in a transaction in which the trustee has an interest adverse
- 9 to the beneficiaries;
- 10 h. The duty to take reasonable steps under the circumstances to take and
- 11 keep control of and to preserve the trust property;
- 12 i. The duty to make the trust property productive under the
- 13 circumstances and in furtherance of the purposes of the trust;
- 14 j. The duty to keep the trust property separate from other property not
- 15 subject to the trust and to see that the trust property is designated as
- 16 property of the trust;
- 17 k. The duty to take reasonable steps to enforce claims that are part of the
- 18 trust property;
- 19 l. The duty to take reasonable steps to defend actions that may result in
- 20 a loss to the trust;
- 21 m. The duty to not delegate to others the performance of acts that the
- 22 trustee can reasonably be required to perform and to not transfer the

1 administration of the trust to a co-trustee. If a trustee has properly  
2 delegated a matter to an agent, the trustee has a duty to exercise  
3 direct supervision over the performance of the delegated matter.

4 (*Public Resource Code § 6009.1*)

5 76. “[A]nalogizing this action to the enforcement of a traditional trust agreement,  
6 the action must be brought against the appropriate representative of the state  
7 as the trustee of the public trust. *Center for Biological Diversity, Inc. v. FPL*  
8 *Group, Inc.* (2008) 166 Cal.App.4th 1349, 1367.

9 77. The courts have an obligation to enforce the government’s fiduciary  
10 obligations to the beneficiaries. *Audubon, supra*. As one court stated: “Just as  
11 private trustees are judicially accountable to their beneficiaries for dispositions  
12 of the resources, so the legislative and executive branches are judicially  
13 accountable for their dispositions of the public trust.” *Arizona Center for Law*  
14 *in the Public Interest v. Hassell*, 837 P.2d 158, 168-69 (Az. Ct. App. 1991)

15 78. The CSH has issued permits for new wells without having considered the  
16 cumulative impact of these decisions on the public trust. As operating reports  
17 are not assembled for the universe of wells, it is unknown which wells are  
18 presently in production, their status, or their yields.

19 79. The CSH has an approval process for wells that as a pattern and practice  
20 methodically precludes public consideration of the impact from these  
21 approvals on the public trust. CSH has neither an ordinance nor

1 administrative procedure that reviews groundwater extractions for potential  
2 injuries to the public trust.

3 80. The CSH has failed to act as a reasonably careful trustee would have acted  
4 under the same or similar circumstances.

5 81. The CSH Council has a persisting bias in favor of economic development at  
6 the expense of the public trust.

7 82. The CSH has failed to acquire and/or report to the public the information  
8 necessary to keep the beneficiaries reasonably informed of the status of the  
9 public trust.

10 83. CSH acknowledges three sources of water: (1) Bell Canyon Reservoir; (2)  
11 North Bay Aqueduct water delivered by contract with the City of Napa; and (3)  
12 the Pope Street/Stonebridge wells.

13 84. A fourth source of water is not disclosed in CSH monthly water reports, or in  
14 most water availability studies. Lower York Reservoir ("LYR"), is at the foot of  
15 euphoniously named Spring Mountain. Constructed in 1878, it predates the  
16 1914 appropriative water scheme. Until Bell Canyon Reservoir commenced  
17 operation in 1968, LYR provided a significant portion of the potable water  
18 used by the 5,000 residents of CSH, a number not much less than the current  
19 population of 6,000. Although many decades ago LYR incorporated flow from  
20 the adjacent York Creek, it presently only stores runoff from the 94 acres in  
21 the watershed above. Potable water delivery from LYR ceased as Bell

1 Canyon came online in about 1968, and the City has reported that, since  
2 2004, York Creek was no longer diverted into the reservoir.

3 85. In violation of FGC § 5937, no bypass is made from LYR into the downstream  
4 reach. The drying reach of the Napa River proximate to the Pope Street wells  
5 is downstream of LYR and would be wetted by its bypass.

6 86. The web-hosted public record of LYR commences with a resolution approving  
7 the Raw Water Supply agreement, (“2016 Raw Water agreement”) in which  
8 the City agreed to sell LYR water to the adjacent Spring Mountain Vineyards  
9 (SMV).<sup>4</sup> The agreement recites in its preamble that:

10 A Raw Water Use Agreement between the City and the Vineyard  
11 was first executed in 1990, amended in 1996, and expired in 2006;  
12 and [t]he City has continued and desires to continuing supplying  
13 water to the Vineyard from this source; and Spring Mountain  
14 Vineyard desires to continue receiving raw water from the City’s  
15 Lower Reservoir.

16  
17 87. None of the alleged agreements in the nearly forty years from 1990 to 2016  
18 was appended to the 2016 Raw Water agreement. Current City records do  
19 not publish prior historical delivery volumes or compensation.

20 88. Some insight can be derived from juxtaposing the 2016 Raw Water  
21 agreement preamble with the state Water Board’s Supplemental Statement of  
22 Water Diversion and Use (SSWD) reports.

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<sup>4</sup> For the last three decades the properties receiving these waters have been owned by Spring Mountain Vineyard, Inc., a Delaware corporation.

1 89. In 2012, the SSWD reports that 63.4 acre-feet (AF) was delivered to  
2 cryptically described “raw water users.”

3 90. In 2015, 52.45 AF was used to irrigate “athletic field grass irrigation at the  
4 middle school” and 126 acres of grapes. By published records, it is not  
5 possible to differentiate between the two.<sup>5</sup> By reference to the Raw Water  
6 agreement it can be seen that the agricultural recipient of these deliveries  
7 was SMV.

8 91. Under the 2016 Raw Water agreement the City agreed to supply SMV with up  
9 to 25 AF<sup>6</sup> per year a year at \$750/AF for a period of two years. Excess  
10 consumption was to be paid at a double rate of \$1500/AF.

11 92. By making a generous 10 AF allowance for the sports field irrigation,  
12 deliveries to SMV in 2016 were 48.8 AF and 2017 were 37.0 AF.

13 93. In an amended 2018 Raw Water agreement the parties agreed to expand the  
14 area of delivery, extend the term for five years, and to “strictly limit Buyer’s  
15 actual annual water usage.” The 2018 Raw Water agreement sternly  
16 provided “Buyer shall in no event use more water than the Annual Limitation,”  
17 and provided that a 100% premium would be charged on water in excess of

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<sup>5</sup> The Compliance Summary reports minor public use of LYR water to irrigate the soccer field at Robert Louis Stevenson School. Demonstrative of the problem of inadequate reporting, the delivery to the school is not generally distinguishable. Accordingly, the analysis herein uses the maximum deduction of 10 AF from the totals on the SSWD to estimate the delivery to SMV. A lesser delivery would increase the delivery to SMV.

<sup>6</sup> An acre foot of water is 325,851 gallons, so the delivery commitment is for 8,146,275 gallons per year at \$0.00230 a gallon.

1 25 AF, “without in any manner excusing Buyer from strict compliance with the  
2 Annual Limitation.”

3 94. In 2018, CSH delivered SMV an estimated 40.0 AF; 2019 delivered 52.1 AF,  
4 and in 2020 53.51 AF, in all years significantly above the “strict” annual limit.

5 95. The several hundred-acre complex of SMV affiliated properties have not less  
6 than nine (9) agricultural groundwater wells. CSH is not securing a premium  
7 price for its water; in fact, the unit price is identical to the base rate charged  
8 by CSH to residential customers. However, residential customers are also  
9 obliged to pay a fixed price meter fee. The CSH’s 2018 water rate survey  
10 CSH increased the monthly charge for water meters and decreased the  
11 variable cost of water delivery, which confers a significant economic  
12 advantage to a high-volume single connection such as SMV over a low  
13 volume residential user.

14 96. It is when one compares the “excess of limit” rate for water that the  
15 preference given to SMV over the residents of the City is revealed. Each of  
16 the 2,500 households of CSH has been allowed 2,500 gallons of water per  
17 month. On average, SMV takes as much water as the total landscaping  
18 allotment for the residents in the CSH for nine weeks. The vineyard pays less  
19 than \$0.004/gallon penalty for its millions of gallons of excess consumption,  
20 while the resident who overwaters her or his landscape by a hundred gallons  
21 a day will pay a penalty of \$0.334/gallon – nearly 100 times more than SMV  
22 penalties for over consumption.



1 97. The environmental injury caused by this conduct is evident. Were the  
2 reservoir not present, the water would flow into York Creek, and then into the  
3 Napa River, thereby providing connectivity for spawning and contributing to  
4 mainstem flow. In each year of the Raw Water agreement, USGS monitoring  
5 has shown the Napa River to have run dry for two or more months.

6 98. *FGC §5937* provides that every dam without a fish ladder or offsetting  
7 hatchery must bypass sufficient water to keep fish downstream in good  
8 condition. CSH has ignored that duty in its operations of LYR. If one  
9 considers the annual period of drying to be 90 days (approximately 7.8 million  
10 seconds), as an alternative to selling the water to provide cheap irrigation,  
11 CSH could have bypassed it for the benefit of the public trust at a rate ranging  
12 from 1.15 to 1.8 cubic feet per second (CFS).

13 99. This condition need not continue. The 2018 agreement provides “the City  
14 shall have the right to discontinue and terminate at its discretion the provision  
15 of raw water under the Raw Water Agreement upon ten (10) days prior written  
16 notice if SMV exceeds its Annual Limitation. SMV having consistently  
17 exceeded its limitations, with good cause CSH may terminate the supply  
18 contract at any time. While 2021 drought conditions have reduced water  
19 stored in LYR to “dead pool” conditions, and deliveries to SMV have been  
20 curtailed, the future needs of the public trust mandate that this water be  
21 released downstream to provide partial mitigation to the injury caused by the  
22 Pope Street wells.

1 100. The defendants' trustee duty to supervise agents means that the elected  
2 government cannot shed its fiduciary duties as a trustee as a result of the  
3 delegation of authority. It must exercise effective oversight of employees,  
4 consultants and administrative agencies in order to meet their fiduciary duties.  
5 The duty of good faith and reasonable skill requires credible and adequate  
6 information to use scientific and professional best practices to arrive at  
7 credible decisions.

8 101. On June 25, 2019, the Napa County Grand Jury issued a Final Report  
9 titled, "St. Helena: A Small Town with Big City Problems." Among numerous  
10 troubling findings, the Grand Jury stated:

11 The City Staff lacks specific expertise to manage some of these  
12 complicated dam and reservoir projects. For the larger and more  
13 complex projects such as Bell Canyon Reservoir, Upper York Creek  
14 Dam, and the Wastewater Plant retrofit, the City should consider hiring  
15 or otherwise engaging the services of an outside project manager to  
16 oversee the project, in order to lessen the burden on City Staff and  
17 assure a timely and appropriate outcome for the project completion.  
18 These assignments should take place commensurate with the start of  
19 the July 1, 2020 budget year.

20  
21 102. August 23, 2019, the City responded: "The City disagrees with this finding.  
22 The City hires qualified outside firms, when prudent, for major projects. City  
23 Staff oversees the work of these firms."

24 103. In February 2021, CSH and Water Audit issued the Joint Statement  
25 discussed above. Within the following forty-five days, the director of public  
26 works/chief engineer and her deputy, and two of the three operating

1 technicians for the water treatment plant resigned their positions. Anecdotally  
2 Water Audit has been advised of other losses of public works staff, which  
3 apparently have reduced staff levels below what is sufficient to provide proper  
4 service to the community<sup>7</sup>. While correlation is not causation, the juxtaposition  
5 of events invites inquiry.

6 104. The city's disfunction is so profound that the drinking water treatment plant  
7 has been inoperable for extended periods, placing an even larger burden on  
8 the Pope Street wells. In order to comply with state mandatory staffing  
9 requirements, the city has been compelled to hire short term replacements, at  
10 twice the prevailing rate. In a staff report dated March 23, 2021, the Acting  
11 Public Works Director wrote:

12 The City's institutional knowledge is impacted when retirements and  
13 voluntary, and involuntary resignations occur. This impact is more  
14 pronounced in smaller organizations like the City of St. Helena. The  
15 City currently has three approved positions at the Water Treatment  
16 Plant (WTP) with two of the three positions currently vacant. In the  
17 interim basis, until these positions are filled, the City needs assistance  
18 with temporary Water Treatment Plant Operators to remain in  
19 compliance with the State of California Water Resources Control Board  
20 [ to have a T4 CPO and T3 shift operators at all times]. ... The  
21 estimated costs for the additional temporary assistance includes both  
22 regular and overtime rates and assumes a total of 26 additional weeks  
23 (six months). ... The estimated fiscal impact of this contract  
24 amendment is \$409,929.58 for a not-to-exceed amount of \$434,929.58  
25 [for two employees for two months.]  
26

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<sup>7</sup> Two days before the filing of this Complaint CSH announced it had hired a director of public works with a scheduled start date of June 30, 2021.

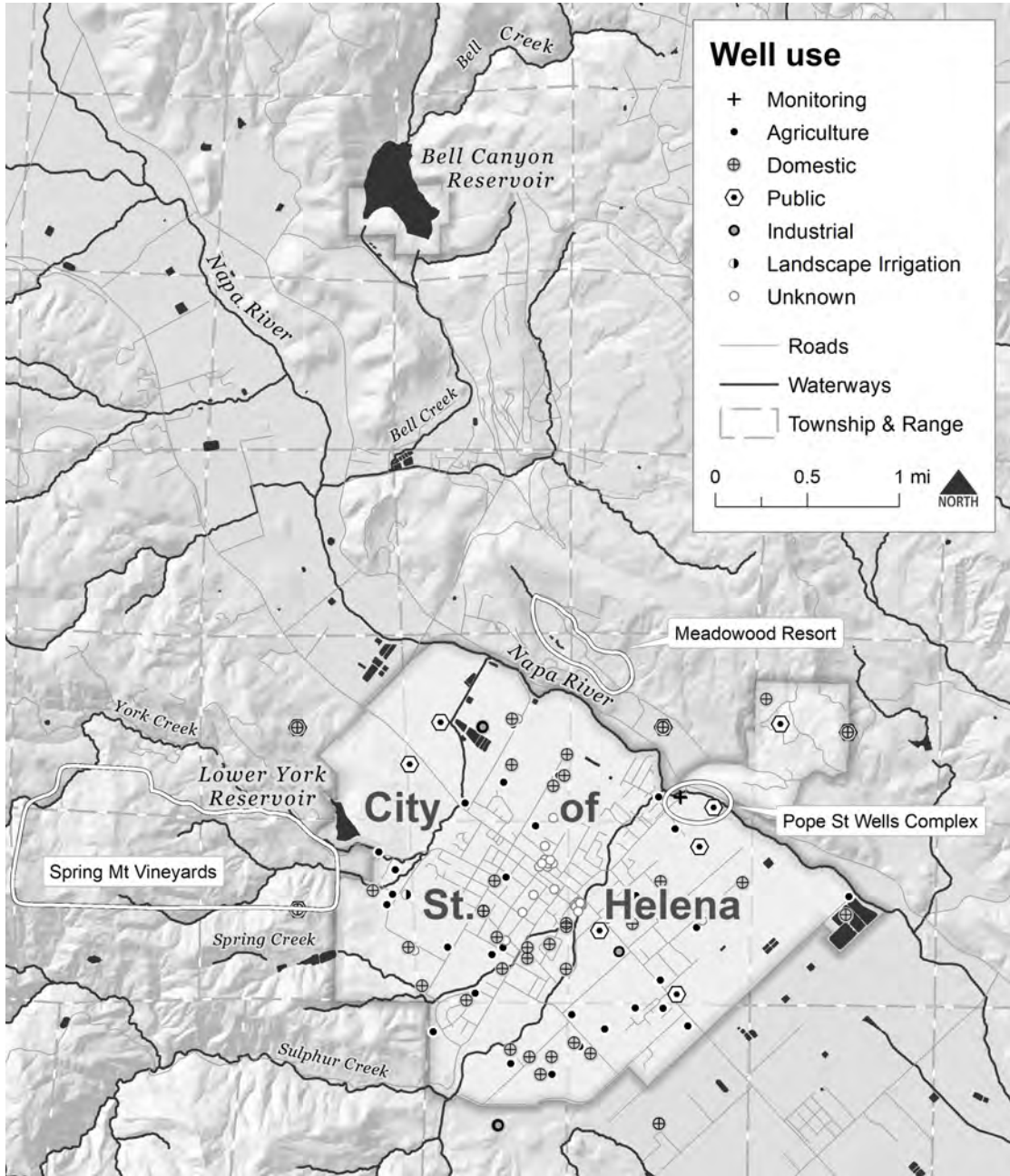
1 105. Since the Joint Statement CSH's sole technical representative tasked with  
2 performing data disclosure required has been a hydrological consultant with  
3 limited institutional knowledge and no authority over city staff. He has  
4 reported that he takes instruction from an attorney employed by the CSH who  
5 is resident in the City of San Diego. On April 28, 2021, the technical  
6 consultant provided an Excel spreadsheet and map identifying 43 (forty-three)  
7 wells that were represented to be the number of reported groundwater  
8 extractions within the CSH area of hydrological influence. The CSH's  
9 technical representative disclosure understates the actual number of wells by  
10 an order of magnitude.<sup>8</sup>

11 106. There are roughly 550 records in the Department of Water Rights ("DWR")  
12 well completion report dataset in the vicinity of CSH city limits. These wells  
13 are either water supply wells (364 wells) or do not have a "well use" listed  
14 (202 wells). This data source has limitations in accuracy and completeness,

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<sup>8</sup> A similar understatement was relied upon by the Slade & Associates report in support of the Farmstead project, wherein the universe of data used to assess existing groundwater extraction was expressed to be merely five wells. The assertion was arguably literally accurate, in that there is a distinction between the number of producing wells, and the number of wells that report production. For example, the highly productive wells proximate to the Farmstead project include those of the Davies Family Winery, Hall Wines, Harold Smith & Sons (ready mix concrete) and numerous others who do not report extractions. The City and County have, in recent years, authorized new wells without any review or consideration of injury to the public trust for vineyards immediately adjacent to Sulphur Creek, including those of Anomaly Wines. The St. Helena Cemetery now provides water from its legacy well to a newly planted Abreu vineyard. Wholly hidden from view, and therefore unreviewed, are substantial, perhaps debilitating, extractions from the headwaters of Sulphur Creek by Cain Wines. In the same category are numerous "ghost" wells, which have been drilled, but have not submitted well completion reports, or wells which have submitted reports lacking location information. Although not disclosed in the 2021 Groundwater Report, cumulative dewatering effects on Sulphur Creek can be inferred from the full set of NRCD stream observations, which state that the channel is "dry."

1 yet it is the most comprehensive representation of groundwater demand  
2 available to the public at this time.

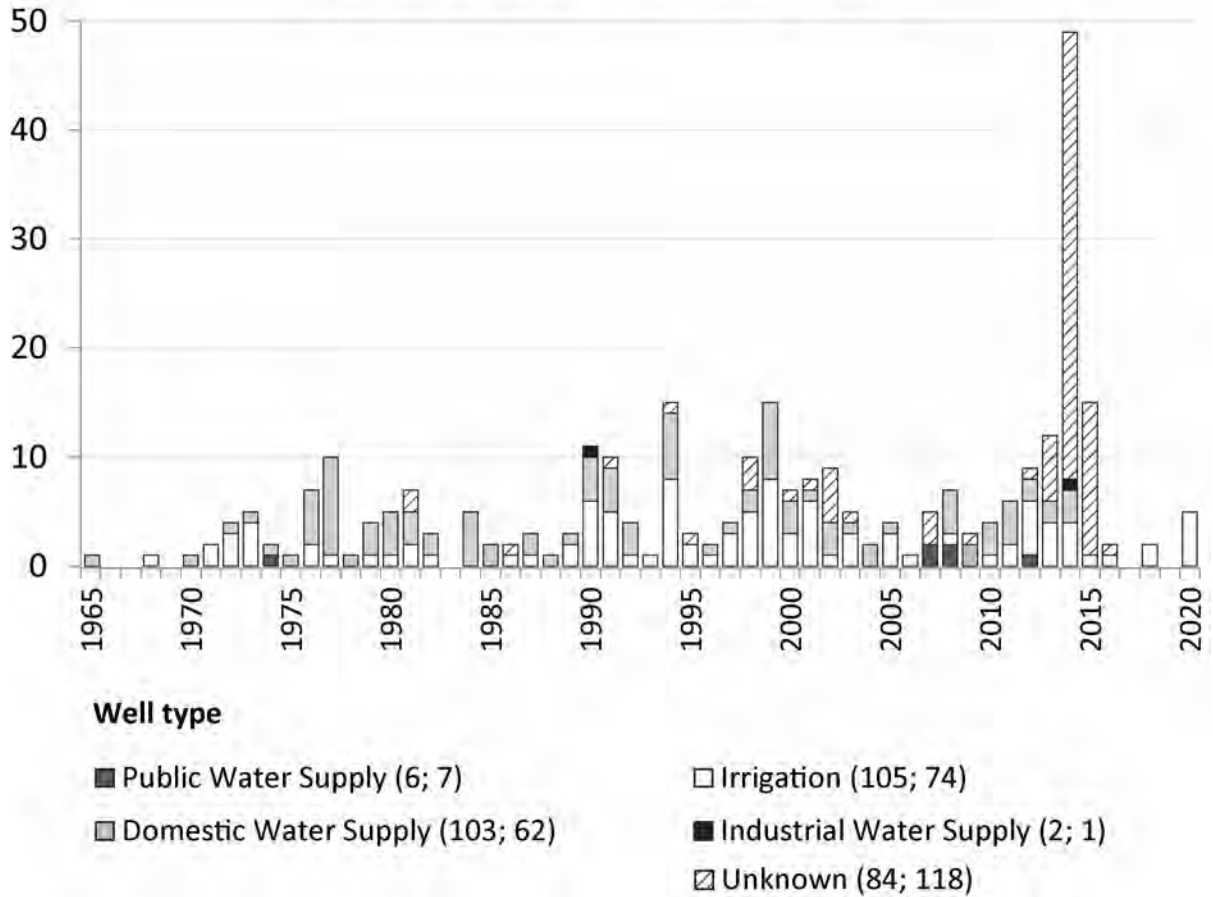


3

4 Image 5: Dr. Amber Manfree for Water Audit California

1

### St. Helena, CA Proximal Wells



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Image 6: Dr. Amber Manfree for Water Audit California

Note: Number of wells shown in this chart; number of wells omitted from chart because no date was reported.

107. The trustee’s duty requires erring on the side of caution where uncertainty exists. As climate change causes uncertainty to increase, in response the level of caution must also increase. Trustees can fulfill their duty of caution by halting demands upon public trust resources until the uncertainty can be resolved.

1 108. Wells have continued to be drilled in the CSH area notwithstanding the  
2 chronically drying watercourses, with a record number reported in 2014.

3 109. In August 2020, Water Audit wrote detailed letters to CSH setting out its  
4 concerns that a proposed development in the City is adjacent to a frequently  
5 drying reach of Sulphur Creek. CSH's attorney advised the planning  
6 commission that as a matter of policy the City did not consider the cumulative  
7 impacts of water extraction unless a CEQA review was required. On another  
8 occasion a CSH Councilperson opined the City needed to continue to  
9 dewater the public trust, and yet another Councilperson seeks to accelerate  
10 the injury by advocating for hotel development. At no point has the City  
11 considered whether its groundwater extraction decisions will cumulatively  
12 injure the public trust or expressed any concern or remorse for this outcome.

13 110. The trustee's duty of furnishing information to beneficiaries, also  
14 expressed as a duty to provide an accounting, has implicit within it the  
15 requirement that the information be complete, accurate and understandable  
16 to the beneficiaries. This procedural duty is critical to the performance of the  
17 preeminent substantive duty to protect public trust resources. As a CSH  
18 councilperson has affirmed, it is axiomatic that we manage what we measure.  
19 This duty was the subject of the Joint Statement, that set forth certain  
20 essential factual matters that would be disclosed by CSH.

21 111. CSH failed to provide a proper accounting to Water Audit and has failed to  
22 protect the public trust as follows:

1 (a.) The City has not fulfilled its promise in the Joint Statement to  
2 identify the forty largest users of water. A list of commercial water  
3 contracts is *prima facie* incomplete, showing neither Treasury Wines  
4 nor Trinchero Family Estates bottling facilities. The latter has publicly  
5 admitted consuming as much as 39 million gallons (120 acre-feet) of  
6 water annually. The large industrial users cumulatively constitute 21%  
7 of CSH water consumption, but the amount consumed by each  
8 industrial user is hidden from public view;

9 (b.) CSH is in violation of the 2017 settlement agreement with Water  
10 Audit to provide automatic digital monitoring of Bell Canyon Reservoir.  
11 The installed monitoring system has been inoperable for more than six  
12 months and reservoir operating reports have not been published for  
13 over a year. The CSH has failed in its aspiration to inform the public of  
14 all relevant water issues, concentrating largely on residential  
15 consumption reduction without discussion of the significance of  
16 industrial consumption;

17 (c.) Evaluating the exchange of water between surface water features  
18 and groundwater requires the performance of mass balance analysis,  
19 which requires knowledge of inputs to and outputs from the system.  
20 Other than direct discharges and diversions, this information is most  
21 typically developed through analysis of measured surface water and  
22



1 groundwater levels. Watershed contributions during precipitation  
2 events may be evaluated by interpreting plots of surface water levels  
3 over time during and after a storm along with cross-sectional areas of  
4 the river channel at different points along the river. In some instances,  
5 the hydrographs may also be interpreted to estimate the surface water  
6 baseflow supplied by groundwater. Groundwater seepage gains and  
7 losses may be evaluated by analyzing differences in flows between  
8 locations along a river (after accounting for the direct discharges and  
9 diversions as well as overland flow contributions). CSH does not  
10 conduct adequate monitoring to be able to measure the aforesaid  
11 conditions accurately and sufficiently. The One-Rain monitoring that  
12 CSH relies upon is, by design, a flood monitoring network incapable of  
13 measuring low flows. Some monitoring devices are inoperable and  
14 incapable of generating useful information. The defendants have not  
15 filled data gaps acknowledged and reported by LSCE and others for  
16 over a decade. Nevertheless, such data that do exist indicate that  
17 groundwater extraction by, and authorized by, CSH diminishes surface  
18 flows needed to fulfill public trust obligations;

19  
20 (d.) CSH does not monitor potentially injurious discharges into its  
21 public trust waters from registered and unregistered dischargers;  
22

1 (e.) The CSH is the only city in the Napa Valley that relies upon  
2 groundwater. The City represents that it relies upon a 2006  
3 Stonebridge well yield study prepared after the County recommended  
4 that groundwater be reserved for agricultural irrigation. The study  
5 stated, in part:

6 If the existing Stonebridge Wells were operated at their  
7 current total capacity is 650 gpm for 7,800 hours per  
8 year, approximately 934 ac-ft of water would be produced  
9 or approximately 2.2 times the annual limit. Therefore,  
10 the existing Stonebridge Wells have enough capacity  
11 under normal operating conditions to meet the projected  
12 supply required.

13 The subsequent CSH yield report concluded that a “sustainable yield”  
14 was approximately 50% of maximum theoretical yield. In none of these  
15 calculations did CSH consider the factor that well operation to this  
16 extent would result in the routine dewatering of the Napa River and  
17 resulting injury to the public trust. A current CSH councilperson is  
18 presently claiming the City is authorized to make extraction beyond the  
19 bounds of the yield study, avowing that the City is not constrained by  
20 its own findings of sustainable limits or to avoid injury to the public  
21 trust;

22  
23 (f) Projects have been approved by both the City and County without  
24 the requisite Water Availability Analysis (“WAA”) or consideration of

1 groundwater extraction on surface waters. For limited example, the  
2 biological assessment for the proposed Castellucci Winery located  
3 proximate to the Pope Street wells fails to address the potential for  
4 acceleration or exacerbation of the drying of the Napa River by its  
5 demand on groundwater, dismissing the potential injury unilaterally,  
6 without qualified hydrological assessment and without consideration by  
7 a proper WAA. Similarly, the planned expansion of the Montessori  
8 school and business also proximate to the Pope Street wells is without  
9 a WAA. It is additionally problematic because of the close association  
10 of elected CSH officials. Similarly, the undocumented request for  
11 Consideration of Water Allocation Exemption made by a CSH  
12 vintner/winery is problematic due to conflicts of interest on the part of  
13 committee members considering the request. *Prima facie*, the absence  
14 of any documentation concerning the Request completely precludes  
15 any public consideration of the merits of the matter.

16 112. As a beneficiary of the public trust, Water Audit was harmed by CSH's  
17 negligence of its trustee's duties. CSH's conduct was a substantial factor in  
18 causing Water Audit's harm.

**SECOND CAUSE ACTION**  
**(Intentional Breach of Trustee Duties Against**  
**the City of St. Helena and Does 1 to 1,000)**

1  
2  
3  
4  
5 113. The Petitioner incorporates and restates paragraphs 1 to 112 above as if  
6 set forth in full here.

7 114. The plaintiff is a beneficiary to the public trust. The defendants are the  
8 trustees of the public trust and have fiduciary duties owed to Water Audit.  
9 CSH intentionally failed to disclose certain facts to Water Audit.

10 115. Alternatively, CSH disclosed some facts to Water Audit but intentionally  
11 failed to disclose other facts, making the disclosure deceptive.

12 116. Alternatively, CSH prevented Water Audit from discovering certain facts.

13 117. Public trust assessments must include a balancing of needs between  
14 desirable environmental flows and the beneficial claims of commerce. The  
15 Water Code and the common law provide priorities to different beneficial  
16 uses. In order to perform the due diligence prior to filing this action, Water  
17 Audit sought to review the forty largest consumers of water in the City, to  
18 determine the total demands of human use.<sup>9</sup> The initial point of reference was  
19 the City's published statement of commercial water contracts and compliance  
20 reports. Subsequently the CSH and Water Audit issued the Joint Statement in

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<sup>9</sup> In the February 2021, Joint Statement CSH vowed to share such data with Water Audit. No information beyond that published on the City's website has been provided to the date of this document.

1 which the City avowed it would provide this information to the Petitioner.

2 Finally, Water Audit issued a formal request for public records. No method  
3 resulted in a full disclosure of the information by the City.

4 118. The 2019 Grand Jury stated that it learned from City officials and Staff that  
5 there are presently at least 30 users of CSH municipal water located outside  
6 city limits, that only 10 of these users have water contracts, and most of those  
7 contracts have not been reviewed or renegotiated in over 20 years. The  
8 Grand Jury reported that these contract documents could not be located by  
9 City Staff on request and that, as these users are outside of city limits, they  
10 pay no fees or taxes to support the City's Water/Wastewater Enterprise  
11 ("WWE"). Water and wastewater rates applicable to these users, as well as  
12 other contract provisions, were reported by the Grand Jury to be "unknown."  
13 (They are also unknown to Water Audit.)

14 119. CSH responded to the Grand Jury: "There are currently 361 water  
15 customers located outside of city limits. Of this amount, 307 are residential  
16 and 54 are assigned into the 'other' category (Industrial, Commercial,  
17 Hotel/Motel, Fire Service). Water customers who have water contracts are  
18 typically commercial properties, a copy of all water agreements have been  
19 inventoried on the City's website at: [https://www.cityofsthelena.org/  
20 publicworks/page/water-agreements](https://www.cityofsthelena.org/publicworks/page/water-agreements) for more than a year."

21 120. Water Audit has discovered that CSH's avowed publication of "all water  
22 agreements" to the Grand Jury, and hence to the public, is false. What is

1 represented by CSH to be a true and correct copy of the “Carpenter  
2 agreement” is published on the aforementioned CSH website list of  
3 commercial water agreements. Entered into in May 1962 between CSH and  
4 Dr. Lewis Carpenter, the Carpenter agreement makes internal reference to  
5 the CSH Bell Canyon water storage permit, an exhibit evidencing the extent  
6 of Dr. Carpenter’s real property, and a permit from the Division of Water  
7 Resources to authorize Carpenter to appropriate the water from Bell Creek at  
8 the rate of .96 cubic feet/second.<sup>10</sup> This alleged allocation was the basis on  
9 which the City agreed to store nearly 400 AFY for Dr. Carpenter. The  
10 Carpenter agreement states that it is personal to Dr. Carpenter “and shall not  
11 run with his land or any part thereof or benefit his heirs, administrators,  
12 executors and assigns” without prior written agreement of CSH. None of the  
13 referenced exhibits is appended to the Carpenter agreement, thereby  
14 rendering the document facially unintelligible.

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<sup>10</sup> The Carpenter agreement in the third “Whereas” represented authorized diversion rate for which CSH was based on an alleged permit for .96 cubic feet/second.

7.48 gallons in one cubic foot.

.96 cubic feet/second X 7.48 gallons = 7.181 gallons/second

7.181 gallons/second X 60 = 430.848 gallons/minute

430.848 gallons/minute X 60 = 25,850.88 gallons/hour

25,850.88 gallons/hour X 24 = 620,421.12 gallons/day

620,421.12 gallons/day X 210 Days (April 15 - Nov. 15) = 130,288,435 gallons in the authorized annual period

130,288,435.2 gallons/annual period divided by 328,851 gallons/acre foot = **396.2 acre feet per annum**

1 121. The Carpenter agreement differs from the SMV transactions discussed  
 2 above. This agreement is not for the sale of water, but merely the obligation  
 3 to store water that is authorized by Water Board. Accordingly, the City's  
 4 obligation to store water is equal to the water diverted under the Water Board  
 5 allocations.<sup>11</sup> Water that CSH is obliged to store for the Carpenters diminishes  
 6 the water that can be stored for the community.

7 122. Water Audit has reviewed the Water Board eWRIMS database and  
 8 located ten (10) water rights agreements in Napa Valley associated with the  
 9 name "Carpenter." Only three predate construction of Bell Canyon Dam, are  
 10 downstream, permit diversion to storage, and therefore would be conceivably  
 11 relevant to the Carpenter agreement. Volumes of water rights authorized are  
 12 less than half of those alleged in the Carpenter agreement.

Application	Diversion	Total Authorized
A017733	0.15 CFS	57.8 AFY
A017607	0.15 CFS	63.5 AFY
A017290	0.15 CFS	54.6 AFY
<b>Total</b>	<b>0.45</b>	<b>175.9</b>

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<sup>11</sup> Water allocations are not absolute, but rather are constantly subject to the *Constitution X section 2* test of reasonableness. Cessation or reduction of the extraction of groundwater has been declared a reasonable and beneficial use. *Water Code §1005.1-1005.4*. Counties and local agencies are authorized to manage surface and groundwater supplies. *Water Code §§ 10608-10608.64, 10610-10656, 10750-10783.2, 10800-10853*. [N]o one can have a protectable interest in the unreasonable use of water, and that the holders of water rights must use waters reasonably and beneficially." (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1242, citing *Joslin v. Marin Mun. Water Dist.* (1967) [67 Cal.2d 132, 140](#)).

1 123. Public records report that Dr. Lewis Carpenter died in April 2013, and  
2 therefore the Carpenter agreement expired by its clear terms. Nevertheless,  
3 CSH to this date represents that it has continued to store water for “Dr. Lewis  
4 Carpenter,” although the amount is alleged to be stored is nebulous.

5 124. In 2019, a St. Helena resident engaged in a lengthy effort to obtain a  
6 proper accounting of the Carpenter Agreement deliveries, contending with  
7 numerous defenses and objections raised by CSH Council and staff.

8 Ultimately, the resident was unsuccessful, as CSH Council routed the duty to  
9 provide a response to a special committee, where it died a lingering death.

10 125. On February 23, 2021, the then-Public Works Director presented a final  
11 report to CSH council on water availability. She reported that the City  
12 remained obliged by contract to hold 100 AFY in storage under the Carpenter  
13 agreement. The City’s compliance reports show an allocation to Dr. Carpenter  
14 of 99,752 HCF (hundred cubic feet), or 30.6 AFY. The difference between  
15 these two numbers, almost 23 million gallons, is not trivial, representing the  
16 City’s consumption for roughly three to four weeks.

17 126. Water Audit reviewed the filed 2019 and 2020 Water Board Reports of  
18 Licensee for the three authorizations listed above.

19		2019	2020	
20	A017733	6.21AFY	9.01 AFY	9 acres of grapes
21	A017607	6.21AFY	9.01 AFY	10.5 acres of grapes
22	A017290	4.04AFY	7.38 AFY	8 acres domestic & grapes.
23				



1 127. Assuming, *arguendo*, that there is some continuing reason that CSH  
2 should store water for the Carpenter interests, the public has a right to know  
3 how much is this obligation: 396 AF, 100 AF, 30 AF, or ...?

4 128. Water Audit has sought to obtain records that evidenced the use of water  
5 by CSH to bottling facilities located in CSH. Through its investigations, Water  
6 Audit had learned of the existence of deliveries of City water in addition to  
7 multiple production wells. The Petitioner sought to form a full impression of  
8 the cumulative industrial demand on the City's water supply. The City  
9 responded to a Public Records Request that there are "no records" of any  
10 supply of City water to either Treasury (Beringer) or Trincherro (Sutter Home).

11 129. In May 2015, Treasury submitted an application to the California  
12 Department of Public Health seeking permission to operate a public water  
13 system. *Prima facie* the application was inconsistent, providing substantially  
14 different values for well depth and output at different locations in the same  
15 document. One well is disclosed as being used as "vineyard irrigation."  
16 Nevertheless, the application was approved, perhaps because it was stated  
17 "wells are currently off-line and domestic water comes soley [*sic*] from the  
18 municipal system."

19 130. In December 2020, an employee of Trincherro applied for appointment to a  
20 CSH water advisory board. In a letter attached to her application, she stated,

1 “Sutter Home Winery on Main Street uses 39 M (million) gallons of water<sup>12</sup>  
2 provided by the city [*sic*] of St. Helena a year.” Subsequently, an executive  
3 and Director of Trinchero wrote to CSH regarding proposed revised  
4 allocations and rates, opining that they would cost that business from \$2.7 to  
5 \$5.4 million dollars a year. These facts are irreconcilable with the CSH  
6 statement that there is no record of water delivery to the two entities above  
7 named.

8 131. The Meadowood Resort is located outside of CSH limits, proximate to the  
9 City. Since the 1960’s it has undergone changes of name and owners, all of  
10 which will be summarily referred to herein as “Meadowood.” Meadowood  
11 presently consists of 99 transient residential units plus a clubhouse and  
12 associated lands.

13 132. In 1964, the CSH passed a Resolution *Regarding The Granting And*  
14 *Extension of Water Service to Territory Outside the City Limits*. It states that  
15 "no new water main extensions outside the city limits of the City of St. Helena  
16 until such time as the City Council finds and determines solutions to the City's  
17 water needs and problems. The effective date of this policy shall be July 14,  
18 1964."

19 133. In 1990, Meadowood applied to the County for a “minor modification” to its  
20 use permit seeking to convert three caretaker homes (approved but not yet  
21 completed) to overnight guest use totaling twelve units, and to convert ten

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<sup>12</sup> Approximately 120 AF.

1 existing day rooms to overnight use. The County approved the application,  
2 and CSH appealed. Subsequently the parties entered into a settlement. In  
3 performance of that settlement CSH approved the Water Agreement and  
4 Resolution No. 90-101 and entered into Meadowood Associates Water  
5 Agreement. Directly contradicting the 1964 Resolution, without explanation it  
6 states: "City initially provided water service to the Property pursuant to a  
7 Water Contract entered into on November 13, 1962, between City and  
8 Meadowood Development Company, Meadowood's predecessor in interest.  
9 The City has continued to provide unlimited water service to the Property as  
10 the Meadowood development has expanded through the years..." The  
11 Water Contract continues: "City agrees to and shall provide up to 20.5 million  
12 gallons ...commencing January 1, 1991 and every year thereafter" At the  
13 state average of 85 gallons a person a day, this is sufficient for more than  
14 240,000 person/days of water. As this would require the Resort to receive  
15 more than six hundred visitors a day, it is a reasonable probability that City  
16 water is being used for agricultural production.

17 134. In 1992, the CSH entered into a *Dedication of Dedicated Water Facilities*  
18 *and Utility Easement Agreement* "between Meadowood Associates, a  
19 California limited partnership ('Grantor') and the City of St. Helena  
20 ('Grantee')." "Grantor is the owner of certain real property in an  
21 unincorporated area of Napa..." and "Grantee is owner and operator of a  
22 municipal water system. Grantor and Grantee wish to incorporate a portion of

1 the Meadowood Resort water distribution system into the municipal water  
2 distribution of Grantee."

3 135. The CSH *Water Rate Study* published in 2016 is internally contradictory  
4 on the rate that is to be charged to Meadowood. At page 202 it states: "The  
5 Madrone pump facility (otherwise called the Meadowood pump facility)  
6 specifically benefits Meadowood customers, who are outside the St. Helena  
7 city limits. Meadowood area customers pay an additional monthly surcharge  
8 for electric use at Meadowood pump facility plus a monthly maintenance fee."  
9 "The water system is 97% funded by water sales (rates) revenue, 1% by  
10 Meadowood area rate surcharges, and 2 % by other revenues..." However,  
11 at page 220 it states: "Water-specific Assumptions: Meadowood area  
12 surcharges are eliminated - Customers in the Meadowood area... Per the  
13 decision made during the September 13th, 2016 Task Force meeting,  
14 Meadowood area customers will no longer pay a surcharge." The CSH posted  
15 Meadowood water agreement is silent on this latter statement.

16 136. In 2020, the County director of planning commented on the Local Area  
17 Formation Commission ("LAFCO") Redline Draft Final Napa Countywide  
18 Water and Wastewater Municipal Service Review: "Remove the discussion of  
19 extending City of St. Helena services to the Meadowood Resort ... Extension  
20 of new municipal services to unincorporated areas has the potential to  
21 undermine and/or circumvent voter sponsored Measures J and P to protect  
22 farmland and open space ... Remove references to any extension of services  
23 to the Meadowood Resort." It is unclear how to reconcile this statement with

1 the information contained in paragraph 134, above. (Although the residents  
2 of CSH appear to be subsidizing the delivery of water to Meadowood to the  
3 extent of 1% of their total water budget, as the resort is located outside of the  
4 City limits, transient occupancy taxes are paid to the County, not to the City.)

5 137. Water Audit did not know of the concealed facts.

6 138. CSH intended to deceive Water Audit by concealing the facts.

7 139. Had the omitted information been disclosed, Water Audit would have  
8 behaved differently.

9 140. Water Audit, and the public as a whole, was harmed by this concealment.

10 141. The CSH's concealment was a substantial factor in causing Water Audit's  
11 harm.

12 142. The public interest has been harmed by this conduct. The City's breach of  
13 its trustee duties is a substantial factor in harm to the public trust.

14 WHEREFORE Petitioner prays for relief as hereinafter set forth.

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**THIRD CAUSE OF ACTION  
(Declaratory Judgment Against  
City of St. Helena and Does 1 to 1,000)**

20 143. The plaintiff incorporates and restates paragraphs 1 to 142 above as if set  
21 forth in full here.

22 144. CCP § 1060 provides that a party may seek a judicial determination of  
23 rights in a matter of controversy.

1 145. There is a real and present controversy between Water Audit and the  
2 defendants regarding the existence and extent of the defendants' duties to  
3 the public trust.

4 146. Petitioner prays that the Court declare that groundwater which is  
5 hydrologically connected to surface flows must be managed and protected in  
6 a manner consistent with the public trust doctrine.

7 147. Petitioner prays that the court issue a declaratory judgment that CSH is a  
8 trustee of the public trust, and that the duties of said trustee include, but are  
9 not limited to, those enumerated at paragraph 72, *supra*.

10 148. WHEREFORE Petitioner prays for relief as hereinafter set forth.

11  
12 **FOURTH CAUSE OF ACTION**  
13 **(Writ of Mandate Against**  
14 **the City of St. Helena and Does 1 to 1,000)**  
15

16 149. Water Audit incorporates and restates paragraphs 1 to 148 above as if set  
17 forth in full here.

18 150. The defendants are trustees of the public trust. Water Audit is a  
19 beneficiary of the trust.

20 151. The duties of a trustee include the duty to provide an accounting to  
21 beneficiaries on demand.

22 152. The public interest requires a disclosure of the forty largest users of water  
23 in CSH, the actual delivery of water pursuant to the posted Water Contracts,

1 and of the deliveries of water and rates paid to locations outside the City  
2 limits.

3 153. The public interest requires an accounting of the impacts of groundwater  
4 extraction on surface water flows. The preparation of this accounting requires  
5 a sufficient monitoring of surface water flows to permit the performance of a  
6 mass balance determination of the effects of groundwater extractions on the  
7 Napa River and its tributaries that are known to have historically supported  
8 public trust fishes. The accounting requires the determination of in-stream  
9 flow objectives sufficient to determine the water needs of the ecosystem.  
10 Further, the accounting requires a determination of the cumulative and  
11 individual effects of groundwater extractions on surface flows, a balancing of  
12 the uses and the environmental needs, a program to adjust extractions to  
13 avoid continuing injury to the public trust, and a program of implementation.

14 WHEREFORE Petitioner prays for relief as hereinafter set forth.

15

16 **FIFTH CAUSE OF ACTION**  
17 **(Preliminary and Permanent Injunction Against**  
18 **the City of St. Helena and Does 1 to 1,000)**  
19

20 154. Water Audit incorporates and restates paragraphs 1 to 153 above as if set  
21 forth in full here.

22 155. The defendants, and each of them, wrongfully and unlawfully engaged in  
23 and/or authorized conduct that has and continues to cause injury to the public  
24 trust.

1 156. The CSH continues to authorize groundwater extractions, putting both the  
2 public trust and those who are relying upon such approvals at risk.

3 157. The CSH continues to extract groundwater in a volume, manner and/or  
4 time that causes unnecessary injury to the public trust.

5 158. The CSH has failed to determine the water requirements of the public  
6 trust, and continues to act without concern for its duties to the public trust

7 159. The CSH has, through its representatives, avowed that it will in the future  
8 intentionally engage in conduct that is injurious to the public trust.

9 160. The CSH's wrongful conduct, unless and until enjoined and restrained by  
10 order of this court, will cause great and irreparable injury to the public trust in  
11 that it will cause additional dewatering of surface flows needed by the  
12 ecosystem.

13 161. Water Audit has no adequate remedy at law for the injuries threatened  
14 and/or currently suffered as an award of monetary damages would not  
15 provide an adequate remedy.

16 WHEREFORE Petitioner prays for relief as hereinafter set forth.  
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18  
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1 **IX. PRAYERS FOR RELIEF**

2 WHEREFORE, Petitioner prays judgment against respondents and defendant(s) as  
3 follows:

- 4 1. An order from the Court that groundwater which is hydrologically  
5 connected to surface flows is protected by the public trust doctrine and  
6 must be protected in a manner consistent with the public trust;
- 7 2. An order from the Court declaring that the CSH is the trustee for the public  
8 trust interests in the groundwater / surface water interface of the Napa  
9 River and its tributaries to the extent of those duties set forth in *Public*  
10 *Resource Code § 6009.1*.
- 11 3. A writ of mandate from the Court directing the CSH to provide an  
12 accounting of water deliveries and of the relationship between  
13 groundwater extraction and surface water flows by a date certain;
- 14 4. A writ of mandate from the Court directing the CSH to provide a  
15 determination of the instream flow objectives that will meet the water  
16 needs of the ecosystem;
- 17 5. A referral to the Water Board pursuant to Water Code § 2000-2001 to  
18 determine the riparian and allocated rights to surface water flows;
- 19 6. Alternative and peremptory writs or preliminary and permanent injunctions  
20 compelling Respondent CSH to cease issuing all well drilling permits for  
21 groundwater until such time as the Court determines that they are not in  
22 violation of their public trust duties;

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- 7. Compensatory damages sufficient to remediate injury to the public trust;
- 8. Reasonable attorney fees and costs of suit incurred in this action as provided by *CCP 1021.5* and other provisions of law; and
- 9. For such other and further relief as the court deems proper.

June 15, 2021



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William McKinnon  
Attorney for the Plaintiff and Petitioner  
Water Audit California

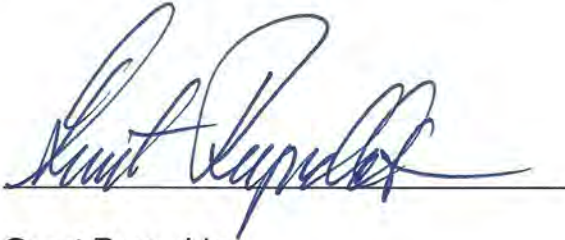
1 **VERIFICATION**

2  
3 I, GRANT REYOLDS, declare as follows:  
4

5 I am a director of the plaintiff and petitioner Water Audit California. I have read the  
6 above COMPLAINT FOR NEGLIGENT & INTENTIONAL BREACH OF TRUSTEE  
7 DUTIES; FOR DECLARATORY JUDGMENT; PETITION FOR WRIT OF MANDATE  
8 AND PRELIMINARY AND PERMANENT INJUNCTION and know its contents.

9 Based upon information and belief, all of the facts alleged in the petition are true of  
10 my own personal knowledge.  
11

12 I declare under the penalty of perjury that the foregoing is true and correct and that  
13 this affidavit was executed June 15, 2021 at San Diego California.  
14

15  
16 

17 Grant Reynolds  
18  
19