



**City of St. Helena
Water Advisory Board
Regular Meeting
Friday, November 5, 2021 @ 10:00 AM**

PLEASE NOTE: Any person who wishes to speak regarding an item on the agenda or make a comment under the "Oral Communication" portion of the agenda may do so, but please observe the time limit of four minutes.

This meeting will be conducted pursuant to the provisions of Government Code Section 54953 (as amended by AB 361) which authorizes teleconferenced meetings under the Brown Act during certain proclaimed States of Emergency. The Governor of California proclaimed a State of Emergency related to COVID-19 on March 4, 2020. This teleconferenced meeting is necessary so that the City can conduct essential business and is permitted under Government Code 54953 in order to protect public health and safety of attendees.

Consistent with Government Code Section 54953, this Meeting will be held via teleconference only, and will not be physically open to the public. Board members and staff will teleconference into the meeting by audio and/or video. The meeting will be conducted via Zoom Webinar.

Those members of the public wishing to participate must do so remotely via Zoom electronic meetings in the following ways; by either logging onto the Zoom link located on the meeting agenda (please download the app to your computer or mobile device) and enter the meeting ID or by calling a listed number and enter the meeting ID. Public comment for Water Advisory Board meetings will be accepted via email to publiccomment@cityofstheleena.org. All public comments must be emailed by 8:00 AM prior to the meeting. Emailed public comments will not be read out loud but will be publicly available and attached to the on-line Water Advisory Board agenda.

In the event a quorum of the Water Advisory Board loses electrical power or suffers an internet connection outage that is not corrected within 10 minutes, the meeting will automatically be adjourned. Any items noticed as public hearings will be continued to the next regularly scheduled meeting of the Water Advisory Board. Any other items on the agenda that the Board has not taken action on will be placed on a future agenda.

Please see the end of the agenda for detailed PUBLIC PARTICIPATION instructions. To learn how to use Zoom, please see the instructions below.

Please click the link below to join the meeting:

<https://us02web.zoom.us/j/82070802157>

Or One tap mobile :

US: +16699006833,,82070802157# or +13462487799,,82070802157#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 929 205 6099 or
+1 301 715 8592 or +1 312 626 6799

Meeting ID: 820 7080 2157

1. CALL TO ORDER

2. ROLL CALL

Chair: Brent Randol

Vice Chair: Dianna Ortiz

Board Member: George Schisler

City Council Representative: Anna Chouteau

Planning Commission Representative: Daniel Hale

3. PUBLIC FORUM:

An opportunity for the public to directly address the Board on items of interest to the public that are not listed on the agenda. Any person addressing the Board should provide his or her name and address, and limit comments to four minutes. Because of restrictions imposed by **the Brown Act, the Board may not engage in substantive discussion, nor take action on matters not described on the agenda.**

4. REPORTS BY STAFF AND BOARD

Reports by staff and/or Board on items of general interest. Brief questions for clarification may be posed and answered, and Board may request that items be placed on a future agenda. Except under certain circumstances, **the Brown Act prohibits any other discussion or action by the Water Advisory Board.**

5. CONSENT CALENDAR:

Members of the Water Advisory Board or the public may ask that any items be considered individually for purposes of considering alternative action, for extended discussion, or for public comment. Unless that is done, on motion may be used to adopt all recommendation actions.

5.1. None

6. OLD BUSINESS:

6.1. None

7. NEW BUSINESS:

7.1. Consideration of Water Allocation Exception – Peter Edelen

7 - 12

CEQA Determination: Not a CEQA project

Prepared By: Martin Beltran, Management Analyst

Recommendation:

Discuss and provide direction for water exception request.

[STAFF REPORT - Water Advisory Exception Request Edelen, Peter
1817 Main Street Peter Edelen](#)

7.2. Consideration of Water Allocation Exception David Knobel

13 - 69

CEQA Determination: Not a CEQA project

Prepared By: Martin Beltran, Management Analyst

Recommendation:

Discuss and provide direction for water exception request.

STAFF REPORT - Water Advisory Exception Request Nobel, David
Signed Water Exception Permit Form 9.15.31 (002)

8. ADJOURNMENT

The next regular Water Advisory Board meeting is scheduled for November 19, 2021 at 10:00 am.

I do hereby certify that a copy of the foregoing agenda was posted on the City website on November 2, 2021 at 9:35 a.m.



Cindy Tzaopoulos, City Clerk

In Compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please call the City Clerk's Office (707) 968-2742. Notification 72 hours prior to the meeting as required by Section 202 of the Americans with Disabilities Act will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

**THE CITY OF ST. HELENA ENCOURAGES ONLINE PUBLIC
PARTICIPATION IN
VIRTUAL MEETINGS**

St. Helena, CA– The City of St. Helena is committed to public participation in City government in a manner that is consistent with guidance provided by the Napa County Public Health Official and Governor Newsom's Executive Order N-25-20. These guidelines relate to social distancing, and are intended to protect everyone by limiting the spread of COVID-19 in our community. In adherence to these guidelines, the St. Helena Water Advisory Board will host a Virtual Meetings on Zoom; a free teleconferencing tool that enables users to watch and/or call into the meeting from their computers or phones. This meeting will be open to public and allows for live public comment. The meeting will also be recorded, and posted on the City's website at the conclusion of the meeting: <https://sthelena.civicweb.net/Portal/>

The ZOOM web link, meeting ID, and phone number will be listed at the top of the Meeting Agenda. You will be required to enter the meeting ID, but there will be no password or participant ID.

How to Watch or Listen to Meetings:

1. Watch and Listen on Zoom.us by clicking on the link in the Agenda
2. Listen only by calling the Zoom number listed on the Agenda

Watch by Joining the Zoom Meeting:

1. By Computer, Tablet, or Smart Phone:

1. Before joining the virtual Meeting, it is highly encouraged that you download the Zoom App. To sign up for your own free account, visit zoom.us/signup and enter your email address. You will receive an email from Zoom (no-reply@zoom.us). In this email, click Activate Account.

2. If you are logged into your account, Enter the **Meeting ID** listed on the Agenda. If you have not created an account go to: <https://zoom.us/join> and enter the **Meeting ID**
3. Select if you would like to connect audio and/or video and tap **Join Meeting**.
4. For specific instructions for your device, go to: <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>

1. **Listen Only by Telephone:**

1. **Dial** the number listed on the Agenda.
2. At the prompt, enter the **Meeting ID** provided on the top of the Meeting Agenda and **Press #. A participate ID is not required.**
3. To disconnect from the meeting, hang up the phone.

Ways to Provide Public Comment:

While attending the virtual Meeting, the public will have the opportunity to provide live public comment during Public Forum and after each agenda item. When it is the appropriate time for public comment the Chair will verbally open public comment. At this time each individual is permitted 4 minutes to speak.

1. **Send a Public Comment in by 8:00 AM Prior to the Meeting to:**
publiccomment@cityofsthelena.org

The easiest way to provide public comment is to email your public comment. Public comments may be emailed to publiccomment@cityofsthelena.org. Please include in the subject line "COMMENT TO WATER ADVISORY BOARD and the AGENDA ITEM". Any public comment is required to be submitted no later than 2 hours before the scheduled meeting and will be included as an attachment to the agenda. All public comments will be made publicly available and attached to the agenda item and will not be read out loud. All public comments that are received after 8:00 AM will be attached to the agenda the following day.

2. **Provide Comment through Zoom meeting from a computer, tablet, or smart phone**

This option allows the public to virtually attend the meeting as a muted 'attendee' with no video or screen sharing capabilities. You will be able to see and hear those participating in the meeting, but they will not be able to hear you until the host unmutes you.

If you wish to provide public comment during a specific agenda item or during public forum, you can use the "**raise hand**" feature located in the control panel at the bottom of your screen. The icon is a small blue hand. In Windows you can also use the Alt+Y keyboard shortcut to raise or lower your hand. In Mac you can also use the Option+Y keyboard shortcut to raise or lower your hand.

The host will be notified that you've raised your hand and you will be placed in a queue with all incoming requests.

When it is your turn to speak, you will be notified that the host has unmuted you. To be removed from the queue, just click the '**raise hand**' button again.

3. **Call in to the ZOOM meeting from a cell phone or landline phone only**

This option allows the member of the public with the opportunity to verbally participate in public comment.

If you wish to speak during public comment time dial ***9** on your telephone.

The host will be notified that you would like to speak and you will be placed in a queue with all incoming requests.

When it is your turn to speak, you will be notified that the host has unmuted you. You may press ***9** again if you wish to be removed from the queue.

You will be notified at the end of your statement that you have been muted.



Report to the City Council
Water Advisory Board – November 5, 2021

Agenda Section: **NEW BUSINESS**

Subject: **Consideration of Water Allocation Exception – Peter Edelen**

CEQA **Not a CEQA project**
Determination:

Prepared By: Martin Beltran, Management Analyst

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

On October 27, 2020, the City Council established Phase II Water Regulations and, in accordance with the St. Helena Municipal Code (SHMC), established the Water Advisory Board consisting of one City Council member, one Planning Commissioner, one winery customer, and two public members, one of whom shall solely be a residential customer.

The Water Advisory Board shall have access to all records in the possession of the water enterprise necessary in its judgement to perform its duties, including customer records. The Board shall maintain confidentiality of individual customer records unless the Board determines by resolution that release of such information is necessary in the pursuit of its duties.

The Water Advisory Board shall meet at least monthly and may grant permits for uses of water, for exceptions to water conservation measures, or for water connections otherwise prohibited. The Water Advisory Board shall prescribe necessary procedures for application for and use of exception permits pursuant to SHMC Section 13.04.280.

On April 30, 2021, the Water Advisory Board approved SOP-FI-0021 *Application and Use of Exception Permits Water Emergency* and the applicable *Exception Form*. On June 4, 2021, the Water Advisory Board approved Revision #1 to SOP-FI-0021

Application and Use of Exception Permits Water Emergency and the applicable Exception Form.

DISCUSSION

On September 28, 2021, the City received an application for an exception by Peter Edelen (Attachment 1). The applicant is requesting the following exception(s) for the following reason(s):

1. For single-family residential parcels exceeding seven thousand (7,000) square feet in area, the quantity of up to twenty (20) gallons per day for each one thousand (1,000) square feet that the property area exceeds seven thousand (7,000) square feet for the purpose of maintaining mature landscape or orchard plants.
2. Applicant is seeking a total outdoor landscape allocation of 600 gallons per day, which exceeds the allocation cited in the municipal code of and additional maximum of 250 gallons per day.

The current allotment for this property based on a 30-day month is:

	Gallons	HCF
6 Person Household	11,700	
Summer Landscape (April through October)	2,500	
Additional Landscape based on lot size (per SHMC)	7,500	
Total Current Allocation	21,700	29.00
Additional Allotment Request	10,500	
TOTAL ALLOTMENT IF GRANTED	32,200	43.05

The applicant has included an addendum in the letter attached to the Water Exception Permit Form.

FISCAL IMPACT

Not Applicable.

RECOMMENDED ACTION

Discuss and provide direction for water exception request.

ATTACHMENTS

Attachment 1 - Exception Application – Peter Edelen

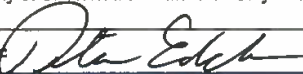


Water Exception Permit Form

DATE SUBMITTED:	9/28/2021
RECEIVED BY:	Martin B.

PROPERTY & BILLING INFORMATION			
Date Applying 9.28.21		Customer or Company Name PETER EDELEN	
Account Number 005710-000		Phone Number 707.291.3777	Email Address edelenp@comcast.net
Mailing Address 1812 MAIN ST		City St. Helena	State CA
		Zip Code 94574	
TYPE OF EXCEPTION REQUEST - CHECK ALL THAT APPLY			
☐	Allocation based on previous water use - it can be demonstrated that water conservation measures beyond those required in Chapter 13.12 were in place prior to the preceding nonshortage year. An additional quantity of water may be allocated to recognize the higher efficiency in place prior to the water emergency condition.		
☐	Allocation based on previous winter water use - it can be demonstrated that efficient and essential water uses are not represented in average winter water use.		
☐	Irrigation - Non-residential customers with irrigation and domestic use provided by the same water meter may receive an additional landscape allocation of up to 70 gallons (Phase II) per day per 1,000 square feet of landscaped area during April through October by documenting the landscaped square footage served by city water.		
☒	Single-family residential - parcels exceeding seven thousand (7,000) square feet in area, the quantity of up to twenty (20) gallons per day for each one thousand (1,000) square feet that the property area exceeds seven thousand (7,000) square feet for the purpose of maintaining mature landscape or orchard plants.		
☐	For medical conditions of a resident, a quantity as required to maintain health standards.		
Additional Amount Requested (if known):		Check One: ☐ HCF -or- ☒ Gallons	
18,000			
Additional supporting information/considerations (please attach any additional supporting documentation):			
Please see attached addendum.			

Updated 04/05/2021

PLEASE READ AND SIGN THE FOLLOWING STATEMENTS AS ACKNOWLEDGED AND REQUIRED BY THIS AGREEMENT							
If this condition is granted, I agree to: - Submit a request in writing to the Director of Public Works; - Adhere to all specific requirements contained within the exception; and - Any other specified conditions as determined by the City of St. Helena or Water Advisory Board							
Name: <u>Peter Edeler</u>	Signature: <u></u>	Date: <u>9.23.21</u>					
PLEASE SUBMIT APPLICATIONS TO:		QUESTIONS?					
City of St. Helena: Public Works 1572 Railroad Avenue St. Helena, CA 95404		Email: mbeltran@cityofsthelena.org Website: www.cityofsthelena.org/Phaseii Phone: 707-967-2746					
STAFF USE ONLY							
Water use exception is hereby: ☐ Approved ☐ Denied							
Details of exception granted, including additional allocation:							
If denied, reason for denial:							
<table style="width: 100%; border: none;"> <tr> <td style="width: 40%; border: none;">Approved by (check one):</td> <td style="width: 10%; border: none; text-align: center;"> ☐ </td> <td style="width: 30%; border: none;">Public Works Director</td> <td style="width: 10%; border: none; text-align: center;"> ☐ </td> <td style="width: 10%; border: none;">Water Advisory Board</td> </tr> </table>			Approved by (check one):	☐	Public Works Director	☐	Water Advisory Board
Approved by (check one):	☐	Public Works Director	☐	Water Advisory Board			

Updated 04/30/2021

Addendum to Water Exception Permit Form

Sept 28, 2021

To Whom it My Concern

Customer: Peter Edelen

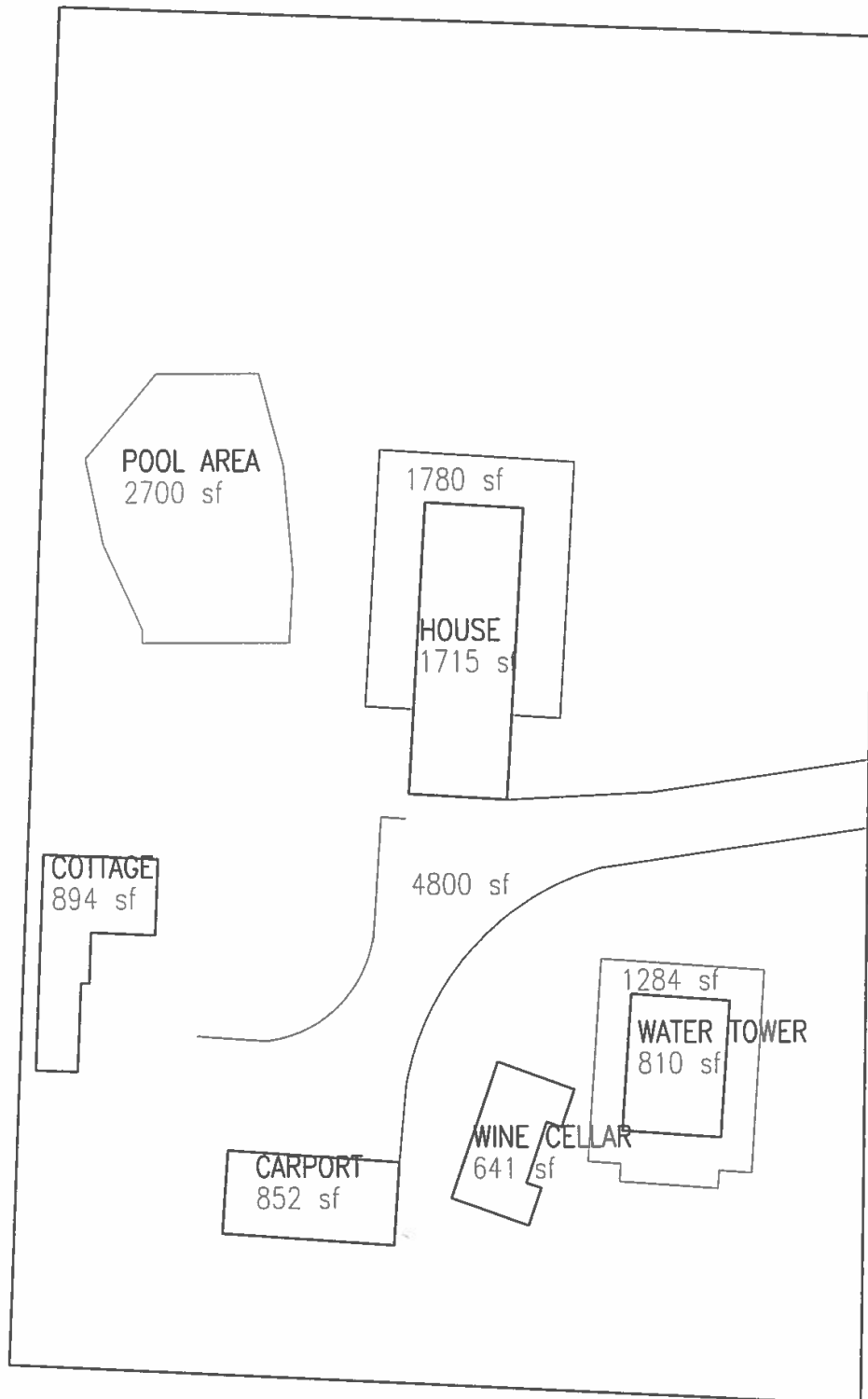
1817 Main Street, St Helena

Comments:

1. Property size estimated to be 68,000 square feet (approximate)
2. Property contains two structures designated as Historical Resources. In 2014 property owner removed approximately 25,000 square feet of lawn.
3. In the subsequent years Property Owner replaced lawn landscaping with twelve hundred (1200) drought resistant plants.
4. With the exception of a 40' flag stone walkway planted with English Thyme. All native plants are irrigated by drip irrigation. Drip irrigation is operated by 5 separate irrigation valves which include 12 separate zones.
5. Estimate of landscape areas, net of structures, pool, deck areas, etc., is approximately 40,000 square feet.
6. Property does include and inground swimming pool

A handwritten signature in black ink, appearing to read "Peter Edelen", written over a horizontal line.

Peter Edelen



1817 MAIN STREET, ST HELENA



Report to the City Council
Water Advisory Board – November 5, 2021

Agenda Section: **NEW BUSINESS**

Subject: **Consideration of Water Allocation Exception – Knobel, David**

CEQA **Not a CEQA project**
Determination:

Prepared By: April Mitts, Administrative Services Director

Reviewed By: April Mitts, Administrative Services Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

On October 27, 2020, the City Council established Phase II Water Regulations and, in accordance with the St. Helena Municipal Code (SHMC), established the Water Advisory Board consisting of one City Council member, one Planning Commissioner, one winery customer, and two public members, one of whom shall solely be a residential customer.

The Water Advisory Board shall have access to all records in the possession of the water enterprise necessary in its judgement to perform its duties, including customer records. The Board shall maintain confidentiality of individual customer records unless the Board determines by resolution that release of such information is necessary in the pursuit of its duties.

The Water Advisory Board shall meet at least monthly and may grant permits for uses of water, for exceptions to water conservation measures, or for water connections otherwise prohibited. The Water Advisory Board shall prescribe necessary procedures for application for and use of exception permits pursuant to SHMC Section 13.04.280.

On April 30, 2021, the Water Advisory Board approved SOP-FI-0021 *Application and Use of Exception Permits Water Emergency* and the applicable *Exception Form*. On June 4, 2021, the Water Advisory Board approved Revision #1 to SOP-FI-0021

Application and Use of Exception Permits Water Emergency and the applicable Exception Form.

DISCUSSION

On September 15, 2021 the City received an application for an exception by David Knobel (Attachment 1). The applicant is requesting the following exception(s) for the following reason(s):

1. Single-family residential parcels exceeding 7,000 square feet in area.
2. Applicant is seeking a total outdoor landscape allocation of 3,700 gallons per day, which exceeds the allocation cited in the municipal code of and additional maximum of 250 gallons per day.

The current allotment for this property based on a 30-day month is:

	Gallons	HCF
4 Person Household	7,800	
Summer Landscape (April through October)	2,500	
Additional Landscape based on lot size (per SHMC)	7,500	
Total Current Allocation	17,800	23.80
Additional Allotment Request	103,500	
TOTAL ALLOTMENT IF GRANTED	121,300	162.15

The applicant has included several appeals in the letter attached to the Water Exception Permit Form. The appeal before the Water Advisory Board is only in reference to the additional outdoor landscape request, all other appeals will be heard by the City of St. Helena City Council at a later date.

FISCAL IMPACT

Not Applicable.

RECOMMENDED ACTION

Discuss and provide direction for water exception request.

ATTACHMENTS

Attachment 1 - Exception Application – Knobel, David



Water Exception Permit Form

DATE SUBMITTED: _____

RECEIVED BY: _____

PROPERTY & BILLING INFORMATION			
Date Applying 9/15/2021		Customer or Company Name David Knobel	
Account Number 007974-000		Phone Number 707-337-3531	Email Address david@dknobel.com
Mailing Address 1235 Lands Ends Rd		City Lantana	State FL
			Zip Code 33462
TYPE OF EXCEPTION REQUEST – CHECK ALL THAT APPLY			
☐	<u>Allocation based on previous water use</u> - it can be demonstrated that water conservation measures beyond those required in Chapter 13.12 were in place prior to the preceding nonshortage year. An additional quantity of water may be allocated to recognize the higher efficiency in place prior to the water emergency condition.		
☐	<u>Allocation based on previous water use</u> – it can be demonstrated that efficient and essential water uses are not represented in average water use.		
☐	<u>Irrigation</u> – Non-residential customers with irrigation and domestic use provided by the same water meter may receive an additional landscape allocation of up to 70 gallons (Phase II) per day per 1,000 square feet of landscaped area during April through October by documenting the landscaped square footage served by city water.		
☒	<u>Single-family residential</u> - parcels exceeding seven thousand (7,000) square feet in area, the quantity of up to twenty (20) gallons per day for each one thousand (1,000) square feet that the property area exceeds seven thousand (7,000) square feet for the purpose of maintaining mature landscape or orchard plants.		
☐	For medical conditions of a resident, a quantity as required to maintain health standards.		
Additional Amount Requested (if known): 3,700/day		Check One: ☐ HCF -or- ☒ Gallons	
Additional supporting information/considerations (please attach any additional supporting documentation): See attached letter.			

Updated 06/04/2021

PLEASE READ AND SIGN THE FOLLOWING STATEMENTS AS ACKNOWLEDGED AND REQUIRED BY THIS AGREEMENT			
If this condition is granted, I agree to: - Submit a request in writing to the Director of Public Works; - Adhere to all specific requirements contained within the exception; and - Any other specified conditions as determined by the City of St. Helena or Water Advisory Board - By signing below, applicant acknowledges and consents to the Water Advisory Board's review and use of applicant's customer records for the purpose of making a decision related to the permit application, and understands that such information, including historical water use, may be discussed and disclosed at a public meeting			
Name: <u>David Knobel</u>	Signature: <u>[Signature]</u>	Date: <u>9/15/21</u>	
PLEASE SUBMIT APPLICATIONS TO:		QUESTIONS?	
City of St. Helena: Public Works 1572 Railroad Avenue St. Helena, CA 94574		Email: mbeltran@cityofsthenela.org Website: www.cityofsthenela.org/Phaseii Phone: 707-968-2746	
STAFF USE ONLY			
Water use exception is hereby: ☐ Approved ☐ Denied			
Details of exception granted, including additional allocation:			
If denied, reason for denial:			
Approved by (check one):		☐ Public Works Director	☐ Water Advisory Board

Updated 06/04/2021



Cassidy Wallace, Esq.
Email: cwallace@kdvlaw.com

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Sonoma, CA 95476

Telephone: 707.509.5260
Facsimile: 707.509.5261

www.kdvlaw.com

September 15, 2021

Via E-mail and US Mail

Mark Rincón-Ibarra
Director, Department of Public Works
mrincon@cityofsthelena.org
Cindy Tzafoopoulos
Clerk, City of St. Helena
ctzafoopoulos@cityofsthelena.org
City of St. Helena
Department of Public Works
1572 Railroad Ave
St. Helena, CA 94574

Re: *1700 Howell Mountain Road - **Appeal of Water Allocation; Appeal of Water Penalty; and Application for Water Exception Permit***

Dear Mr. Rincón-Ibarra and Ms. Tzafoopoulos:

This office represents David Knobel regarding the above-referenced matter. Mr. Knobel hereby supplements the appeal filed on August 18, 2021 and attached as **Exhibit 1** (hereinafter, the appeal and this supplement are collectively referred to as the “**Appeal**”). This Appeal is made pursuant to Section 4(f) of City Council Resolution No. 2021-58 dated April 27, 2021 (“**Resolution 2021-58**”).¹ This Appeal contests: (I) the City of St. Helena’s (“**City**”) establishment of a Phase II water emergency; (II) the City’s imposition of the monthly water usage allocation (“**Monthly Allocation**”); (III) the City’s application of the Monthly Allocation to impose water excess penalties (“**Water Penalties**”), specifically those on Account No. 007974-000 for Mr. Knobel’s property at 1700 Howell Mountain Road, APN 025-140-030-000 (“**Property**”); (IV) the City’s arbitrary limits for customers to apply for a water exception permit (“**Exception Permit Application**”); and (V) the City’s insufficient notice to Mr. Knobel concerning the Monthly Allocation and Water Penalties.

¹https://www.cityofsthelena.org/sites/default/files/fileattachments/active_transportation_amp_sustainability_committee/page/24000/resolution_2021-0058.pdf. Resolution 2021-58 is entitled “Resolution of the City Council of the City of St. Helena Establishing Volumetric Penalties During Phase II and Phase III Water Emergencies.”

Mr. Rincón-Ibarra and Ms. Tzafoopoulos
September 15, 2021
Re: 1700 Howell Mountain Road - Appeal of Water Allocation; Appeal of Water Penalty; and Application for Water Exception Permit Request
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While the City considers this Appeal and responds to the requests made herein, Mr. Knobel hereby requests an Exception Permit Application, pursuant to the City’s authority purportedly authorized by Section 6 of Resolution 2021-58 and St. Helena Municipal Code (“**SHMC**”) Section 13.04.280 to grant exceptions to the water conservation measures and Monthly Allocation imposed by Resolution 2021-58 (“**Exception Permit**”).² For the reasons described in more detail below, Mr. Knobel requests that the Property be granted an Exception Permit constituting the full amount of additional gallons under Section 13.040.280(A)(2) without the arbitrary upper limit of 250 gallons per day.

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² In applying for an Exception Permit, Mr. Knobel does not waive his right to contest the validity of the Monthly Allocation and Water Penalties, including by judicial review and court action. (See Water Code § 358 (“Nothing in this chapter shall be construed to prohibit or prevent review by any court of competent jurisdiction of any finding or determination by a governing board of the existence of an emergency or of regulations or restrictions adopted by such board, pursuant to this chapter, on the ground that any such action is fraudulent, arbitrary, or capricious.”); Water Code § 372(a) (“Nothing in this chapter prohibits a customer of the public entity from challenging whether the basic use allocation established for that customer’s account is reasonable under the circumstances.”); *Howard Jarvis Taxpayers Assn. v. City of Roseville* (2002) (97 Cal.App.4th 637) (granting declaratory, injunctive and mandate relief to plaintiff where Roseville violated Proposition 218).)

Mr. Rincón-Ibarra and Ms. Tzafoopoulos

September 15, 2021

Re: 1700 Howell Mountain Road - Appeal of Water Allocation; Appeal of Water Penalty; and Application for Water Exception Permit Request

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I. RELEVANT FACTUAL BACKGROUND

A. Property Characteristics and Fire Hazard

Mr. Knobel's Property is 4.41 acres³ and sits on a hillside of forested land. The Property includes a single-family home, guest house, and small non-commercial vineyard (approximately 200 vine plants). The Property is in the City's Woodlands & Watershed zoning district,⁴ which the City considers a high fire hazard area. (SHMC 17.64.010(G).) Furthermore, the City identifies the Property as being within a Moderate Fire Hazard Severity area.⁵

Over the past 10 years, Mr. Knobel has completed extensive fire remediation work on the Property pursuant to his insurance company's instruction. In fact, following the insurance company's inspection of the Property in 2011, it required that Mr. Knobel trim trees hanging over the house, thin trees within 150 feet of the house, and create a defensible area of adequately watered space no less than 60 meters (196 feet) around his home because the Property is on sloped terrain.

Mr. Knobel took the precautions mandated by his insurance company, including creating a defensible space around his home with water-conscious landscaping and rock beds, trimming trees, and reducing the tree canopy. Per the insurance company's mandates, the Property's defensible space expands approximately 90,000 square feet around the home and includes the small vineyard. All of Mr. Knobel's fire remediation work has taken into consideration the maximum extent of water-use efficiency, and his water use is only as is necessary and reasonable in light of the size of the defensible space required around his property. The fire safety precautions cost Mr. Knobel approximately \$50,000 over the past five years.

Mr. Knobel's home was directly affected by the Glass Fire starting on September 27, 2020. His family was evacuated and could not live in the house for 110 days, and the fire swept through the Property burning the vegetation and trees up through a portion of the defensible area almost to the walls of his home. (See **Exhibit 2** – photos of the Property pre-Glass Fire – compared to **Exhibit 3** – photos of the Property post-Glass Fire.) His neighbor's home, less than 300 feet from Mr. Knobel's house on the Property, was completely destroyed. (*Id.*)

Mr. Knobel's home fortunately survived the fire, but the home and Property sustained a substantial amount of damage, including: (1) lifting and peeling of the stucco walls of the house

³ Napa County Assessor Information, APN 025-140-030-000.

⁴ http://www.ci.st-helena.ca.us/sites/default/files/fileattachments/planning_resources/page/1741/final_zoning_map_city_of_st_helena_updated_5.16.18_for_website.pdf.

⁵ See City of St. Helena Map Viewer (Public) available at http://gis.napa.ca.gov/html5viewer/?viewer=External_St_Helena

Mr. Rincón-Ibarra and Ms. Tzafoopoulos

September 15, 2021

Re: 1700 Howell Mountain Road - Appeal of Water Allocation; Appeal of Water Penalty; and Application for Water Exception Permit Request

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causing the exterior to become exposed and porous, (2) molding of the roof due to the combination of ash and moisture, and (3) destroying his water tank, water lines to the home, cable and phone lines, septic system, landscaping lighting, and landscaping irrigation system on the Property. Notably, the irrigated vineyard within 150 feet of Mr. Knobel's home did not burn, despite the fact that the land on both sides of the vineyard was completely burned. (*Id.*)

Once Mr. Knobel replaced the infrastructure of the Property, he needed to clean and repair the exterior of the house and roof to remove fire, smoke, and ash damage and return the home to its fire-defensible condition. The risk and threat of fire danger to his home and the fact that his home was in barely livable condition necessitated that the repair work be completed as soon as possible. In Spring 2021, Mr. Knobel scheduled the cleaning and repair work for the next available date which was late June to August 2021.

To further emphasize the significant damage fires caused the Property, since Mr. Knobel was able to return to his home after being evacuated from the Glass Fire, he has had to repair water leaks caused by fire damage on six occasions. The latest leak occurred on August 17, 2021, of which he was notified by the City who called Mr. Knobel to inform him of a broken water line on his Property, caused by fire damage, which was leaking. As soon as Mr. Knobel learned of this leak on August 17, 2021, he immediately had it repaired. Despite Mr. Knobel's diligent and ongoing repairs, fire damage remains, as does the reality that the home could have burned but did not.

B. Mr. Knobel's Notice of City Actions Regarding Water Restrictions

The first notice provided by the City to Mr. Knobel that the City had declared a Phase II Water Shortage Emergency was by letter on February 19, 2021. (*See Exhibit 4.*) It stated that "Phase II water regulations limit residential users to 65 gallons per person per day during the months of November through March." (*Id.*) It blanketly provided a "monthly allotment" for no month certain of 7.82 units or 5,850 gallons for the Property. (*Id.*) No where in the letter did it state how the Phase II emergency was determined, how the water allocation was calculated, how the allocation was to be applied, when the allocation would go into effect, or how a customer would be affected if they exceeded the allocation. (*Id.*)

The next notice Mr. Knobel received from the City was by letter on May 21, 2021. (*See Exhibit 5.*) It indicated that the allotment of 65 gallons per person per day for residential indoor water use was "[s]tarting today, and through the remainder of the water crisis" and that penalties for inefficient water use were "effective June 1, 2021." (*Id.*) This was Mr. Knobel's first notice of the Property's June Monthly Allocation – 10 days before the program was to go into effect. The letter provided that Mr. Knobel's June 2021 Summer Monthly Allocation was 15.08 units or 11,282 gallons, different from the allocation in the February letter without explanation. (*Id.*) The

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letter did not explain the basis for his specific 15.08 unit (11,282 gallon) allocation, which appeared to depart from the calculations based on per-person and landscaping criteria set forth in the letter and SHMC Section 13.04.240. Therefore, it was unclear how the 15.08 unit or 11,282 gallons allocation was to be applied to per-person versus landscaping use. Based on the Property's historical water use in June 2019, according to the letter, the Property's June 2021 allocation was an 89% reduction from his June 2019 water use. (*Id.*) The May 21, 2021 letter was also the first notice to Mr. Knobel that the allocations were mandatory, versus advisory, and that the City was considering penalties "for inefficient water use." (*Id.*) However, the only calculation for the penalties was in a chart, without explanation. (*Id.*) Furthermore, the fact that the penalties were based on a per-unit/gallon-exceeded, rather than a flat charge, was only set out as a heading in the chart. (*Id.*)

As described above, Mr. Knobel already had in place many of the encouraged and mandatory conservation measures outlined in SHMC Section 13.04.221 including using water-saving devices, limiting the expansion or installation of new water-using appliances, limiting the hours of irrigation, and not washing any driveways, sidewalks, or motor vehicles at the Property. Nevertheless, upon receipt of the May 21, 2021 letter, Mr. Knobel immediately implemented additional water-usage reducing measures for the Property while still following his insurance company's requirements for an adequately-watered defensible space. This included changing all landscaping drippers from two gallons per hour to one-half gallon per hour, a 75% cut back. Mr. Knobel knew the Property would be vacant for most of June, and therefore, anticipated that the per-person water usage would also be heavily decreased.⁶ That said, without an example or clear explanation of how the penalties were to be implemented, Mr. Knobel did not find out until his next water bill whether his water-saving measures for the Property were sufficient to avoid a penalty; they were not.

It was not until July 23, 2021 when Mr. Knobel received his June 2021 bill that the effect of the 15.08 unit allocation and the fact that the penalty was calculated per exceeded-unit/gallon became clear, as (to the complete shock of Mr. Knobel) the bill included a June excess penalty of \$4,495.24. (See **Exhibit 6**.) Mr. Knobel had already completed the cleaning and repair work required on the exterior of his home following the Glass Fire damage, which occurred in early July 2021. The June bill confirms that the Property's June 2021 water usage decreased by 29% from its June 2019 water use. (*Id.*; see **Exhibit 5**.) To an even bigger shock to Mr. Knobel, when he returned to his primary residence in Florida on July 27, 2021, he received a letter from the City dated July 15, 2021 explaining that the June excess penalty emailed to him on July 23, 2021 was only 25% of the total penalty. The total penalty was actually \$17,980.95.

⁶ Mr. Knobel's primary residence is in Florida as reflected by the address of record on his Account No. 007974-000.

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Mr. Knobel immediately visited the City office after receiving his June bill to inquire about the penalty amount. City representative, Ian Dale, stated that the penalty was accurate. More recently, Mr. Knobel asked the City for an explanation of the breakdown of the 15.08 unit or 11,282 gallons allocation, because it differs from the criteria set forth in SHMC Section 13.04.240. According to the City, the allocation was determined by the following criterion: four people in the household, 33 days in the June billing period (May 26 to June 28), and a per day landscaping allotment which is different and lower than the flat 2,500 irrigation allotment set forth in SHMC Section 13.04.240. (See **Exhibit 7**.)

Mr. Knobel did not receive the Property's July Monthly Allocation in advance of July 1, 2021. Rather, the only notice Mr. Knobel received was in an August 11, 2021 letter from the City which notified him that he had exceeded the July Monthly Allocation. (**Exhibit 8**.) Mr. Knobel's July Monthly Allocation was 13.710 units or 10,256 gallons, without explanation. (*Id.*) Even though the Property's water use in July was a 41% reduction from water use in June 2019, Mr. Knobel is incredulously subject to \$7,198.78 in Water Penalties.⁷ As far as we can tell, the July Monthly Allotment was calculated similarly to the June Monthly Allotment, with a per day landscaping allotment that is different and lower than the flat 2,500 irrigation allotment set forth in SHMC Section 13.04.240. Mr. Knobel has not received a notice of his August Monthly Allotment, despite it being well into September.

II. APPEAL

A. CITY'S FLAWED ESTABLISHMENT OF PHASE II WATER EMERGENCY

Pursuant to California Water Code section 350 *et seq.*, the City Council may find that water shortage emergency conditions exist. (Water Code §§ 350 *et seq.*) SHMC 13.04.220 requires the City to classify the emergency into "phases" based on the severity of the shortage and make findings and determine that the relevant water shortage conditions exist. The City must also adopt a resolution setting forth the applicable phase. (SHMC 13.04.220.)

The criteria for a Phase II emergency is as follows:

1. The volume of water anticipated to be available prior to the next May 1st from all potable water sources, as determined by the director of public works based on a reasonable projection of the rainfall for the next rainy season, is not sufficient to meet the

⁷ Pursuant to the City's penalty forgiveness program, this amount represents 50% of the total penalty amount of \$14,397.55.

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- projected demands through May 1st without demand reduction measures beyond the Phase I reductions being implemented; or
2. Conditions requiring the establishment of a Phase III water emergency appear imminent.
 3. In assessing the need to impose Phase II restrictions, due weight shall be accorded to the trigger system developed by the safe yield committee for use by the director of public works. The trigger system is based on water levels in Bell Canyon Reservoir, with the level necessary to trigger a water emergency being adjusted each month to reflect the supply capacity of groundwater and water to be delivered by the city of Napa at that time. Details of the system can be obtained from the director of public works.

(SHMC 13.04.240(A).)

On October 27, 2020, the City Council voted to purportedly declare a Phase II water emergency in Resolution 2020-107 (“**Resolution 2020-107**”). (See **Exhibit 9**.) However, the City’s establishment of a Phase II emergency and the accompanying Resolution 2020-107 are flawed because (1) Resolution 2020-107 provides no support for the City’s purported finding and only contains vague statements that make it invalid; (2) the Staff Report for the relevant agenda item discussed at the October 27, 2020 City Council meeting, at which Resolution 2020-107 was adopted, does not provide the requisite support for a Phase II declaration; and (3) the City did not review, consider, or discuss relevant evidence sufficient to declare a Phase II emergency at the October 27, 2020 City Council meeting. Therefore, the City failed to properly find and determine a condition within SHMC 13.04.240(A) exists.

First, in support of its finding that the prerequisites for declaring a Phase II water shortage emergency exist, Resolution 2020-107 provides no supporting evidence, or any evidence at all for that matter. Instead, Resolution 2020-107 includes vague and conclusory statements. For example, the recitals identify a “trigger system” found in the SHMC.⁸ The Code describes the “trigger system” as:

In assessing the need to impose Phase II restrictions, due weight shall be accorded to the trigger system developed by the safe yield committee for use by the director of public works. The trigger system is based on water levels in Bell Canyon Reservoir, with the

⁸ Resolution 2020-107, Recital C; SHMC 13.04.240(A).

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level necessary to trigger a water emergency being adjusted each month to reflect the supply capacity of groundwater and water to be delivered by the city of Napa at that time. Details of the system can be obtained from the director of public works.

(SHMC 13.04.240(A).)

This codified description is fundamentally invalid because it is too vague to provide sufficient notice to the public of a reasonable metric, or to have any legal meaning. Furthermore, the Staff Report for the relevant agenda item⁹ does not include any support for the Safe Yield Committee system or that a trigger system was reviewed. The City simply does not supply any support. The City did not raise or discuss the operative Safe Yield Committee report dated March 17, 2011¹⁰ until its February 23, 2021 City Council Meeting.¹¹ Resolution 2020-107 does not make any findings to support that it reviewed any evidence, let alone the Safe Yield Committee report. In other words, it appears the City made such a decision without any basis.

Second, the Staff Report from the relevant agenda item discussed at the October 27, 2020 City Council meeting¹² only provides that “as of October 13, 2020, Bell Canyon was at 399.8’ and 39.4% capacity.” However, the City supplies its water from three sources, and therefore, the information for Bell Canyon does not provide a clear picture. Furthermore, it does not explain how the Bell Canyon criteria fits within the Safe Yield Committee’s triggering analysis or otherwise triggers a condition under SHMC 13.04.240(A).

Third, the discussion at the October 27, 2020 City Council meeting surrounded the water regulations and restrictions that would flow from the Phase II declaration and how notice to customers would be effected. It was not until after the City Council moved to declare a Phase II emergency that a single council member inquired about the status of water supply and demand levels from the City’s three sources—Councilmember Paul Dohring raised the question of how much water is available and how that tied in with the Safe Yield Committee reports. Yet Councilmember Dohring’s question went unanswered and Resolution 2020-107 was adopted. Therefore, the City failed to properly find and determine a Phase II condition existed.

Indeed, water supply and demand levels were not discussed until the December 8, 2020 City Council meeting, the Staff Report for which indicated that “the available water supply versus projected demand through the end of fiscal year 2020/21 is currently in the positive” with the Bell Canyon Reservoir at 399.47 feet and 38.67% capacity, nearly identical to the numbers identified

⁹ Agenda Item 10.3 of the October 27, 2020 City Council Meeting.

¹⁰ SHMC 13.04.010 (defining “safe annual yield”)

¹¹ Staff Report for Agenda Item 11.1 at February 23, 2021 City Council Meeting.

¹² Agenda Item 10.3 of the October 27, 2020 City Council Meeting.

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in Resolution 2020-107.¹³ The December 8, 2020 Staff Report further evidenced that the water demand from July 1 to November 30, 2020 was below the water demand for the same time frame in 2018 and 2019. Even further, the projected water demand through the end of June 2021 was approximately 770 acre-feet whereas the projected water supply was 1,419 acre-feet.

Accordingly, the City failed to properly establish a Phase II water emergency given its lack of supporting evidence, in violation of Water Code section 350 *et seq.* and SHMC 13.04.220. Moreover, the City conceded in its Staff Report for the relevant agenda item at the February 23, 2021 City Council meeting that it “did not formally meet the criteria prescribed by SHMC Section 13.04.220” when it “moved forward with the declaration of a Phase I Emergency.”¹⁴

B. CITY’S MONTHLY ALLOCATION STRUCTURE EXCEEDS ITS AUTHORITY

Because the Phase I and II declarations (which were improper for the reasons explained above) serve as the City’s entire basis for the Monthly Allocations, the Monthly Allocation structure is inherently flawed as failing to have the requisite foundation. Even if the City properly determined and declared a Phase II emergency, which Mr. Knobel contests above, the City exceeded its authority by imposing its Monthly Allocation structure. Pursuant to Water Code section 353, once the City has determined and declared the existence of an emergency condition of water shortage, it can adopt regulations on the delivery and consumption of water “as will in the sound discretion of such governing body conserve the water supply for the greatest public benefit with particular regard to domestic use, sanitation, and fire protection.” (Water Code § 353.) According to the SHMC, the City’s Phase II water regulations for single-family residential customers is a Monthly Allocation of sixty-five (65) gallons per person per day, plus twenty-five hundred (2,500) gallons per month from April through October for landscape irrigation. (SHMC 13.04.240(C)(2).) There is no similar monthly landscape irrigation allotment for November through March. (*Id.*)

The Water Code sets forth the requirements governing the City’s authority to implement any allocation-based conservation water program such as that set forth in Resolution 2021-58. Such programs must meet all of the following criteria:

- (1) Billing is based on metered water use.
- (2) A basic use allocation is established for each customer account that provides a **reasonable amount of water for the customer’s needs and property characteristics**. Factors used to determine the

¹³ Agenda Item 10.1 of the December 8, 2020 City Council Meeting.

¹⁴ Staff Report page 4 for Agenda Item 11.1 at February 23, 2021 City Council Meeting.

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basic use allocation may include, but are not limited to, the number of occupants, the type or classification of use, **the size of lot or irrigated area**, and the local climate data for the billing period. Nothing in this chapter prohibits a customer of the public entity from challenging whether the basic use allocation established for that customer's account is reasonable under the circumstances. Nothing in this chapter is intended to permit public entities to limit the use of property through the establishment of a basic use allocation.

(3) A basic charge is imposed for all water used within the customer's basic use allocation, except that at the option of the public entity, a lower rate may be applied to any portion of the basic use allocation that the public entity has determined to represent superior or more than reasonable conservation efforts.

(4) A conservation charge shall be imposed on all increments of water use in excess of the basic use allocation. The increments may be fixed or may be determined on a percentage or any other basis, without limitation on the number of increments, or any requirement that the increments or conservation charges be sized, or ascend uniformly, or in a specified relationship. The volumetric prices for the lowest through the highest priced increments shall be established in an ascending relationship that is economically structured to encourage conservation and reduce the inefficient use of water, consistent with Section 2 of Article X of the California Constitution.

(Cal. Water Code § 372(a), emphasis added.)

Criteria 2 includes that the City must allow a reasonable amount of water for the customer's needs and property characteristics. Here, the City has provided a flat amount of water allowed per single-family residence. The restriction therefore does not consider the size or other characteristics of a property, such as fire hazard. For example, this Property in the Woodlands and Watershed zoning district, where the lot areas range from 4 to 40 acres,¹⁵ is viewed, according to the City, in the same way as a property in the High Density Residential zoning district, where lot sizes can be as small as 1/28th of an acre.¹⁶ This Property, for example, is 4.41 acres. Moreover, the Woodlands and Watershed zoning district is intended to preserve community open space and is recognized as having steeply sloping areas and in high fire hazard areas,¹⁷ while the High Density Residential

¹⁵ SHMC 17.64.050.

¹⁶ SHMC 17.44.060.

¹⁷ SHMC 17.64.010(k).

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zoning district is generally limited to single and multi-family use and the homes sit among a neighborhood, which creates naturally defensible space from fire hazard.¹⁸ Despite the fact that most of the 4.41 acres on the Property is comprised of trees and vegetation, Mr. Knobel limits his irrigation water use to the required defensible space around his home per his insurance carrier's mandate. The fact that Mr. Knobel is granted the same amount of irrigation water use as other properties in different zones in the City is a clear violation of Criteria 2.

Furthermore, even if the City could justify the flat allocation for all residential zones (which it cannot), the City has put forth no support or explanation for its limit of 65 indoor gallons per day and 2,500 outdoor gallons per month. It appears the arbitrary amounts came from the City's prior shortage announcements in 2014, which were never actually implemented.¹⁹ The third party contractor that the City engaged to analyze and evaluate its Monthly Allocation structure and Water Penalties, Raftelis, estimated that the Monthly Allocation structure would result in a 29% overall demand reduction target for the summer months, with the residential user target at 41% reduction.²⁰ However, Raftelis did not determine that 29% reduction was even necessary. As set forth in its report, it posed to the City whether a 29% demand reduction would be sufficient and whether it was "appropriate and feasible to require a 41% reduction from residential users to achieve a 29% systemwide reduction."²¹ There is no evidence that the City adequately addressed these items before it implemented the limits.

Even if the 29% reduction were a carefully balanced criteria supporting the City's Monthly Allocations, Mr. Knobel has individually reached that reduction in June 2021 (29% reduction) and surpassed that reduction in July 2021 (41% reduction). Requiring the Property to further reduce water use by a percentage of 90% is impracticable and fails to take into consideration the Property's size and other characteristics. Raftelis further recommended that the City "harmonize irrigation water allotments between Residential and Non-Residential" classes, indicating that the City's 10% reduction for commercial customers was not fair or proportional to the impracticable reductions it required of certain residential customers.²² However, there is no evidence that any attempts were made by the City to do so. For these reasons, the City and Resolution 2021-58 do not meet Criteria 2.

¹⁸ SHMC 17.44.010.

¹⁹ Staff Report from relevant agenda item 12.2 from the March 23, 2021 City Council Meeting.

²⁰ Staff Report, page 46, from relevant agenda item 12.2 from the March 23, 2021 City Council Meeting; Staff Report, page 25, from relevant agenda item 10.1 from the April 13, 2021 City Council Meeting.

²¹ Staff Report, page 48, from relevant agenda item 12.2 from the March 23, 2021 City Council Meeting; Staff Report, page 27, from relevant agenda item 10.1 from the April 13, 2021 City Council Meeting.

²² Staff Report, page 49, from relevant agenda item 12.2 from the March 23, 2021 City Council Meeting; Staff Report, page 28, from relevant agenda item 10.1 from the April 13, 2021 City Council Meeting.

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Criteria 4 contemplates conservation charges on water use in excess of the basic use allocation, which is precisely the Water Penalties imposed by Resolution 2021-58. Criteria 4 allows the excess charge to be fixed or determined on a percentage or any other basis. Despite the discretion to allow for fixed excess charges, the City opted to impose percentage-based charges. The only explanation for this provided by the City was that the “penalties are designed to minimize the impact on those bills that exceed the allocation by a little bit, while sending a strong message to unusually heavy water users.” (See **Exhibit 5**.) However, if the basic use allocation does not take into account the wide-ranging lot sizes, needs, and characteristics of properties in the City’s different zoning districts, the percentage by which a customer exceeds the basic allocation does not fairly indicate whether or not a customer is an “unusually heavy water user.” Therefore, the City has not shown that the conservation charge is economically structured to reduce the inefficient use of water. For these reasons, the City and Resolution 2021-58 do not meet Criteria 4.

The City must meet all of the requirements of Section 372(a). However, the City fails to meet Criteria 2 and Criteria 4; therefore, the City has exceeded its statutory authority. The Monthly Allocation structure is thus invalid both as applied to this Property and as a whole.

C. CITY’S IMPOSITION OF WATER PENALTIES EXCEEDS ITS AUTHORITY

Because the Phase I and II declarations (which were improper for the reasons explained above) serve as the City’s entire basis for the Water Penalties, that structure is inherently flawed as failing to have the requisite foundation above. Even if the City properly determined and declared a Phase II emergency, which Mr. Knobel contests above, the imposition of Water Penalties approved through adoption of Resolution 2021-56 violates section 6 of article XIII D of the California Constitution because revenues derived from the fees exceed the funds required to provide water service to ratepayers, and because the fees exceed the proportional cost of water service attributable to each parcel.

Articles XIII C and Article XIII D of the California Constitution (commonly known as “Proposition 218”) limit the methods in which local governments can create or increase taxes, assessments, fees, and charges levied “as an incident of property ownership” or for a “property-related service,” which include water rates imposed on customers of a public agency. (See Cal. Const., Article XIII, Sections C-D; *see generally Capistrano Taxpayers Ass’n, Inc. v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493.) In accordance with these Articles, a property-related fee must meet certain requirements including that: “Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service”; and “The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.” (Cal. Const., Article XIII D, Section 6(b)(1),(3).)

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California Water Code section 373 requires similar conditions as those in Proposition 218. That is, (a) Revenues derived from allocation-based conservation water pricing shall not exceed the reasonable cost of water service including basic costs and incremental costs; and (b) Revenues derived from allocation-based conservation water pricing shall not exceed the proportional cost of service attributable to the customer's parcel. (Water Code § 373.)

In analyzing Articles XIII C and D, California courts have cast doubt on any municipal price structure that imposes a penalty rate for excessive water use, as violating the proportionality requirement set forth in Proposition 218. (See *Capistrano*, 235 Cal.App.4th at 1514-15 (finding that a conservation penalty would make a “mockery of the Constitution” and would create a loophole to the requirements of Articles XIII C and D of the California Constitution so large that it would virtually repeal Proposition 218). The Court in *Capistrano* explained:

All an agency supplying *any* service would need to do to circumvent article XIII D, section 6, subdivision (b)(3), would be to establish a low legal base use for that service, pass an ordinance to the effect that any usage above the base amount is illegal, and then decree that the penalty for such illegal usage equals the incrementally increased rate for that service. Such a methodology could easily yield rates that have no relation at all to the actual cost of providing the service at the penalty levels. And it would make a mockery of the Constitution.

(*Capistrano*, 235 Cal.App.4th at 1515 (emphasis in original).)

The California Supreme Court clarified that agencies (and not property owners) bear the burden of proof to demonstrate Proposition 218 compliance in proving that the contested assessment is proportional to the benefits conferred on the property in question and that the revenue derived from the assessment does not exceed the funds actually required to provide the service. (*Silicon Valley Taxpayers Ass'n, Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 448; see also *Capistrano* 235 Cal.App.4th at 1504.) Therefore, the burden of proving Proposition 218 compliance for any water conservation program lies with the agencies providing the service – here, the City.

Here, the penalty structure imposed by Resolution 2021-58 does not meet Proposition 218 or Water Code section 373 compliance because (1) the amount of the penalty on the Property undoubtedly exceeds the proportional cost of the water service attributable to the Property; and (2) the revenues derived from the penalties undoubtedly exceed the funds required to provide the Property water service. Both are violations of the California Constitution, Article XIII C and D, Section 6(b)(1),(3), and the latter is an additional violation of Water Code section 373.

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1. The City has not met its burden to show that the Water Penalties are proportional to the cost of water service attributable to the Property.

The City has implemented a percentage-based volumetric penalty which increases the fee depending on the level of water use that exceeds the Monthly Allocation. However, the City does not show that such percentage-based fee is proportional to the cost of water attributable to the Property.

For example, the City has required Mr. Knobel to reduce his water usage by almost 90% from his water use from June 2019, and any amount used in excess is charged at an increasing rate depending on over-usage. Meanwhile, the City requires commercial water users to reduce allocation by a flat 10%. (SHMC 13.04.240(C)(1).) It is inevitably more likely for a commercial water customer to incur a lower percentage of penalties than Mr. Knobel, just based on the different standards at which the Monthly Allocations are set. However, the City does not show that the cost of water service to commercial water customers is any lower than that to residential customers. This simply fails the proportionality test set forth in Proposition 218. (*See City of Palmdale v. Palmdale Water Dist.* (2011) 198 Cal.App.4th 926, 936 (holding that an agency failed to carry its burden of proving proportionality where it increased water rates for residential irrigation users while permitting commercial users to exceed their budgeted allocation).)

Given that the burden is on the City to prove compliance with the fee proportionality requirement of the California Constitution, by this appeal, Mr. Knobel requests that the City provide justification and legal authority for its Water Penalties.

2. The City has not met its burden to show that revenues it derives from the Water Penalties are proportionate to the funds actually required to provide water service.

At the City's Water Advisory Board meeting on July 16, 2021, it presented a June 2021 Water Meter Reads & Penalty Overview ("Penalty Overview"). (**Exhibit 10.**) The Penalty Overview confirms that 900 customers exceeded their June 2021 allocations, 371 of which exceeded it by over 100%. (*Id.*) Total penalties issued, and presumably collected, by the City in June 2021 was reported at approximately \$2.97 million. (*Id.*) It appears that, 861 of the 900 customers who exceeded their June Monthly Allocation were residential customers – 167 (or 19%) of which were issued penalties greater than \$3,000. (*Id.*) This revenue collected by the City cannot possibly be proportionate to the funds actually incurred to provide water service. And, even if it is, it is the City's burden to demonstrate proportionality.

The City likely recognized that it strayed from Proposition 218 once it realized the excessive and extortionate penalties that it would issue on 19% of its residential customers, including Mr. Knobel. This explains why the City suspended 75% of June 2021 penalties and 50%

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of July 2021 penalties.²³ The City further offered to forgive June and July penalties if a customer does not exceed their allocation in August through November 2021. However, “[i]f a customer does not keep usage below targets during the four designated months, then any suspended amount becomes payable to the City.” The City’s forgiveness program still strays from Proposition 218 and Water Code section 373 justification. Given that the burden is on the City to prove compliance with the revenue proportionality requirement of the California Constitution, by this appeal, Mr. Knobel requests that the City provide justification and legal authority for its Water Penalties structure.

D. CITY’S ARBITRARY LIMITS FOR EXCEPTION PERMITS DO NOT RESOLVE CITY’S AFOREMENTIONED FAILURES

Pursuant to SHMC Section 13.04.280, as part of Resolution 2021-58, the director of public works shall grant exception permits in addition to any Monthly Allocation, based on limited conditions, including the two discussed separately below. These exceptions are not sufficient to resolve the City’s lack of authority in imposing the Monthly Allocation and Water Penalties and, in any case, do not provide justification for the City to exceed its authority.

1. Exception 13.04.280(A)(2): parcels exceeding 7,000 square feet

One such condition applicable to the Property is Section 13.04.280(A)(2), which provides an exception “for single-family residential parcels exceeding seven thousand (7,000) square feet in area” and allocates “the quantity of up to twenty (20) gallons per day for each one thousand (1,000) square feet that the property area exceeds seven thousand (7,000) square feet for the purpose of maintaining mature landscape or orchard plants.” However, “[a]n exception granted based on this subsection shall allow the use of **no more than an additional two hundred fifty (250) gallons per day for this purpose.**” (SHMC 13.04.280(A)(2).)

While Section 13.04.280(A)(2) contemplates allocating additional water units based on Criteria 2 required under Water Code Section 372(a)(2) (*i.e.*, a property’s size and characteristics), it arbitrarily limits the exception to 250 gallons per day, which would be a maximum of 8,250 gallons for June (a 33-day billing period); and 7,500 gallons for July and August (30-day billing periods).²⁴

Mr. Knobel’s Property exceeds 7,000 square feet by 185,099.60 square feet (or approximately 185 parcels of 1,000 square feet). Under SHMC Section 13.04.280, this lot size would warrant an additional 3,700 gallons per day (185 parcels x 20 gallons). For June, the

²³ Press Release, City of St. Helena Approves Water Usage Penalty Forgiveness Program (7/30/21), <https://www.cityofstheleena.org/community/page/press-release-city-st-helena-approves-water-usage-penalty-forgiveness-program>.

²⁴ <https://www.cityofstheleena.org/water-emergency/webform/residential-allocation-calculator>.

Mr. Rincón-Ibarra and Ms. Tzafoopoulos

September 15, 2021

Re: 1700 Howell Mountain Road - Appeal of Water Allocation; Appeal of Water Penalty; and Application for Water Exception Permit Request

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additional monthly amount for the Property would be 122,100 gallons (3,700 gallons per day x 33-day billing period) and for July and August, the additional monthly amount would be 111,000 gallons (3,700 gallons per day x 30-day billing period).

If Mr. Knobel were granted 122,100 gallons for June in addition to his Monthly Allocation of 11,281 gallons, his total allocation would increase to 133,381 gallons or 178.32 units. (**Exhibit 5.**) If this were the case, Mr. Knobel's June water use of 73,304 gallons or 98 units would be well within the allocation. (*Id.*) Similarly, if Mr. Knobel were granted 111,000 gallons for July and August in addition to his Monthly Allocation of 10,256 gallons, his total allocation would increase to 121,256 gallons or 162 units, which Mr. Knobel's actual water use would again be will within. (**Exhibit 8.**)

However, with the arbitrary limit of 8,250 additional gallons for June and 7,500 gallons for July and August, Mr. Knobel's allocation would only increase to 19,532 gallons or 26.11 units for June and 17,756 gallons or 23.8 units for July and August, which is insufficient to adequately address Criteria 2 of Water Code Section 372(a).

2. Exception 13.04.280(B): unnecessary and undue hardship; affecting fire protection

Another condition on which the director of public works may grant an exception permit is pursuant to SHMC Section 13.04.280(B). If the water advisory board finds and determines that current water conservation measures would: (1) cause an unnecessary and undue hardship to the applicant or to the public; (2) cause an emergency condition affecting the health, sanitation, fire protection, or safety of the applicant or public; or (3) promote water conservation by providing for the establishment of water efficient landscaping meeting the standards of Section 17.112.140, an exception permit may be granted. (SHMC 13.04.280(B).)

Based on the facts described above that Mr. Knobel's Monthly Allocation does not take into account (1) his lot size in relation to other properties in different zones; (2) the Property's unique characteristics such as its sloping nature, heavily forested landscape, and high fire hazard area; and (3) Mr. Knobel's efforts to establish water efficient landscaping, an exception under SHMC Section 13.04.280(B) should clearly be granted for the Property. However, the City's standard of review on a Section 13.04.280(B) exception application is that it "may" grant the permit versus a strict "shall" standard that a Section 13.04.280(A)(2) permit requires. Furthermore, even if an exception is granted under Section 13.04.280(B), there is no enumerated calculation for the exception amount. Therefore, this exception does not resolve the City's lack of authority in implementing the Monthly Allocation and Water Penalties structure. The opportunity for a customer, including Mr. Knobel, to apply for an exception permit does not negate the City's obligation to meet its authority for imposing monthly allocations and penalties.

Mr. Rincón-Ibarra and Ms. Tzafoopoulos

September 15, 2021

Re: 1700 Howell Mountain Road - Appeal of Water Allocation; Appeal of Water Penalty; and Application for Water Exception Permit Request

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E. CITY’S INSUFFICIENT NOTICE OF CONDUCT DESCRIBED HEREIN IS A VIOLATION OF CUSTOMERS’ DUE PROCESS RIGHTS

The City is required to abide by the procedural and substantive due process requirements under constitutional law. (U.S. Const., XIV Amendment; Cal. Const., Article I, §§ 7, 15.) Here, the City’s failure to abide by the Due Process Clause can be described as follows, without limitation:

- Providing inconsistent Monthly Allocations to Mr. Knobel for the Property;
- Providing Monthly Allocations which do not comply with SHMC 13.04.240(C)(2), as the per day landscaping allotment is different and lower than the flat 2,500 irrigation allotment set forth in SHMC 13.04.240.
- Failing to provide an explanation of the Monthly Allocation such that a customer could reasonably attempt to conserve accordingly;
- Providing only 10 days of notice of the Water Penalties before they were to be effective;
- Failing to sufficiently explain the Water Penalties and, particularly, the fact that they were based on per-unit/gallon-exceeded versus a flat fee;
- Failing to provide an example of how the Water Penalties would be applied;
- Failing to convey the Property’s July and August Monthly Allocations; and
- Failing to set forth a clear method for Mr. Knobel to oppose and appeal the Monthly Allocation and Water Penalties.

Based on these failures, described with respect to Mr. Knobel more fully above in section I.B., the City failed to give sufficient procedural and substantive notice to Mr. Knobel of his Monthly Allocations and Water Penalties, and therefore, they should be invalid.

III. MR. KNOBEL TIMELY SUBMITTED HIS APPEAL

Pursuant to Section 4(f) of Resolution 2021-58, any person who wishes to appeal the imposition of a Water Penalty may do so. “[A]ny person who shall have a right to appeal . . . may, at any time within thirty (30) days after such determination, appeal to the city council by giving written notice to the director of public works and to the city clerk, setting forth the determination with which such person is dissatisfied.”²⁵ (SHMC 13.04.180(A).)

²⁵ Resolution No. 2021-58 further requires that “[n]otice of the right to appeal the imposition of a volumetric penalty shall be included in the customer’s water bill.” However, Mr. Knobel’s water bill contained no such notice. (*Memphis Light, Gas & Water Div. v. Craft* (1978) 436 U.S. 1, 98 (holding notice did not comport with constitutional requirements when it does not advise the customer of the availability of a procedure for protesting a decision.)

Mr. Rincón-Ibarra and Ms. Tzafoopoulos
September 15, 2021

Re: 1700 Howell Mountain Road - Appeal of Water Allocation; Appeal of Water Penalty; and Application for Water Exception Permit Request

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Pursuant to Section 4(e) of Resolution 2021-58, the receipt of a water bill with any applicable Water Penalty shall serve as notice of violation of Resolution 2021-58. Mr. Knobel received his June 2021 water bill via email on July 23, 2021. (Email attached as **Exhibit 5**.) Thirty days from Mr. Knobel's date of receipt is August 22, 2021.

On August 18, 2021, Mr. Knobel gave timely written notice of appeal to the Director of Public Works and to the City Clerk setting forth his protest and appeal of the June Excess Penalty. (Email attached as **Exhibit 1**.) Mr. Knobel's appeal was timely because it met the 30-day limitation and has met the procedurally requirements to have his appeal addressed. However, the City has not provided Mr. Knobel, nor the public, with a clear method for appeal. The SHMC does not require a specific format for the appeal, we were unable to locate a relevant appeal form on the City's website, and the City has not responded to the appeal we submitted.

IV. MR. KNOBEL'S WATER EXCEPTION PERMIT REQUEST

In light of the above facts and argument on appeal, which is hereby incorporated into this Section IV, Mr. Knobel requests a water exception permit under SHMC Sections 13.04.280(A)(2) and (B) as follows: that the Property be granted the full amount of additional water contemplated under Section 13.04.280(A)(2) without the arbitrary upper limit of 250 gallons per day,²⁶ on the grounds that, without this requested exception, the Monthly Allocation – which was implemented by the City in excess of its authority (1) creates an unnecessary and undue hardship to Mr. Knobel, (2) has a negative effect on Mr. Knobel's fire protection efforts, and (3) does not take into consideration Mr. Knobel's established water efficiency efforts. This Water Exception Permit Request is to be applied retroactively beginning with Mr. Knobel's June 2021 bill.

V. CONCLUSION

Based on the foregoing, Mr. Knobel appeals: (I) the City's establishment of a Phase II water emergency; (II) the City's imposition of the Monthly Allocation, as it pertains to the Property and generally; (III) the City's Water Penalties, as they pertain to the Property and generally; (IV) the City's arbitrary limits on Water Exception Permits; and (V) the City's insufficient notice of the Property's Monthly Allocation and Water Penalties which makes it in violation of its due process requirements. By this appeal, Mr. Knobel requests that the City provide justification and legal authority for its Phase II water emergency, Monthly Allocation structure, and Water Penalties. While the City considers this Appeal, Mr. Knobel requests a Water Exception Permit for the full amount of additional water contemplated under Section 13.04.280(A)(2) without the

²⁶ i.e., 133,381 gallons (or 178.32 units) for June; 121,256 gallons (or 162 units) for July and August; and so on for the remainder of months that Resolution 2021-58 is in effect.

Mr. Rincón-Ibarra and Ms. Tzafoopoulos

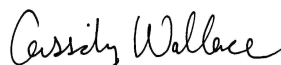
September 15, 2021

Re: 1700 Howell Mountain Road - Appeal of Water Allocation; Appeal of Water Penalty; and Application for Water Exception Permit Request

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arbitrary upper limit of 250 gallons per day. Mr. Knobel reserves the right to take further action as necessary.

Very truly yours,



Cassidy Wallace, Esq.

Kaufman, Dolowich & Voluck, LLP

CC:

Martin Beltran (via E-Mail and U.S. Mail)

mbeltran@cityofsthelena.org

City of St. Helena Public Works

1572 Railroad Avenue

St. Helena, CA 94574

Enclosures

Mr. Rincón-Ibarra and Ms. Tzafopoulos

September 15, 2021

Re: 1700 Howell Mountain Road - Appeal of Water Allocation; Appeal of Water Penalty; and Application for Water Exception Permit Request

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VERIFICATION

I, DAVID KNOBEL, declare as follows:

I am the water account holder for Account No. 007974-000 and property owner of 1700 Howell Mountain Road, APN 025-140-030-000. I am familiar with the contents of the letter by Cassidy A. Wallace of Kaufman Dolowich Voluck to Mark Rincón-Ibarra and Cindy Tzafopoulos regarding 1700 Howell Mountain Road - Appeal of Water Allocation; Appeal of Water Penalty; and Application for Water Exception Permit Request.

The information supplied therein is based on my personal knowledge and/or has been supplied by my attorneys or other agents and is therefore provided as required by law. The information contained in the foregoing is true, except as to the matters which were provided by my attorneys or other agents, and, as to those matters, I am informed and believe that they are true.

With respect to the Water Exception Permit Request, if the condition is granted, I agree to adhere to all specific requirements contained within the exception and any other specified conditions as determined by the City of St. Helena or Water Advisory Board. By signing below, I acknowledge and consent to the Water Advisory Board's review and use of my customer records for the purpose of making a decision related to the permit application, and understand that such information, including historical water use, may be discussed and disclosed at a public meeting.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this verification was executed September 15, 2021 at Lantana, Florida.

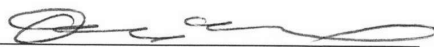

DAVID KNOBEL

EXHIBIT 1

Cassidy Wallace

From: Cassidy Wallace
Sent: Wednesday, August 18, 2021 4:36 PM
To: mrincon@cityofsthelena.org; ctzaopoulos@cityofsthelena.org
Subject: Notice of Appeal re: Water Penalty - 1700 Howell Mountain Road (Account No. 007974-000)

Dear Mr. Rincón-Ibarra and Ms. Tzaopoulos:

Please accept this correspondence as a notice of appeal of the City of St. Helena's imposition of volumetric water penalty (June Excess Penalty) issued on July 23, 2021 to 1700 Howell Mountain Road (APN 025-140-030-000) on behalf of the property owner, David Knobel. This notice is pursuant to St. Helena Municipal Code Section 13.04.180 and City of St. Helena Resolution No. 2021-58 Section 4(f). This office represents Mr. Knobel regarding the above and we respectfully request that you direct any communication regarding the appeal to this office.

Please confirm receipt and advise as to next steps. If there is a specific form on which you prefer appeals, will you please provide a copy? Thank you.

Best regards,
 Cassidy

Cassidy Wallace
 Attorney at Law



19327 Sonoma Highway, Suite 100
 Sonoma, CA, 95476

Direct: 707-509-5275
 Cell: 707-931-9997
 Main: 707-509-5260
 Email: cwallace@kdvlaw.com

425 California Street, Suite 2100
 San Francisco, CA 94104

Main: 415-926-7600
 Fax: 415-926-7601

WWW.KDVLAW.COM



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Please consider the environment before printing.

EXHIBIT 2

1700 Howell Mtn - Before Fire

Legend

 1700 Old Howell Mountain Rd

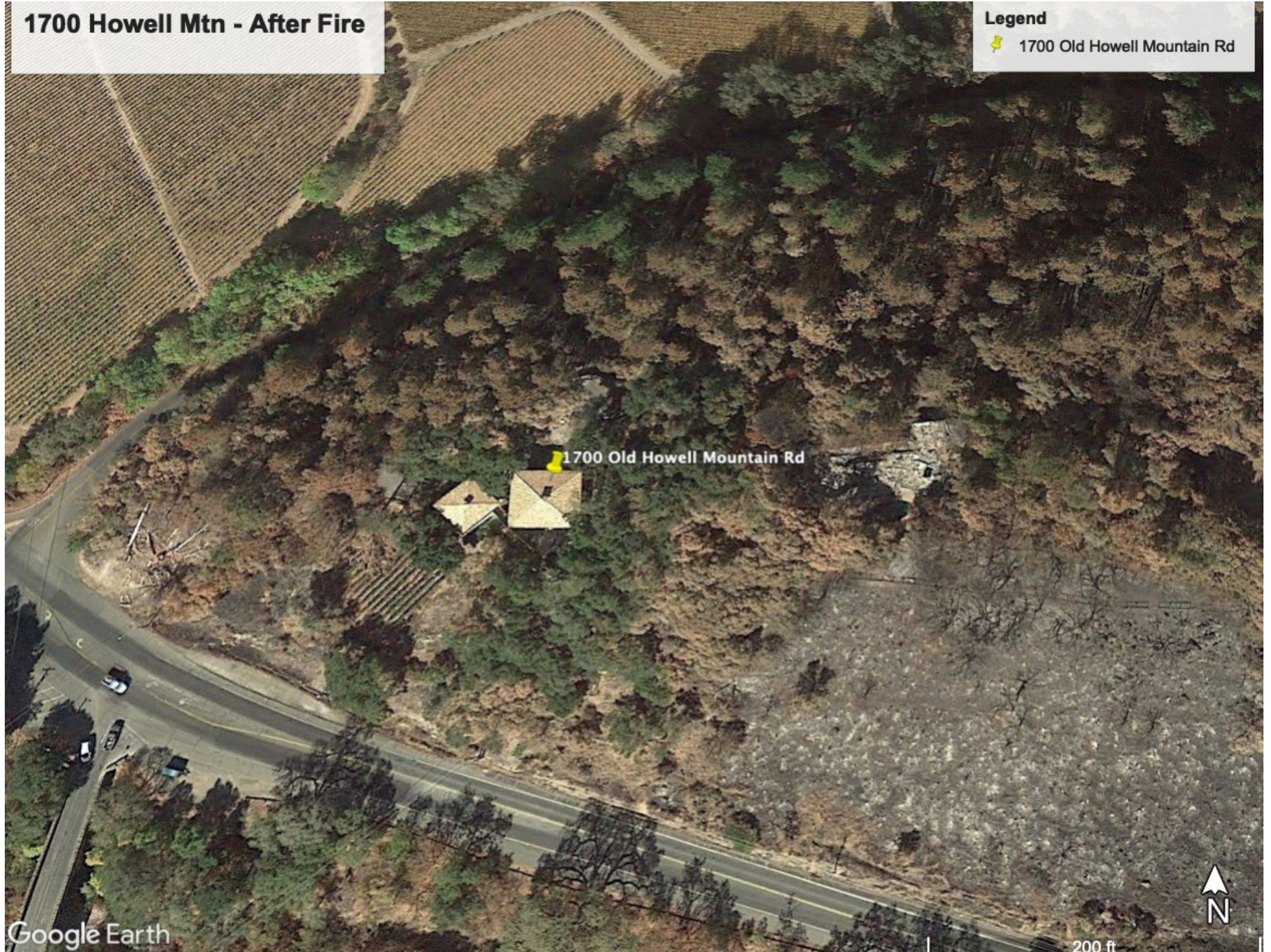


EXHIBIT 3

1700 Howell Mtn - After Fire

Legend

 1700 Old Howell Mountain Rd



Google Earth

200 ft

EXHIBIT 4

0102000 065330001660



CITY OF ST. HELENA
UTILITY BILLING DEPARTMENT
1480 MAIN ST
SAINT HELENA, CA 94574-1854

City of St. Helena
Utility Billing Department
1480 Main Street
St. Helena CA 94574
(707) 968-2745

065330001660*9*1*****MIXED AADC 970

DAVID KNOBEL
1235 LANDS END RD
LANTANA, FL 33462-4770

February 19, 2021



Account number: 007974 - 000
Service Address: 1700 Howell Mtn Rd

Dear David Knobel,

On October 27, 2020, the St. Helena City Council declared a Phase II Water Shortage Emergency because of the lack of rainfall and resulting low reservoir level. Phase II water regulations limit residential users to 65 gallons per person per day during the months of November through March. Your water use is billed in "units" of hundred cubic feet (HCF). There are 748.05 gallons per HCF; therefore, 65 gallons per day is equivalent to 2.61 units per person, per month.

During the months of April through October, an additional allocation of 3.34 units (2,500 gallons) per month will be allocated for landscaping. This equates to approximately an additional 83 gallons per day.

You can locate your water consumption per month on your utility bill here (Cons = Water use in "units")*:

METER READING

Serial No	Previous Reading		Current Reading		Cons
	Date	Reading	Date	Reading	
08798711	10/30/2020	2326	11/19/2020	2330	4
08798711	11/19/2020	2330	12/30/2020	2345	15

*Please note, the above is a SAMPLE and not your actual water bill.

Recognizing the importance of communication during the Phase II emergency, the City will be providing customers with monthly water use information. This will occur through the regular bi-monthly billing cycle and through letters on non-billing months.

On January 29, 2021, the City conducted a monthly, informational only, water meter reading. The usage associated with this account for the past 30 days is **31.00 units**, or **23,189.55 gallons**. Based on the information we currently have on file your monthly allotment is currently **7.82 units***, or **5,850.00 gallons***.

If you have not already completed the Household Survey online, please complete the online survey as soon as possible at: <https://www.cityofstheleena.org/watersurvey> or complete the enclosed survey and return by mail/drop off at Interim City Hall, located at 1572 Railroad Avenue, St. Helena, CA 94574.

**Please note that if the City does not receive a response, your water allocation will assume there are two persons in your household, which is not currently reflected in the above allotment calculations.*

We invite you to contact City staff if you have a question at (707) 968-2745 or by email at water@cityofstheleena.org.

EXHIBIT 5



NOBEL DAVID ..
1235 LANDS END RD
LANTANA, FL 33462-4770

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EXHIBIT 6

7/24/2021

Mail - David Knobel - Outlook

Your bill from City of St. Helena is ready.

noreply@merchanttransact.com <noreply@merchanttransact.com>

Fri 7/23/2021 9:26 AM

To: David Knobel <david@dknobel.com>

City of St. Helena
1572 Railroad Avenue
St. Helena, CA 94574
17079682753
8 AM to 5 PM

Account Information

Account: 007974-000
Name: David Knobel
Service Address: 1700 Howell Mtn Rd
Service Period: 5/1/2021 to 6/30/2021 (61 days)
Billing Date: 7/15/2021
Due Date: 8/20/2021

Meter Reading

Serial	Previous Reading		Current Reading		Cons
	Date	Reading	Date	Reading	
004118053	4/30/2021	9388.00000	5/26/2021	9465.00000	77.00000
004118053	5/26/2021	9465.00000	6/28/2021	9563.00000	98.00000

Current Charges

Miscellaneous: June Excess Penalty \$4,495.24
Water: \$0.00
Water: Water Base Fee 5/8" Residential \$131.26
Water: Water Base Fee 5/8" Residential Consumption \$0.00
Water: Water Use @ \$7.44 Consumption \$1,302.00
Total Current Charges: **\$5,928.50**

29% Reduction from June 2019 (handwritten note with arrow pointing to the Total Current Charges)

Bill Summary

Previous Balance: \$184.78
Payments Received: \$184.78
Adjustments: \$0.00
Current Charges: \$5,928.50
*** Total Amount Due by: 8/20/2021** **\$5,928.50**

* This was the amount due at the time of billing.

To view your amount due at the current time and make a payment [click here](#).

Auto payment is setup for this customer account, do not pay.

EXHIBIT 7

Cassidy Wallace

From: April Mitts <AMitts@cityofsthelena.org>
Sent: Tuesday, August 24, 2021 4:06 PM
To: Cassidy Wallace; Martin Beltran
Subject: RE: [External] Knobel, David (St. Helena Water Account # 007974-000)

[EXTERNAL SENDER]
 Hi Cassidy,

I was able to verify the methodology for the allocation for June for the account referenced above:

007974-000 has an allocation of 15.08 for June 2021.

June 2021 has 33 days in the billing period and 33 days with a summer residential outdoor allocation.

Indoor Allocation = 4 people in household 33 days X 65 GPCD / 748.05 gallon per HCF = 11.47 HCF

Outdoor allocation = 33 Summer Days X 81.78 Gallon per Summer Month Day / 748.05 gallon per HCF = 3.60 HCF

11.47 + 3.60 = 15.08 HCF allocation.

I hope this helps, please let me know if you have any questions.

April Mitts
 Administrative Services Director
 1572 Railroad Avenue
 St. Helena, CA 94574
 707.968.2751
amitts@cityofsthelena.org

Help End St. Helena's Water Crisis

 Indoor < 65 Gal per person per day	 Outdoor < 2,500 Gal per month	 Business and Agricultural ↓ at least 10%
--	---	--

For summer watering rules and conservation tips, visit www.cityofsthelena.org!

Ayuda a Poner Fin a La Crisis Del Agua en St. Helena

 Interior < 65 Gal por persona	 En las afueras < 2,500 Gal por mes	 Negocios y Agricultura Por Lo Menos 10% ↓
---	--	---

¡PARA LAS REGLAS DE RIEGO DE VERANO Y CONSEJOS DE CONSERVACIÓN, VISITA WWW.CITYOFSTHELENA.ORG!

From: Water
Sent: Monday, August 23, 2021 5:37 PM

To: 'Cassidy Wallace' <cwallace@kdvlaw.com>; Martin Beltran <MBeltran@cityofsthelena.org>
Subject: RE: [External] Knobel, David (St. Helena Water Account # 007974-000)

Hi Cassidy,

Thank you for your email. Martin is out of the office for a few days due to a family emergency, and I wanted to let you know that I am researching the allocation and will get back to you as soon as possible.

April Mitts
 Administrative Services Director
 1572 Railroad Avenue
 St. Helena, CA 94574
 707.968.2751
amitts@cityofsthelena.org

Help End St. Helena's Water Crisis



Indoor
< 65 Gal
 per person per day



Outdoor
< 2,500 Gal
 per month



Business and Agricultural
↓ at least 10%

For summer watering rules and conservation tips, visit www.cityofsthelena.org!

Ayuda a Poner Fin a La Crisis Del Agua en St. Helena



Interior
< 65 Gal
 por persona



En las afueras
< 2,500 Gal
 por mes



Negocios y Agricultura
Por Lo Menos 10% ↓

¡PARA LAS REGLAS DE RIEGO DE VERANO Y CONSEJOS DE CONSERVACIÓN, VISITA WWW.CITYOFSTHELENA.ORG!

From: Cassidy Wallace <cwallace@kdvlaw.com>
Sent: Monday, August 23, 2021 1:17 PM
To: Water <water@cityofsthelena.org>; Martin Beltran <MBeltran@cityofsthelena.org>
Subject: RE: [External] Knobel, David (St. Helena Water Account # 007974-000)

Hello,

I am following up on the below request.

Thanks so much,
 Cassidy

Cassidy Wallace
 Attorney at Law



KAUFMAN DOLOWICH VOLUCK

ATTORNEYS AT LAW

19327 Sonoma Highway, Suite 100

Sonoma, CA, 95476

Direct: 707-509-5275
Cell: 707-931-9997
Main: 707-509-5260
Email: cwallace@kdvlaw.com

425 California Street, Suite 2100
San Francisco, CA 94104

Main: 415-926-7600
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From: Cassidy Wallace <cwallace@kdvlaw.com>
Sent: Wednesday, August 18, 2021 2:34 PM
To: water@cityofsthelena.org; mbeltran@cityofsthelena.org
Subject: Knobel, David (St. Helena Water Account # 007974-000)

Dear St. Helena Water Department and Water Advisory Board:

This office represents St. Helena resident, David Knobel, concerning his property located at 1700 Howell Mountain Road (Water Account # 007974-000). On July 27, 2021, Mr. Knobel received the attached Notice of Penalty dated July 15, 2021 issued/governed by these departments. The Notice informs Mr. Knobel of his June 2021 allocation of 15.080 units. We are aware of St. Helena Municipal Code section 13.04.240 setting forth the criteria of measurement for allocations; however, Mr. Knobel's 15.080 unit allocation appears to vary from Section 13.04.240 and it isn't clear from the Notice how the 15.080 unit allocation was determined. We would like to better understand its make-up so we are respectfully requesting an explanation and/or documentation which reflects the basis for Mr. Knobel's 15.080 unit allocation. It would be very much appreciated, and we thank you in advance.

Best regards,
Cassidy

Cassidy Wallace
Attorney at Law



19327 Sonoma Highway, Suite 100
Sonoma, CA, 95476

Direct: 707-509-5275
Cell: 707-931-9997
Main: 707-509-5260

Email: cwallace@kdvlaw.com

425 California Street, Suite 2100
San Francisco, CA 94104

Main: 415-926-7600

Fax: 415-926-7601

WWW.KDVLAW.COM



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EXHIBIT 8



City of St. Helena
Utility Billing Department
1572 Railroad Avenue
St. Helena CA 94574
(707) 968-2745

August 11, 2021

070901000026*2*1*****MIXED AADC 970

KNOBEL DAVID
1235 LANDS END RD
LANTANA, FL 33462-4770



Account number:
007974-000

Service Address:
1700 Howell Mtn Rd

Dear Knobel David,

MONTHLY ALLOCATION UPDATE – NOTICE OF WATER PENALTY

Like many California communities, St. Helena is facing a critical water crisis. Lack of rain and use of water from Bell Canyon Reservoir to fight last year's wildfires has contributed to this worsening emergency. This letter is being provided as a monthly update for your actual water use and notice that your water usage in June 2021 has resulted in a penalty.

Actual Water Use Update

Your July 2021 water allocation was: **13.710 units**, or **10,256 gallons**. The meter read for July reflects the following use **81.790 units**, or **61,183 gallons**.

Penalties

In recognition of the dire situation, City Council adopted a penalty structure for customers who exceed their property's monthly water allocation. These penalties are designed to minimize the impact on those bills that exceed the allocation by a little bit, while sending a strong message to unusually heavy water users. Given this is the first-time penalties have been imposed, on July 13, 2021, City Council adopted a program to suspend 75% of the penalties for overuse in June 2021 and to suspend 50% of the penalties for overuse in July 2021 with the ability for customers to have 100% of the penalties forgiven if allocation targets are met, in the months of August, September, October, and November 2021 (see enclosure for additional information). Below is a summary of the penalties that will be assessed on your water utility account.

Because you exceeded your July 2021 water allocation by: **68.080 units**, or **50,927 gallons** you are being assessed a penalty in the amount of **\$7,198.78**. This penalty amount represents 50% of the total penalty amount of: **\$14,397.55**. This penalty will be added to your bi-monthly utility bill.

Continuing Water Conservation

It is not too late to start conserving water! As we have in the past, we have no doubt our friends and neighbors in St. Helena will emerge from this crisis stronger and more resilient than ever! As we did last year during wildfire season and throughout COVID-19, we must pull together as a community to weather this worsening drought. If we do not, it is inevitable that we will be forced to move from Phase II water restrictions currently in place to the more painful restrictions necessary in Phase III.

Learn More

For more information and tips for how you can do your part to help our community navigate through the current drought, visit www.cityofstheleena.org!

Questions or Concerns?

Contact City staff at (707) 968-2745 or by email at water@cityofstheleena.org.

EXHIBIT 9

CITY OF ST. HELENA

RESOLUTION No. 2020-107

**Establishing a Water Shortage Emergency Condition
requiring the implementation of Phase II Water Regulations**

RECITALS

- A. St. Helena Municipal Code Section 13.04.220 establishes that at any time that the City Council finds and determines a water shortage emergency condition exists within the criteria of Sections 13.04.230 through 13.04.250, and that it is necessary to limit usage by the customers of the municipal water department, the City Council shall adopt a resolution setting forth the applicable phase; and
- B. St. Helena Municipal Code Section 13.04.240 A.1 provides for implementation of a Phase II Water Emergency when the volume of water anticipated to be available prior to the next November 1st from all potable water sources is not sufficient to meet the projected demands through November 1st without demand reduction measures beyond the Phase I reductions being implemented; and
- C. Per the trigger system identified in St. Helena Municipal Code Section 13.04.240 A.3, the City Council has been advised by the Director of Public Works that a Phase II emergency was triggered at the beginning of October 2020.
- D. The City Council finds that the prerequisites for declaring a Phase II Water Shortage Emergency have been met.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

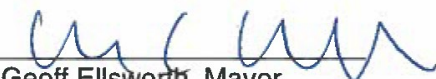
- 1. To establish Phase II Water Emergency Regulations.
- 2. To establish a Water Advisory Board consisting of one City Council Member, one Planning Commissioner, one winery customer, and two public members, one of whom shall be solely a residential customer.
- 3. That the City Clerk shall cause to be published at least once, in a newspaper of general circulation published and circulated in the city, a notice declaring the establishment of such regulatory phase. Such notice shall set forth the limitations of water use applicable to the particular phase being established and shall further

declare that violations of such limitations are punishable in accordance with the provisions of Sections 13.04.290 and 13.04.310 of St. Helena Municipal Code. The establishment of a particular phase shall be completed and effective at midnight of the day on which the newspaper containing such notice is distributed.

Approved at a Regular Meeting of the St. Helena City Council on October 27, 2020, by the following vote:

Mayor Ellsworth: Yes
Vice Mayor Dohring: Yes
Council Member Chouteau: Yes
Council Member Knudsen: Yes
Council Member Koberstein: Yes

APPROVED:


Geoff Ellsworth, Mayor

ATTEST:

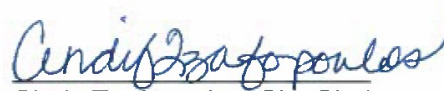

Cindy Tzaopoulos, City Clerk



EXHIBIT 10



June 2021 Water Meter Reads & Penalty Overview

July 16, 2021



Presentation Overview

- Water Emergency Background
- Adopted Water Penalty Structure
- June 2021 Water Meter Reads & Usage Penalties
- Water Ad Hoc Committee Recommendation



Water Emergency Background

- June 23, 2020 Phase I Water Emergency
- October 27, 2020 Phase II Water Emergency
- April 13, 2021 Water Penalty Structure Adopted
- April 27, 2021 Urgency Ordinance Updating Commercial, Industrial, and Institutional Users due to seasonal nature of water use
- June 2021 First month penalties applied



Adopted Water Penalty Structure

Bin	Volume Exceeded	\$ per HCF Exceeded	\$ per Gallon Exceeded
1	<25% Over (up to 24.999%)	\$10	\$0.013
2	25-50% Over (25-49.999%)	\$25	\$0.033
3	50-100% Over (50-99.999%)	\$100	\$0.134
4	>100% Over	\$250	\$0.334



June 2021 Water Meter Reads

Volume Exceeded	Number of Accounts
0-24.9%	206
25-49.9%	149
50-100%	174
100%+	371
Total	900



June 2021 Water Penalties

Penalty Range	# of Accounts*	Total Penalties	%
\$0	1,525	\$0	62.89%
\$0.01 - \$100	337	\$10,921.51	13.90%
\$100.01 - \$500	154	\$40,841.28	6.35%
\$500.01 - \$1,000	80	\$57,741.75	3.30%
\$1,000.01 - \$2,000	77	\$113,622.65	3.18%
\$2,000.01 - \$3,000	46	\$114,756.40	1.90%
\$3,000.01 - \$4,000	28	\$98,998.45	1.15%
\$5,000.01 - \$10,000	72	\$489,783.95	2.97%
\$10,000.01 - \$20,000	42	\$618,721.00	1.73%
\$20,000.01 - \$30,000	13	\$338,767.65	0.54%
\$30,000.01 - \$40,000	5	\$163,949.50	0.21%
\$40,000.01 - \$50,000	1	\$48,844.90	0.04%
\$50,000.01 - \$100,000	4	\$280,043.25	0.16%
\$100,000+	2	\$421,023.10	0.08%
Total	2,425	\$2,972,613.84	



Non-Residential June 2021 Water Penalties

<i>Non-Residential</i>	# in Category	% of Total Accounts*	% of Accounts in Category	% of Penalties Total Accounts	% of Penalties in Category	# of Accounts with Leak Letters
No Penalty	184	8%	65%			
0-24.9%	36	1%	13%	4%	37%	5
25-49.9%	15	1%	5%	2%	15%	2
50-100%	15	1%	5%	2%	15%	4
100%+	31	1%	11%	3%	32%	9
Total	281	12%		11%		20



Residential June 2021 Water Penalties

<i>Residential</i>	# in Category	% of Total Accounts*	% of Accounts in Category	% of Penalties Total Accounts	% of Penalties in Category	# of Accounts with Leak Letters
No Penalty	1,342	55%	63%			
0-24.9%	169	7%	8%	19%	21%	18
25-49.9%	134	6%	6%	15%	17%	18
50-100%	159	7%	7%	18%	20%	15
100%+	340	14%	16%	38%	42%	61
Total	2,114	88%		89%		112



Water Ad Hoc Recommendations

- Suspend 75% of June 2021 penalties and 50% of July 2021 penalties.
- Penalties in June and July 2021 will be forgiven if customer does not exceed their allocation in August, September, October, and November 2021.
- If customer does not keep usage below targets in August, September, October, and November 2021, then any suspended amount would become payable to City.



Questions