

ENDORSED

JUN 17 2019

CLERK OF THE NAPA SUPERIOR COURT
BY: M. MARRON
DEPUTY

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,
COUNTY OF NAPA

SODA CANYON GROUP,

Petitioner,

vs.

COUNTY OF NAPA, et al.,

Respondents.

Case No.: 17CV001063

ORDER REMANDING THE CASE TO NAPA
COUNTY AND/OR THE NAPA COUNTY
BOARD OF SUPERVISORS

Hearing Date: May 7, 2019, Dept C.

This matter came on for hearing on May 7, 2019 to determine which documents contained in Exhibit C to Petitioner's Motion to Augment the Administrative Record (the "Atlas Fire Evidence") constituted truly new evidence of emergent facts. On February 21, 2019, the Court found that certain of the Atlas Fire Evidence was both relevant and truly new evidence of emergent facts and ordered the parties to meet and confer regarding which documents should be sent to Napa County and/or the Board of Supervisors in light of the Court's order to remand this matter to the Board of Supervisors. Although the parties met and conferred prior to the May 7, 2019 hearing, they were unable to reach agreement regarding the scope of the Atlas Fire Evidence that should supplement the administrative record.

At the hearing, Petitioner continued to argue that, with limited exception, all 177 pages of the Atlas Fire Evidence meets the Court's standard to augment the administrative record and Respondents continued to argue that none of the Atlas Fire Evidence met the Court's standard.

Timing of Remand to Napa County Board of Supervisors

At oral argument, the Court raised the preliminary issue of the timing of remand to the Napa County and/or the Board of Supervisors. The Court questioned the parties on whether the Court may immediately remand the case to Napa County and/or the Board of Supervisors to reconsider its decision (as it assumed in its February 22, 2109 Order), or whether the Code of Civil Procedure section 1094.5, subdivision (e), when read in conjunction with subdivision (f), requires the Court to first conduct the writ hearing. That section provides in relevant part:

Where the court finds that there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (f) remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case.

(Code Civ. Proc. § 1094.5, subd. (e).)

The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent.

(*Id.* at subd. (f).)

In response to the Court's inquiry, Respondents argued the Court must first conduct a hearing on the underlying writ petition, and only after that hearing has been completed may the Court remand the matter to Napa County and/or the Board of Supervisors. They argue that extra-record evidence should only be considered if and after the Court finds that there is no substantial evidence supporting the agency's decision below. Pursuant to this argument, if the Court finds substantial evidence sufficient to support the agency's decision, neither the Court (nor presumably the County/Board of Supervisors on remand) could consider "truly new evidence of emergent facts." The Court finds no such limitation in the language of section 1094.5, subdivision (e).

Petitioner agreed that the Court *may* proceed with the writ hearing first but urged the Court to instead remand the matter to the County/Board of Supervisors prior to the hearing.

The Court finds that *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, when read in conjunction with *Windigo Mills v. Unemployment Ins. Appeals Bd.* (1979) 92 Cal. App. 3d 586, and its progeny, is instructive on this procedural issue.

In *Voices of the Wetlands*, the California Supreme Court considered whether the trial court properly held its judgment in abeyance when it remanded the case back to the Regional Water Board to consider additional evidence regarding an issue crucial to issuing the subject permit. (*Voices of the Wetlands v. State Water Resources Control Bd.*, *supra*, 52 Cal.4th at 507.) In affirming the trial court's decision, the Court considered Code of Civil Procedure section 1094.5, subdivisions (e) and (f), and concluded "when properly understood and interpreted [these sections] impose no absolute bar on the use of prejudgment limited remand procedures such as the one employed" by the trial court in that case. (*Id.* at 526.) The Court supported its holding with reference to Code of Civil Procedure section 187, which allows the trial court to adopt any suitable process or mode of proceeding, so long as it is in the spirit of the Code of Civil Procedure and is not otherwise specifically prescribed by the statute applicable to the proceeding. (*Ibid.*)

In *Windigo Mills*, the Court of Appeals upheld the trial court's decision to consider CCP § 1904.5(e) "new evidence" at the administrative mandamus proceeding. (*Windigo Mills v. Unemployment Ins. Appeals Bd.*, *supra*, 92 Cal. App. 3d at 597.) The Court elaborated:

This does not mean that the trial court should admit such evidence in all cases. In keeping with the principle that the administrative agency should have the first opportunity to decide the case on the basis of all the evidence, the better practice might be to remand the action for agency redetermination in light of the new evidence, particularly where the evidence would have been crucial to the administrative decision.

(*Id.* at 599, fn 4.)

Cases applying *Windigo Mills* have approved a direct, pre-judgment remand to the agency. (See e.g. *Elizabeth D. v. Zolin* (1993) 21 Cal. App. 4th 347 (remand to trial court with direction for trial court to remand to DMV for reconsideration in light of new evidence); *Curtis v. Board of Retirement of Los Angeles County Employees Retirement Association* (1986) 177 Cal. App. 3d 293 (Court of Appeal remanded directly to Board of Retirement for reconsideration in light of new evidence.)

Hence, it is this Court's opinion that it may either (1) proceed with the writ of mandate hearing and consider the new evidence itself (remanding to the County, if appropriate) or (2) immediately remand the matter to the County for reconsideration of the matter in light of the "truly new evidence of emergent facts."

The Court concludes that it would be most efficient to remand the matter to the County prior to the administrative mandamus hearing. If the County affirms its decision, the matter will return to the trial court for hearing. If not, the matter will proceed accordingly.

The Following Evidence Shall be Provided to the County for Reconsideration

The Court has determined the evidence set forth below is relevant, could not have been produced at the hearing below, and is truly new evidence of emergent facts. (Code Civ. Proc. § 1094.5(e); *Fort Mojave Indiant Tribe v Dept of Health Services* (1995) 38 Cal. App 4th 1574.)

Declaration of Cynthia Grupp

Paragraphs 1 - 3 (these are submitted for foundational purposes only)

Page 3, line 11, beginning with the word "Just." through line 20, ending with the word "chain."

Page 4, line 7, beginning with the word "When," through line 10.

Declaration of Shelle Wolfe

Paragraphs 1 - 4 (these are submitted for foundational purposes only)

Paragraphs 5, 7, 10, 11, 13 and 15

Declaration of David Hallett

Paragraphs 1 - 3 (these are submitted for foundational purposes only)

Paragraphs 9 - 12, 13 (the first two sentences only)

Declaration of Glenn Schreuder

Paragraphs 1 - 3, 5 (these are submitted for foundational purposes only)

Paragraph 8 (but not last sentence)

Paragraphs 9 - 10

Declaration of Amber Manfree

All, including Exhibits 5 and 6 from Mr. Arger's Declaration

Declaration of Linda Savoie

Paragraphs 1 - 3 (these are submitted for foundational purposes only)

Paragraph 4 through 9

Paragraph 10 (but not the last sentence)

Paragraphs 11 through 13, 16 through 21

Paragraph 22 (first sentence only)

Declaration of Anthony Arger

Paragraphs 1 and 2 (foundational only)

Paragraphs 4

Paragraph 5 (not last two sentences)

Paragraphs 7,

Paragraph 8 (strike reference to Exhibit 4)

Paragraph 9 - 12

Exhibit 2,

Exhibit 3, pages 1 through 10

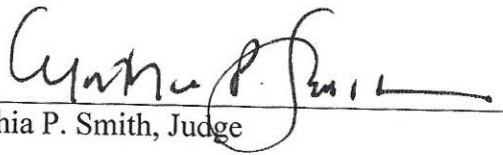
Exhibits 5 through 8

Conclusion

For the reasons set forth above, the Court remands this matter forthwith for reconsideration by Respondent Napa County. Declarations shall be restated in full to contain only the excerpts designated above. Petitioners shall provide the above-referenced documents to County Counsel on or before June 26, 2019, and County Counsel shall provide it to Napa County and/or the Board of Supervisors immediately upon receipt, but in any event no later than July 8, 2019.

The Court sets this matter for status review hearing on Wednesday August 21, 2019 at 9:00 am in Department C.

June 12, 2019


Cynthia P. Smith, Judge

Superior Court of California

County of Napa
825 Brown Street
Napa. CA 94559

Case #: 17CV001063

Soda Canyon Group vs County of Napa et al

Mark Raymond Wolfe

MR WOLFE & ASSOCIATES, PC
555 SUTTER STREET, STE 405
San Francisco, CA 94102

Jeffrey Michael Brax

1195 Third Street STE 301
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Brien Francis McMahon

505 Howard ST STE 1000
San Francisco, CA 94105

Certificate of Mailing/Service

I hereby certify that I am not a party to this cause and that a copy of the foregoing ***Order Remanding the Case to Napa County and/or The Napa County Board of Supervisors*** was:

- ☒ mailed (first class postage pre-paid) in a sealed envelope
☐ certified copy faxed to Napa Sheriff's Department at (707) 253-4193
☐ personal service – personally delivered to the party listed above
☒ placed in attorney/agency folders in the ☐ Criminal Courthouse ☒ Historic Courthouse

at Napa, California on this date and that this certificate is executed at Napa, California this Date. I am readily familiar with the Court's standard practice for collection and processing of correspondence for mailing within the United States Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the Courthouse.

Date: 6/17/2019

Robert E. Fleshman, Court Executive Officer

M. MARRON

Mirasol Aguilar-Marron, Deputy Court Executive
Officer

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA**

Case#: 17CV001063

Soda Canyon Group vs County of Napa et al

Mark Raymond Wolfe
MR WOLFE & ASSOCIATES PC
555 SUTTER STREET STE 405
San Francisco CA 94102

Hearing Date: 08/21/2019

Hearing Time: 9:00 AM

Hearing Location: Department C

NOTICE TO APPEAR

YOU ARE HEREBY NOTIFIED a Conference: Status Status Review Hearing per Order Filed 6/17/19 has been scheduled in the Napa Superior Court at the time, date and location listed above.

CERTIFICATE OF MAILING

I hereby certify that I am not a party to this cause and that a copy of the foregoing document was

- ☒ **mailed** (first class postage pre-paid) in a sealed envelope
☐ **placed in attorney/agency folders** in the ☐ Criminal Courthouse ☐ Historic Courthouse
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Date: 6/17/2019

Robert E. Fleshman, Court Executive Officer

M. MARRON

Mirasol Aguilar-Marron, Deputy Court Executive
Officer

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