



Date: April 10, 2009

Dear Neighbors

Thank you for the opportunity to share NOWWE's perspective on the situation and conditions of the headwaters of Mark West Creek. NOWWE's general view of the conditions and situation are presented first. For new people or people otherwise interested in specific historical and scientific information, more detailed information is included below that section.

### **General Overview**

NOWWE believes that a unified effort, unsusceptible to divide and conquer strategies, is essential to forestalling the complete eradication of species dependent upon all of us to preserve flows of cold, clear water in the creek and its major tributaries without interruption all year round.

Each year since August of 1998, migration and spawning of steelhead trout have been documented in the headwaters area of Mark West Creek above Tarwater Road. The rainy season of 2000-2001, however, brought significant changes in the creek. (Cited below)

The dramatic change compelled NOWWE to respond. That response included looking carefully at development upstream and determining that what was being proposed at that time, (yet another forest conversion, vineyard and winery project), was wholly inappropriate in an area already suffering the effects of water draw down, scarcity, and heavy sedimentation. NOWWE participated in the process and effectively stopped the winery project on hydrologic and geologic grounds. NOWWE has demanded that the responsible regulatory agencies force developers to prove that their activities will not further damage the creek (preparation of an environmental impact report) before allowing any additional water consuming and land disturbing activities. This is what the scientists, experts in biology, hydrology and geology, recommend.

NOWWE welcomes the support of the community in its efforts to first and foremost preserve and conserve the upper watershed. The impacts to the creek and its rare populations of salmon and trout, migratory birds, otters, and others are already substantial. It is our position that additional water consuming, forest destroying, and hillside scraping activities are not warranted at this time.

## **Specific and Pertinent Watershed Moments**

To date, the effort to protect the headwaters has required that NOWWE commission investigations and reports from hydrologists, biologists, and geologists. These scientific reports have been instrumental in protecting the watershed from dangerous landslides and inappropriate water consuming projects. These reports are now quoted from regularly by the Friends of Mark West Watershed, appearing on their web site, and are now being used by the Russian River Keeper as well. A unified effort is needed and has been critical to the effort to stop further destruction of the flows and recharge capability of the upper watershed.

### The Early Years ...

In the winter of 2000-2001, we noticed that the expected changes in the creek after a moderate rain storm, i.e. a moderate rise in flow of relatively clear water, had changed. That year each storm produced radical increases in flow of short duration, with the water appearing very dirty due to eroded soil it was carrying. It became apparent to us that the health of the creek was being negatively impacted by the deforestation caused by the expansion of vineyards in the area, and the excessive mining of the ground water to supply the growing vines and wine factories.

In our investigations we discovered that regulatory agencies responsible for protecting private citizens, landowners, members of the public, and the environment were not doing their jobs. The NOWWE Corporation was formed out of necessity to try to reverse this trend before the death of the MW creek. A plan of action was developed to insure the sustainability of the creek and to protect the watershed and all its life forms. NOWWE's objectives are as follows:

1. Quantify and qualify those things that adversely impact the MW watershed
2. Identify and prioritize those projects and actions degrading and negatively impacting the MW watershed
3. Develop and implement solutions to insure the long term vitality and sustainability of the MW watershed
4. Communicate with other interested parties
5. Identify and utilize all due process remedies; regulatory, legislative, and judicial. Assist, and if necessary, compel these agencies to fulfill their mandates.

NOWWE's retained experts have uncovered numerous examples of proposed projects that are unsafe and improper. As a result of NOWWE's efforts, individuals doing substandard or improper work have been brought to the attention of State agencies and have been warned and disciplined.

The history of the proposed Cornell winery, a current project under County review, is the latest example of such a project. It is rife with blatant examples of improper work. It has already caused damage to the watershed, and if allowed to proceed will further degrade the recharge capability of the upper watershed, displace animals, and usurp the scarce water needed by long time residents, businesses and species. NOWWE's challenge of the adequacy of the County's environmental review has never been and is not now a symbolic challenge. It is an essential part of a vital and a unified effort to stop further adverse impacts and reverse the already significant adverse impacts BEFORE another water hungry project is permitted.

NOWWE has generated volumes of information on the Cornell project through both independent scientific investigations and professional review of documents submitted to the County. Much of

this information has been submitted to the County authorities in support of NOWWE's appeal of the project. As such it has become a part of the public record. That information should be honored and returned to again and again as the standard to which the County must be held.

This letter is an attempt to provide you with facts that you may not have. Obviously it is not practical to include all of the information here in this letter, and in fact even just highlighting the items here creates a daunting list. For this we apologize, but to further condense the list would leave off important developments. Below is a timeline that outlines what has happened so far.

- 1998-2000 Creek characterized by cascading riffles and calm pools 3-8 ft deep Steelhead juveniles 1-3 years old abundant. Spawning steelhead videos made each season.
- Cornell Vineyard submits Timber Harvest Plan (THP) to California Department of Forestry (CDF) for review. Author of THP (Edwards) sanctioned by State Board for improper and inadequate work. North Coast Regional Water Quality Control Board (NCRWQCB) notes **grading violation** on "pre logging" inspection
- 2000-2001 Witness large earth moving equipment in upper MW creek watershed. Aerial photographs taken of extensive freshly graded areas in upper watershed. Winter stream flows characterized by radical changes in volume and "dirty" silt saturated water. Vineyard conversion has reduced soils ability to absorb rainfall causing more runoff and erosion of soil. This **sediment is deposited in pools** covering gravel needed for spawning and reducing depth thereby increasing water temperature. Summer flows appear normal.
- Feb. 2001 NCRWQCB comments on Cornell THP urging CDF to deny issuing the permit calling the **report inadequate** with regards to the effects on the watershed. THP denied.
- June 2001 new THP submitted by Cornell. "Pre logging" inspection notes **additional grading violations** and recommends citation be issued.
- 2001-2002 Neighbors on Wappo Rd. report Cornell Vineyards begin operation. Winter storms have an even more immediate effect on creek rise and **sediment** content. Summer flows noticeably lower.
- 2002-2003 Winter storms cause immediate creek rise above historic levels. Summer drop in creek water level causes Caplinger domestic water pipe exposed above creek surface for first time. **Unpermitted grading** takes place upstream, is reported to Sonoma County Permit and **Resource Management** (PRMD), but no action is taken.
- 2003-2004 Winter rains fill the creek with **vast amounts of eroded soil** which piles up behind fallen trees and creates "dams" blocking steelhead access to normal spawning areas.

NOWWE Corporation formally created...

- **Frustrated by the inaction** of regulatory agencies to stop illegal activities destroying the creek, NOWWE is formed. At the request of NOWWE, officials from NCRWQCB, PRMD, National Oceanic and Atmospheric Administration (NOAA), Trout Unlimited (TU) and Department of Fish and Game (DFG) inspect affected areas of MW creek. PRMD/NCRWCB cite upstream property owner demanding remedial grading plan. **Vastly fewer fish** are present in the creek and Caplinger **domestic water supply no longer functions** normally.
- 2004 NOWWE discovers that **Cornell intends to expand** operations to include a winery (wine making factory) and caves.

- 2004-2005 Winter storms bring immediate rise in creek characterized by **large amounts of water borne sediment** with an almost instant drop to pre storm levels at conclusion of rain event. This is the first winter where creek did not remain at a high level.
- July 2004 R.G.H. Geotechnical firm issues water availability report on proposed Cornell winery project. It reports no problem with water availability and no impact on other properties.
- December 2004 Sonoma County Planner Swedenborg prepares Mitigated Negative Declaration (MND) stating “less than significant impacts” (from landslides) with Cornell winery project, and posts notice of public hearing as required.
- January 2005 Board of Zoning Adjustments (BoZA) approves Cornell MND
- January 2005 NOWWE hires Geologist to review feasibility and effects of Cornell Winery project. Waldbaum Geologic Review of site finds **ground water availability study done improperly and slope stability problems (landslides) on winery site**. State Department of Water Resources subsequently finds R.G.H. water availability report to be **“substandard work” and issues warning**
- February 2005 NOWWE attorney files appeal to B.O.Z.A. approval
- June 2005 NOWWE appeal hearing held. **Swedenborg presents map fraudulently** represented as a geologic landslide map showing no landslides on the site.
- June 2005 NOWWE geologist, Waldbaum, writes letter to Sonoma County Board of Supervisors members calling attention to Planner Swedenborg’s **fraudulent “geologic” map and abundant uninvestigated landslides** on proposed Cornell Winery site.
- June 2005 NOWWE attorney Burr petitions Planner Swedenborg to require Environmental Impact Report before approving Winery project. She states that the legal requirements for MND were not met citing the grading violations, project piecemealing, inadequate water availability and uninvestigated dangerous landslides on the property.
- June 2005 NOAA representative Edmondson reports to Sonoma County supervisors emphasizing that MW Creek is the spawning and rearing habitat of an Endangered Species and that NOAA is deeply concerned about its destruction from grading sediment, dewatering of the creek and landslide potential.
- July 2005 Community complaint about Swedenborg to State Board Of Registration For Geologists
- July 2005 **State Board For Geologists issues written reprimand and warning sanctioning Swedenborg for Unlicensed Practice of Geology**
- September 2005 In response to NOWWE complaint, **State Board** of Registration for Geologists **issues written reprimand and warning** to Neal Mace and Gary Russey of RGH Geotechnical **for substandard work on Cornell winery project**.
- December 2005 **landslide on winery site activates causing slope failure** and debris into tributary of MW creek. Sediment flows downstream into MW creek. **Spawning and rearing pools are filled with sediment debris from landslide and destroyed**. NOWWE geologist Waldbaum issues report documenting **active landslide** on proposed Cornell Winery site.
- January 2006 By request from NOWWE, DFG and NOAA inspect damage to MW creek from landslide.
- 2005-2006 Pattern of drastic fluctuations in winter flows corresponding with storms continues. **Former deep pools filled with silt** leaving only shallow water. **Juvenile steelhead trout** with no place to hide are **easily taken by predators**. **Exhausted and battered adults returning to spawn find no suitable areas**. Summer flows at historic low levels.
- May-October 2006 RGH Geotechnical issues several geotechnical reports on proposed winery site. NOWWE geologist, Waldbaum reviews them and again finds work to be

substandard. **Area residents file complaint** with State Board for Registration of Geologists **for substandard practice** by RGH February 2008

- September 2006 NOWWE appeals to NOAA, California Department of Fish and Game, NCRWQCB, California Environmental Protection Agency (CEPA) and State Water Resources Control Board reporting **Endangered Species Act violations, degradation of Critically Listed Habitat, and depletion of surface and ground water**, and water quality impairment and urges them to take action.
- April-June 2007 Cornell hires Todd Engineers to re-investigate water availability on winery site. Reports issued assert adequate water supply, but acknowledge that **Sonoma County required investigative procedures were not followed and “long term and cumulative indirect impacts to Mark West Creek and its tributaries may occur.”**

#### Out of water, water hauling begins to upper watershed ...

- Summer 2007 Pride Vineyard (Cornell’s immediate neighbor) no longer has adequate summer water to irrigate its present vines and is forced to begin **buying offsite water** and trucking it in.
- July 2008 Under pressure from NOWWE, Sonoma County hires Kleinfelder Geotechnical to review recent RGH reports. Kleinfelder **affirms** NOWWE’s **Geologist Waldbaum’s findings**. RGH has failed to report numerous dangerous landslides on the Cornell Winery site. However they find the site suitable for the proposed winery, while **acknowledging that the required testing was not done to determine its safety**.
- November 2008 NOWWE Geologist, Waldbaum, issues report stating that 1. RGH landslide report is grossly deficient. 2. Kleinfelder's review for the County (in an area where they practice and submit reports to the County) is a **conflict of interest under California State guidelines** and therefore improper. A complaint is filed with the State Board against Kleinfelder for conflict of interest.
- October 2008 NOWWE hires Biologist, Dr Stacy Li to do habitat inventory and assessment of sedimentation of MW creek.
- November 2008 at the request of NOWWE, Department of Fish and Game and the California Department of Water Resources submit important comments to Board of Zoning Adjustments confirming inadequacy of the investigations done by Cornell consultants and in support of NOWWE’s appeal of the proposed Winery.
- December 2008 NCRWQCB comments in support of NOWWE appeal reporting that critical information was not considered or reported by Cornell’s consultants rendering the reports deficient.
- November 2008 NOWWE Biologist Dr. Li presents preliminary report on the adverse effects of sediment in creek
- November 2008 NOWWE Hydro geologist Greg Kamman issues review of **Todd water availability report** concluding that it **was inadequate**
- December 2008 **complaint is filed against Todd for malpractice** with State Board for Geologists based on the work of hydro geologist Kamman

### **Present Situation and Hope for the Future**

The MW creek is already in “critical condition” due to the cumulative impacts of the vineyards and wineries already present. Frost protection, irrigation, and the processing of grapes to make wine all make huge demands on already scarce water and often at the most critical times of the year. Any future development must be adequately investigated to **PROVE** that it will not damage what we have left of this precious resource.

It is the position of NOWWE, based on the voluminous scientific evidence unearthed by professionals in the fields of Engineering Geology, Hydrogeology, Biology and the Law, that the proposed Cornell winery is both improperly and inadequately investigated and is unsafe. Any attempt to “make a deal” with the winery developers disregards the findings of these professionals, and undermines the work of NOWWE.

For too long we have allowed decisions about our well being and our future to be made by corporations. We have put our trust in the words spoken by corporate executives and others driven by greed and a quest for power. A decision about what to believe has come to our own backyard. We have the power to change the tide. NOWWE urges all interested parties to trust the science, the neutral and impartial experts, rather than the words of corporate executives who have millions of dollars staked on the outcome of this project. We ask for your support in our efforts. The watershed is depending on us - the people who care, to stop the destruction of the forests and protect what scarce little water is left in MW creek for the fish and other creatures whose lives depend on it.

Thank you for considering the concerns of NOWWE.

Casey Caplinger