

## **Mark Wolfe's Sierra Club summation on day 1 of the Walt Ranch Appeal Hearing 11/18/16**

Good afternoon. I am Mark Wolfe, a land use lawyer here on behalf of the Sierra Club. The Sierra Club, in case you didn't know, is the oldest and largest conservation organization. Next year it celebrates its one hundred and twenty fifth anniversary. It's been around a very, very long time and achieved considerable success by taking the long view. Taking the long view a hundred years ago led to things like the creation of Yosemite National Park which I'm proud to say I can have my kids go and see in a relatively unspoiled state. And it's that same philosophy of the long view that we're asking you to take today.

The downside of going last is that other people have stolen your thunder. And in this particular case I have to say that I find the thunder in this room resounding, in its quantity but especially in its quality. I've been doing this for about 20 years and rarely if ever have I seen the degree of technical and legal sophistication brought to bear by such a diverse set of interests, also pitched on one particular project. And I think it speaks to the magnitude of the issues that you're facing today. So I'm not going to repeat the points that were already made, probably much more succinctly and eloquently than I can make myself. Going last brings benefits, being able to tie things up, sort of like a closing argument in court, and that's what I'm going to try to do briefly today. I want to focus on 3 concepts, all of which CEQA essentially underscores and I'm going to talk about them not so much in legal terms. Those concepts are first risk, second doubt and finally accountability.

Risk. What's at stake here? What's at stake are the natural resources and the environmental quality that has been talked about at length for the last several hours. We're talking about groundwater; we're talking about the critters, the frogs, the birds, the turtles. We're talking about their habitat. We're talking about a stable climate, we're talking about air, safe roads and ultimately human habitat as well. What can we say about these resources? Well first, I think it's fair to say, they belong to everyone. These are shared public resources. The Halls may own the dirt, and have a deed that says they have title to this particular piece of land, but the water in those creeks, those belong to the State of California. the frogs, turtles, the birds, those belong to the people of the State of California if not the entire United States of America. Obviously a stable climate belongs to us all. These are shared public resources that belong to your constituents, us and yourselves as well. We can also say about these resources that they are definitely finite. They are limited. They will not last forever and they are in a state of serious depletion already. You've heard at great length from the people before me the state of risk that faces several of these species, the groundwater resources and the surface water resources and indeed the road resources as well, So they belong to all of us, they are limited and finite and they are in a state of depletion. So who's supposed to be watching, manning the ship, watching the farm? For better or worse, and I don't envy you, it is you. You five are the stewards of these resources. You are the guardians of these resources. You have,

for better or worse a grave, and I dare say, somber responsibility to prevent the further unnecessary or unreasonable depletion of their already finite characteristics for your constituents today and, it's almost a cliché to say this at this point, for their children and their children's children for future generations. This is what the Sierra Club, frankly, is all about philosophically. So you are, in effect being asked to make a gamble, take a risk, place a bet. And the stakes are these resources, the people's resources. To belabor the metaphor, you are being asked to make a bet at the casino using you constituents' money. So what are your responsibilities, as public officials, with regard to that risk? Your responsibility is to minimize it to the maximum extent practicable, the maximum extent reasonable.

That brings me to my second concept which is doubt. Risk and doubt are absolutely closely related. If there are doubts about the wisdom of the bet, you shouldn't take the bet. Or if you're going to take the bet, you should minimize what you're putting on the table in terms of the number of chips. You have a duty to calculate this risk and minimize it to the maximum extent practicable before you take any action, before the cards are dealt. Here, I think, the record before you, as illustrated by all the testimony that's happened so far, should have indicated at the very least that there is abundant doubt about what's going to happen to the resources affected by this project. We would submit that there is virtual certainty that the resources are going to be unacceptably depleted, degraded further, and there is nothing in the EIR that conclusively or compellingly shows to the contrary. But you'll hear from the applicant on Tuesday, and certainly you're going to hear other technical experts, with other evidence and information probably saying all of our concerns are overblown. Regardless of that, at the very least, I think that you have to admit that there is some serious doubt. There's doubt about what's going to happen to the water, there's doubt about hydrological interaction between the creek and the groundwater, there's doubt about how far away from the streambeds the frogs can travel, there's doubt about what is going to happen to the runoff, there's doubt about whether deep ripping is going to increase or decrease permeability. Doubt. Doubt. Doubt. The hallmark, that is, the catchphrase of what I've heard from the presentation today: we don't really know what's going to happen. What can you do? Your job, we respectfully submit, is to work to minimize that doubt to the maximum extent practicable. I underscore the word practicable. We're not asking you to do the impossible, because it's probably impossible to gauge with 100% certainty what's going to happen. But I think you owe it to your constituents and the resources and the public at large to do more than accept this EIR in its current form. You have a duty to make the staff and the applicant take a closer look, paying careful attention to all of the technical points that were raised so far and come back with a document that truly identifies the actual nature and extent of that risk to these resources before you make the bet on approving the vineyard.

Finally, the question of accountability, which is really what CEQA is all about. The Supreme Court has said repeatedly that CEQA EIR's are essentially documents of accountability. They present to the public and to the decision makers what will happen to the environment and natural resources as project get approved. Based on

that information, the agency, you, get to make that ultimate balancing test, that judgment. Are the benefits of the project worth that cost? Are the economic benefits, the employment benefits, tourism benefits of a project like this, - is that worth it? If you make that determination, you do so in what's called a statement of overriding considerations. In this particular EIR, because it did not find any, any significant unmitigated impacts, you actually don't have to adopt a statement of overriding considerations. You can approve the project as is. I'm aware that there's one in there anyway. That doesn't really count from a strict legal perspective. It only becomes relevant if the EIR finds a significant unmitigated impact. Now a flawed EIR, one that does not adequately disclose all potentially significant impacts, makes that whole exercise in accountability essentially a hollow exercise. It makes it irrelevant. The way that CEQA is written to make sure that doesn't happen is one key touchstone requirement: if you certify this EIR, you have to find that it reflects your independent judgment. You can't point at the staff and say that they said the EIR was OK. You can't point to the applicant and the consultants and say that they say that the EIR is OK. You need to make that decision for yourselves. And if you certify it, you are saying to your constituents and the people of the State of California, quite honestly, that you believe the this EIR in its current form is adequate to the task, that it has done all that it can reasonably do to investigate, disclose and evaluate all the potential significant impacts that this project could bring to bear on affected resources. The Sierra Club would respectfully submit that there is just no way on the current record that you could make that finding today. We would join with the other appellants and urge you to require the staff and the applicant to come back with a revised, limited, EIR - it doesn't have to be the entire thing all over again, but just those issues that are in controversy today - come back and make sure that everything is adequately disclosed and mitigated where feasible

Thank you.