

State of California
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. BOX 2000, Sacramento, Ca. 95812-2000
Info: (916) 341-5300, FAX: (*916) 341-5400, Web: <http://www.waterrihts.ca.gov>

PROTEST – Application

BASED ON ENVIRONMENTAL, PUBLIC INTEREST, PUBLIC TRUST OR OTHER ISSUES
Protests based on Injury to Vested Rights should be completed on other side of this form

APPLICATION: 31824 PERMIT: LICENSE:

We,

Living Rivers Council (LRC) a public nonprofit, 1325 Imola Ave. West PMB 614
Napa, Ca. 94558

(Name and address of Protestant)

have read carefully a notice relative to a petition for new APPLICATION by Greenwood
Vineyards, LLRC and James K. & Jill S. Mooney Family Trust
(State name of Petitioner) to appropriate water from Garnett Creek hence Napa River, NW1/4 of Section
25P, T9N, R7W MDB & M

(Name of Source)

2. We protest the above application on: ENVIRONMENTAL ISSUES, ETC:

The appropriation will not best conserve the public interests, will have adverse environmental impact and/or will adversely affect a public trust use of a navigable waterway.*

- a. Public interest protests should clearly indicate how the appropriation will affect the public.
- b. Environmental protest should identify specific impacts and provide supporting recitals on issues such as: plants, animals or fish affected erosion, pollution, and aesthetics. Etc.
- c. Public trust protests must identify the navigable waters to be affected and how the project will impact public trust values. Protests of a general nature (not project specific) or opposed to constitutional or legislated state policy will not be accepted. A request for information or for studies to be conducted is not a protest.

OTHER ISSUES, ETC:

The appropriation will be contrary to law, will require access rights, will not be in the State Water Resources Control Board's jurisdiction or concerns other issues.

Facts and if Applicable, points of law which support the foregoing allegations are a follows:

1. **Current existing diversions in Garnett Creek are diminishing flows and causing cumulative environmental impacts to existing small populations of steelhead in Garnett Creek. This diversion will add to significant cumulative impacts caused from water diversions in Garnett Creek. The Napa River watershed had below average rain fall for three years (2007-2009). Snorkel surveys (2009) in the Napa River demonstrated that the steelhead population was down 2/3^{rds} due to lack of water. Garnett Creek is a blue line stream with**

- steelhead populations now in low numbers due to lack of flow for more 20 years. Dr. Charley Dewberry through Friends of the Napa River conducted snorkel surveys in 2000 and 2002 which established that steelhead are relying on small isolated pools nourished by ground water/subsurface channel flows throughout Garnett Creek. Diversions compounded by drought conditions are causing harm to these listed species throughout the water season. This diversion application will not only further diminish flows that are low but could tip the flows towards extirpation of steelhead throughout this subwatershed. Steelhead survival rate is directly limited by low flows in the Napa River basin. Garnett Creek has very low numbers of steelhead and further loss of aquatic habitats by dewatering can be highly detrimental to aquatic resources. What are the cumulative impacts from current permits and illegal diversion which are estimated by the SWRCB to be 377 in the Napa River basin? Water availability can not be determined by this applicant because it is not clear how much water is available due to illegal activities in the basin. This proposed diversion period of time, March through May cause serious harm to young of the year steelhead depending on adequate flows to survive throughout their life cycle of migration and rearing.
2. Will the applicant stock the 23 acre pond with non-native fish? Non native fish are detrimental to the ecology of the Napa River.
 3. The applicant states that they do not need any other permits. This is a false statement. Other permits are required by law. The applicant is contrary to existing Department of Fish and Game which requires a stream bed alteration permit for any change to the stream including pipes and pumps. The applicant must apply for an Erosion Control Plan/Best Management Practices /NPDES/SWMPP to excavate earth due to sedimentation impacts to the Napa River. The Napa River is listed on the 303(d) list of impaired water bodies for sedimentation. Additional sediment from this project to the Napa River is detrimental to the health of the Napa River.
 4. Has a biological survey and study been done for the ‘pit’?
 5. The Governor of California and the State Attorney General has legislated that projects must determine their impact on global warming. This project has not taken into account climate change and drought conditions. How many trees will be cut down to develop the ‘pit’? Trees utilize carbon and reduce the impacts of climate change.
 6. Excavation of this pond proposed in this application does not determine the environmental impacts from dredge and fill resulting from the excavation. Excavation poses many environmental concerns such as: soil types of excavated material erosion caused by storm water, existence of special status plants and animals in the project area, storm water pollution and increased peak flows in the Napa River from the additional vineyard development that this water right will allow.

Under what conditions this protest may be disregarded and dismissed:

1). On-going bioassessment and hydrologic real time monitoring 3) Watershed stewardship is formed on Garnett Creek 4) Environmental Impact Report 5) water availability based on Garnett water analysis, illegal diversions and existing water rights. 5.) Provide a DFG report. 6) Change the period of diversion to NOAA and DFG Joint Guidelines for diversion during the February mean flow or use the soon approved AB2121 Policy Document Regional Criteria for establishing flows. 7.) No stocking the ‘pit’ with non-native fish 8.) Applicant complies with all permits mentioned above.

4. A true copy of this protest has been served upon the applicant: By mail
(Personally or by mail)

Protestant(s) Authorized Representative sign here

Type or print name or title of representative, if
Applicable
Chris Malan
Living Rivers Council
Manager
Street Address

1370 Tancas
614
City and State: Napa Ca. 94558

Telephone: 707-255-7434 or 322-8677

- For the purpose of filing a protest, navigable waters include streams and lakes that may be seasonally navigable in small recreational watercraft

Date: 6/15/10
See attachment 1

PRO-APP (1-00)