

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 – (Petitions)

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

APPLICATION: 30384 PERMIT: LICENSE:

I, Chris Malan, Living Rivers Council, 1370 Trancas, PMB 14, Napa, 94559
(Name and address of Protestant)

have read carefully a notice relative to a petition for new APPLICATION **Gerald J. Marino, Michael F. Nichelini, and Joseph C. Nichelini, c/o James C Hanson, Hanson Engineering**

(State name of Petitioner) to appropriate water from **Pope Creek tributary to Putah Creek thence Yolo Bypass.**

(Name of Source)

It is desired to protest against the approval thereof because to the best of our information and belief:

The proposed application/petition for water will

- (1) not be within the State Water Resources Control Board's (SWRCB) jurisdiction
- (2) not best serve the public interest** **X**
- (3) be contrary to law
- (4) have an adverse environmental impact** **X**

State Facts, which support the foregoing allegations: **1. Expanding the existing on stream reservoir from 35 acre feet to 196 acre feet and grading off stream for a new reservoir shall require an EIR as grading for the instream reservoir poses significant environmental impacts such as: a.) introduction of non-native fish (stocking the reservoir) during storm events that causes the reservoir to spill thereby populating the streams with non-native fish that can prey on native fish especially trout fry. Both the instream reservoir and the off stream reservoir may cause impacts such as b.) Loss of native vegetation such as oak trees that can cause increase rate of run off to the stream causing bank erosion and creating down stream turbidity and causing harm to aquatic species such as native trout and Chinook salmon below Lake Berryessa. Young of the year salmon and trout have increased morbidity with slight increases in turbidity (Bill Trush, fish biologist, studies on turbidity) c.) What are the impacts to global warming from loss of native trees that currently sequester carbon? What is the amount of carbon sequestration lost from cutting down of native trees? d.) the fill and spill construction of the proposed reservoir can cause increased rate of runoff causing stream bank and bed erosion e.) Has the applicant done a water availability analysis? If so did the water**

availability analysis include illegal water diversions in the basin? Stetson Engineering, hired by the SWRCB, determined that there are 1,777 illegal water diversion in Marin, Sonoma, Napa, Mendocino, and Humboldt counties alone. There are 286 illegal water diversion in the Napa River watershed. The Putah Creek watershed has illegal water diversions. This application should determine how many illegal diversion are in the Putah Creek watershed above this request for diversion in order to determine the water availability for this application. f.) drought conditions are damaging public trust resources. Streams are drying and aquatic animals are dying from lack of water. There are no provisions in this application to account for drought conditions in order to protect aquatic species from stranding or lack of seasonal flows. Between illegal water diversions, inaccurate water availability analysis (due to illegal water diversions) it would be difficult to determine that water is available for frost protection, irrigation etc. g.) Napa County shall require an Erosion Control Plan. Shouldn't this application for water rely on the approval of the Erosion Control Plan first?

Under what conditions may this protest be disregarded and dismissed.

1. CEQA EIR process so the public may comment on the details of this project.
2. No non native fish stocking of any of the reservoirs
3. No on stream reservoirs as recommended by DFG and NMF.
4. Water availability is determined based on a finding of illegal water diversion.

A true copy of this protest has been served upon the petitioner by mail.
(Personally or by mail)

Date:
8/17/09

Protestant(s) Authorized Representative sign here

Protests must be filed within the time allowed by the SWRCB as stated in the notice relative to the change or such further time as may be allowed.

(NOTE: Attached supplemental sheets as necessary)

PRO-PET (1-00)

Additional concerns/protest: