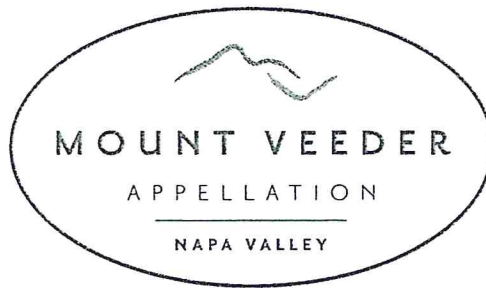


CUPC
MEETING

NOV - 6 2013
AGENDA ITEM
NO. 9C



RECEIVED

NOV 05 2013

Napa County Planning, Building
& Environmental Services

November 1, 2013

Mr. Sean Trippi
Napa County Planning, Building and Environmental Services Department
1195 Third Street, Suite 210
Napa, CA 94559

Dear Mr. Trippi:

My name is Sam Peters, Executive Director of the Mt. Veeder Appellation Council(MVAC). Woolls Ranch Winery has a hearing date with the Napa County Planning Commission on Wednesday, November 6 to discuss the prospective Woolls Ranch Winery and tasting room project within the Mt. Veeder AVA. The MVAC met to discuss the impact the Woolls Ranch Winery project may have on the Mt. Veeder AVA and its residents and I am writing to let you know the MVAC's conclusions.

The MVAC studied the plans for the prospective winery and tasting room and concluded the architectural design was amazing and would only add to Mt. Veeder's beautiful surroundings and the wonderful place our member vintners, growers and neighbors call home. The MVAC also concluded that, given the proven track record of the owners, Paul Woolls and Betty O'Shaughnessy, in our community and wine industry, adding the Woolls Ranch Winery and tasting room will only further benefit the Napa Valley community, our local wine and tourism industry on the whole, and the Mt. Veeder AVA and our member vintners, growers and neighbors as well.

Therefore, we support the Woolls Ranch Winery and tasting room project and we hope you find in favor of it as well. Thanks for your time and consideration.

Gratefully yours,

A handwritten signature in cursive script that reads "Samuel Peters".

Sam Peters
Executive Director
Mt. Veeder Appellation Council

CDPC
MEETING

NOV - 6 2013

AGENDA ITEM

NO. 9C

THOMAS ADAMS
tadams@dpf-law.com

October 30, 2013

VIA EMAIL: sean.trippi@countyofnapa.orgMr. Sean Trippi, Principal Planner
Planning, Building and Environmental Services
1195 Third Street
Napa, CA 94559Re: **Woolls Ranch Winery Use Permit Application; #P13-00187**

Dear Sean,

We represent Marsha Johnston who is the trustee of the Trust Estate of Herbert Weston Walker ("Walker"). Walker owns the property located at 3255 Dry Creek Rd, Napa CA 94558 (APN# 035-460-033) in the vicinity of Woolls Ranch Winery property. The Walker property relies on a ground water well located on a parcel (APN# 035-460-032) that is adjacent to the above referenced Woolls Ranch Winery project ("Winery Project"). The well that Walker relies on was installed in May of 2009 prior to the Winery Project's associated Vineyard Conversion Erosion Control Plan P08-00436-ECPA being approved ("ECP Project"). Our client's well was drilled to a depth of approximately 400 feet and at that time it had a static depth to groundwater of 133 feet and an estimated yield of 100 gallons per minute, the pump was installed in July of 2009 ("Walker Well"). Both the Walker Well and the well located on the Woolls Ranch property (APN# 035-010-054) are located within close proximity to each other, the Walker Well being 6 feet and the Woolls Ranch property well being approximately 23 feet from the shared property line between APN# 035-460-032 and 035-010-054. (See Exhibit A, property map.)

As described in the attached February 1, 2013 letter to the O'Shaughnessy Winery, owner of the ECP Project property at that time, Walker was concerned that the ECP Project groundwater pumping was interfering with its well resulting in a groundwater supply issue. (See Exhibit B, Feb. 1, 2013 letter.) To summarize, in August of 2012 the Walker Well suffered a complete failure. Based on the close proximity of one of the ECP Project's wells and it occurring during the irrigation season the Walker Well failure is more than likely connected to the ECP Project's groundwater pumping. Subsequently, the water level in the Walker Well has partially recovered; however, the most recent depth to groundwater measurement shows a decline in groundwater level from 140 feet to 315 feet or a 175-foot decline in groundwater. As a result of the well failure the pump had to be replaced and a level protector installed to shut the pump off when the groundwater level declines to a level below the pump. (See Exhibit C, email correspondence with Oakville Pump.)

The data on groundwater level declines together with the direct impacts to the Walker Well's pump operations and ability to provide sufficient groundwater to support the existing land uses

on the properties in the vicinity, including the Walker's property are concerning. Accordingly, our client asks that these groundwater impacts be sufficiently addressed by the County in its enforcement of both existing conditions of approval for the ECP Project (discussed below) and conditions of approval or mitigation measures for the Winery Project pursuant to the California Environmental Quality Act ("CEQA"). The need for the County to adequately address this issue is especially true due to the fact that it is relying on a mitigated negative declaration, which cannot be used when the County is presented with a fair argument that the project may have a significant effect on the environment (CEQA Guidelines Section 15064(f)(1), citing *Friends of B Street v. City of Hayward* (1980) 106 Cal. App. 3d 988).

The Winery Project's Initial Study Checklist states that "[t]he County adopted mitigation measures in connection with its approval of the ECP. These mitigation measures are being carried forward and will be incorporated into this project." (Woolls Ranch Winery; Use Permit & Road and Street Standards Exception (#P13-00187), Initial Study Checklist, p. 2.) The ECP Project County approval, dated May 27, 2009 includes the following condition of approval, although not labeled a mitigation measure it clearly was intended to mitigate for potential impacts and as a condition of approval is fully enforceable:

The permittee may be required (at the permittee's expense) to provide well monitoring data if the Director of Environmental Management determines that water usage at the vineyard is affecting, or would potentially affect groundwater supplies or nearby wells. Data requested could include, but may not be limited to, water extraction volumes and static well levels. If applicant is unable to secure monitoring access to neighboring wells, onsite monitoring wells may need to be established to gage potential impacts of the groundwater resource utilized for the project proposed. Water usage shall be minimized by the use of best available control technology and best water management conservation practices. In the event that changed circumstances of significant new information provide substantial evidence that the groundwater system referenced in the permit would significantly affect the groundwater basin, the director of environmental management shall be authorized to recommend additional reasonable conditions on the permittee, or revocation of this permit, as necessary to meet the requirements of the Napa County Groundwater Ordinance and protect public health, safety, and welfare. That recommendation shall not become final unless and until the director has provided notice and the opportunity for hearing in compliance with the County Code section 13.15.070.G-K. (Project ECP, Conditional of Approval #11.)

The existing ECP Project condition of approval #11 and the facts related to the decline in groundwater levels and impacts to pumping of the Walker Well provide sufficient evidence that "the vineyard is affecting, or would potentially affect groundwater supplies or nearby wells." Therefore, the analysis and conclusions of the Initial Study Checklist prepared for the Woolls Ranch Winery; Use Permit & Road and Street Standards Exception (#P13-00187) ("Winery Initial Study"), related to hydrology, specifically groundwater supply are inadequate. (See *Gray v. County of Madera* (2008) 167 Cal. App. 4th 1099, 1116 holding that there must be substantial

evidence that the mitigation measure can effectively replace the decline in the water available to the neighboring residents.)

Further, it appears that the Winery Project Phase 1 Water Availability Analysis referenced in the Winery Project Initial Study is inconsistent with the information previously submitted in support of the ECP Project in that it does not include the water use by the two existing residences on the property, the cattle operation, or the same information provided in the ECP Project Initial Study for the vineyard. For example, the water analysis for the ECP Project Initial Study shows an anticipated water use of 14.88 acre feet per year once the vineyard is established, but the application for the Winery Project shows a total existing use of 10.41 acre feet per year. Moreover, the ECP Project Initial Study states that irrigation for the proposed vineyard would be supplied from two existing groundwater wells with the water stored in five 10,000 gallon water tanks (ECP Project Initial Study, p. 20). This raises additional factual concerns related to the accuracy of the project description, baseline and future groundwater use. The first is overall accuracy of the Phase 1 Water Availability Analysis and lack of any discussion of these inconsistencies. The second is the fact that if the Winery Project will rely on one of the groundwater wells to meet its water demands it will likely increase the irrigation demand on the groundwater well located in the immediate vicinity of the Walker Well or require the installation of additional wells in the future. The third is that based on aerial photographs (see Exhibit B) and our clients own observations, the five 10,000 gallon water tanks analyzed in the ECP Project Initial Study appear to have been replaced with an irrigation reservoir that has been constructed but was not included in the project description in the ECP Project Initial Study or referenced in the Winery Project Phase 1 Water Analysis. As referenced in our February 1, 2013 letter, at the time of the Walker Well failure this previously unanalyzed irrigation reservoir was being filled with groundwater. Regardless of the Phase 1 Water Availability Analysis unsupported assumptions regarding groundwater availability, which as noted contain significant factual inconsistencies, the facts provided herein establish more than a fair argument that the existing ECP Project is currently having a significant impact on the groundwater supplies available to our client. This also provides substantial evidence that any increase in groundwater demand on the property as the result of the Winery Project could result in additional impacts, both direct and cumulative, to groundwater availability in the project vicinity.

In order to address the ECP Project's existing impacts, ECP Project condition of approval #11 and additional impacts that could result from the Winery Project we ask that the County include a mitigation measure or condition of approval on the Winery Project that provides for the following:

Monitoring: The applicant shall measure the groundwater levels of all wells located on its property and the offsite well located on APN# 035-460-032 as recommended by a qualified hydrogeologist. The applicant also shall measure groundwater pumping of all wells located on its property on a monthly basis. Monitoring devices and protocol shall be done in accordance with the recommendations of a qualified hydrogeologist as approved by the County.

Reporting: The applicant shall submit a semi-annual report prepared by a qualified hydrogeologist to Napa County and the users of offsite well located on APN# 035-460-032 with the results of the monitoring program, including a summary of data collection and necessary recommendations regarding water use corrective measures and/or physical improvements necessary to insure the offsite well located on APN# 035-460-032 meets the performance standard discussed below.

Restrictions: The applicant's Well #2 (see Exhibit B) use shall be limited to providing vineyard irrigation and shall not be used for winery or any other purpose. No additional wells shall be drilled on applicant's property without conducting a Phase 2 Water Availability Analysis with notice and opportunity to review and comment provided to users of offsite well located on APN# 035-460-032 prior to County approval of new well.

Performance Standard and Corrective Measures: If there is substantial evidence activities on the applicants property, including winery operations, vineyard irrigation, livestock management, or drilling of additional wells would or is causing the production rate of the offsite well on APN#035-460-032 to drop to a level which would not support existing land uses relied on by the offsite well, the County shall implement one or more, but not limited to, the following mitigation measures to the extent necessary to meet the performance standard:

- Repair, service or replace the offsite well, at applicant's sole expense, such that the affected property owner will have access to water of similar quality and quantity as existed before the applicant's vineyard irrigation.
- Redistribute onsite pumping operations to reduce pumping stress on offsite well.
- Abandon and/or relocate vineyard irrigation well to reduce potential impacts to offsite well.
- Limit groundwater pumping from vineyard irrigation well.

Thank you in advance for your attention to this matter and we trust that you will adequately address our concerns. Please feel free to contact me with any questions.

Regards,

DICKENSON, PEATMAN & FOGARTY



Thomas S. Adams

ec: Brian Russell

EXHIBIT A



NORTH

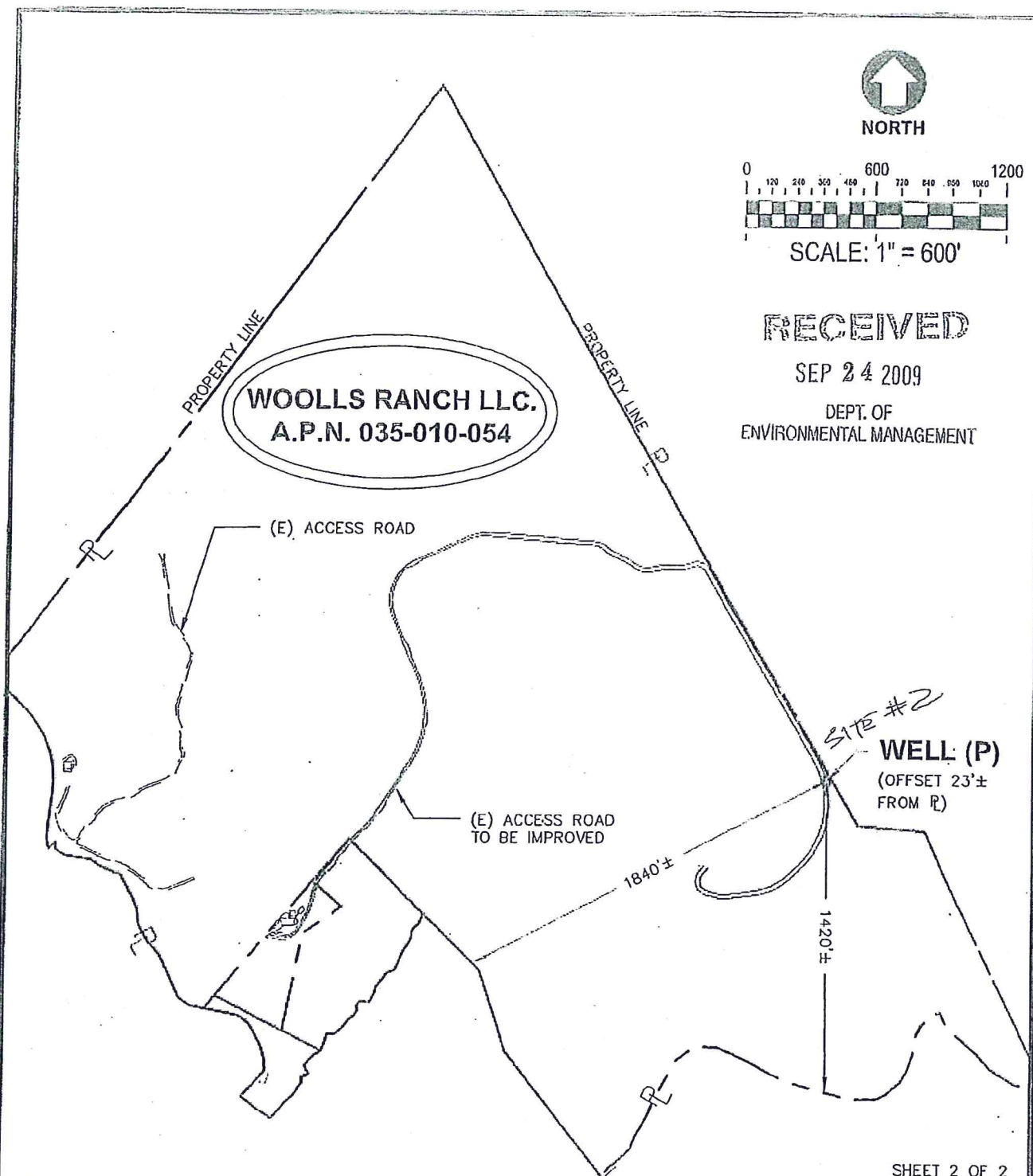


SCALE: 1" = 600'

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SEP 24 2009

DEPT. OF
ENVIRONMENTAL MANAGEMENT



R.E.B. ENGINEERING, INC.

R.C.E. 45115 & L.S. 6591

CIVIL & STRUCTURAL

ENGINEERING, PLANNING, & SURVEYING

P.O. BOX 113, ST. HELENA, CA 94574 (707) 963-8638

WOOLLS RANCH LLC.

WELL LOCATION PLAN

1032 MOUNT VEEDER RD

NAPA, CA 94558

A.P.N. 035-010-054

JOB: 07-04540

DATE: 09/22/2009



HUCKFELDT WELL DRILLING

MIKE BOLEN
3277 DRY CREEK ROAD
NAPA, CA 94558
AP# 035-460-032

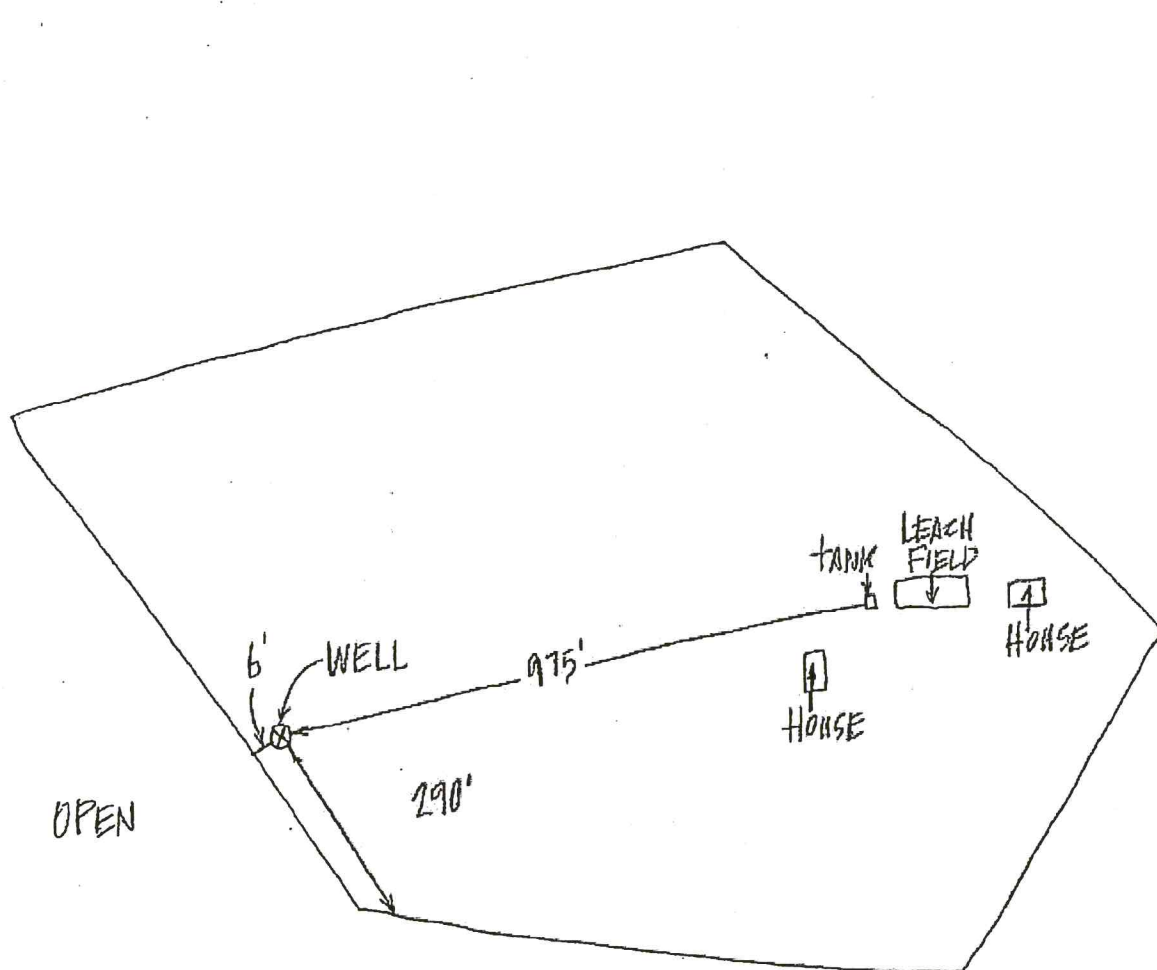


EXHIBIT B



1455 First Street, Suite 301
Napa, CA 94559

T: 707.252.7122
F: 707.255.6876

JAMES W. TERRY
jterry@dpf-law.com

February 1, 2013

Sean Capiaux
O'Shaughnessy Winery
PO Box 923
Angwin, CA 94508

Re: Estate of Herbert Weston Walker
Mt. Veeder Vineyard potential water issues

Dear Sean,

We represent Marsha Johnston who is the trustee of the Trust Estate of Herbert Weston Walker (Walker). Walker owns residential property in the vicinity of O'Shaughnessy's Mt. Veeder vineyard. The Walker property adjoins residential property owned by Elgin Allen (Allen). The Allen property shares a common boundary line with O'Shaughnessy's vineyard property. We have included an aerial photo showing the approximate location of the three parcels. There is a well on the Allen property that is jointly owned and operated by both Walker and Allen. The well is located near the Allen/O'Shaughnessy property line. The well is the exclusive source of domestic and irrigation water to the Allen and Walker parcels.

On August 11, 2012, the Allen/Walker well suffered a complete failure. The then owner of the Allen property, Mike Bolen, claims to have observed significant water usage by O'Shaughnessy, coincident with the failure, including vineyard irrigation and filling of a large reservoir on the O'Shaughnessy property. Bolen believes that water usage by O'Shaughnessy contributed to or caused the water depletion experienced by the Allen/Walker well.

We do not know if there is any connection between O'Shaughnessy's water usage and failure of the Allen/Walker well. However, we are aware that there is a well on the O'Shaughnessy property identified on County records as Well # 2 which is located approximately 23 feet from the Allen property line as shown on the attached well location plan prepared for the Woolls Ranch by R.E.B. Engineering. The proximate location of Well # 2 and the concurrent events reported by Mr. Bolen lend some support to the possibility that there is some causal connection between O'Shaughnessy water usage and failure of the Allen/Walker well. The Erosion Control Permit also contemplated a potential problem in that it provides:

The permittee may be required (at the permittee's expense) to provide well monitoring data if the Director of Environmental Management determines that water usage at the vineyard is affecting, or would potentially affect groundwater supplies or nearby wells.

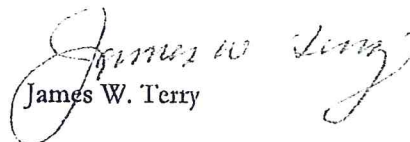
Sean Capioux
February 1, 2013
Page 2

Data requested could include, but may not be limited to, water extraction volumes and static well levels..... In the event that changed circumstances or significant new information provide substantial evidence that the groundwater system referenced in the permit would significantly affect the groundwater basin, the director of environmental management shall be authorized to recommend additional reasonable conditions on the permittee, or revocation of this permit, as necessary to meet the requirements of the Napa County Groundwater Ordinance and protect public health, safety, and welfare.

At this point, we are asking O'Shaughnessy to be mindful of a potential problem and to recognize that use of water on the O'Shaughnessy vineyard might have an adverse affect on the primary water source serving the Allen and Walker properties. We can report that no catastrophic failure has occurred since August 11, 2012. However, the well is not producing water at the same output levels that it has historically. Walker is concerned about this trend. Walker is continuing to watch the situation closely and will advise if any further events occur.

Sincerely yours,

DICKENSON, PEATMAN & FOGARTY


James W. Terry

cc: Marsha Johnston
Enclosure

EXHIBIT C

Thomas Adams

From: Roger Lutz [roger@oakvillepump.com]
Sent: Monday, October 28, 2013 2:38 PM
To: Thomas Adams
Subject: RE: Johnston Well reply from Roger

Just got back from a field survey of the address. The distance between Marcia Johnsons well and the newer well drilled on the adjacent property is 30-40ft. The cone of depression for each well is interfering with the other.

A summary:

In May 2009 the static water level was 1t 133ft (As stated previously

We installed the original pump July 1st of 2009

December 5th 2012 we replaced the pump that was installed July 2009. The pump failed due to lack of water in the well. When we replaced the pump the water level in the well was at 315ft. When we checked the static water level the well had been dormant (no pumping) for at least 24hrs. I do not have an notes as if the neighbors well had been pumping water or not?

The expanse of vineyards adjacent to Marcia's upper well is expansive. I would suspect that this area due to the extent of the vineyards and the lack of water in the area will be drilling more wells and pumping more. This would be detrimental to the water supply for Marsha Johnson. (Rumor...the vineyard is projecting to drill 8 more wells???)

To date this is the information I have found. There are several water meters installed for the water that services Ms. Johnsons irrigation and domestic water but to the best of our knowledge she has those records.

Any Questions Please let me know

Thanks

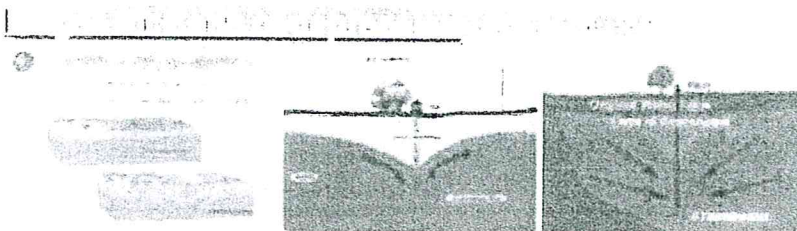
Roger.

PS: Thought this visual might help.

Cone of depression - Wikipedia, the free encyclopedia

en.wikipedia.org/wiki/Cone_of_depression

A **cone of depression** occurs in an aquifer when groundwater is pumped from a well. In an unconfined aquifer (water table), this is an actual depression of the ...



From: Thomas Adams [mailto:tadams@dpf-law.com]
Sent: Monday, October 28, 2013 11:45 AM
To: roger@oakvillepump.com
Subject: Johnston Well

Roger, Any news on whether you have any field logs or notes in the file? Also, was the pump replacement in December of 2012 due to the August 2012 well failure?

THOMAS S. ADAMS, ESQ.
DICKENSON, PEATMAN & FOGARTY
1455 FIRST STREET, SUITE 301
T: 707.252.7122 | F: 707.255.6876

10/30/2013

D: 707.261.7016

TADAMS@DPF-LAW.COM | WWW.DPF-LAW.COM

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10/30/2013