

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: 31715      PERMIT:      LICENSE:**

**I, Living Rivers Council, 1375 Trancas, PMB 614, Napa Ca. 94559** (Name and address of Protestant)

have read carefully a notice relative to a petition for new APPLICATION **Patrick Elliot Smith,**  
(State name of Petitioner) to appropriate water from **unnamed stream tributary to Stoney Creek thence**  
**Capell Creek.**  
(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** X
- (4) **have an adverse environmental impact** X

State Facts, which support the foregoing allegations: **1.) The applicant is applying for a point of diversion that is pre-existing without a permit from the SWRCB, thereby these diversions constitute a trespass against the State of California. Will the SWRCB be issuing fines of \$500/violation/day through an enforcement action? 2) Do these illegal reservoirs have non-native fish stocked in them which can spill into the riparian areas during storm events? Non native fish pose a predatory threat to endangered/threatened steelhead and Chinook and other aquatic species of concern. Resident trout/trapped steelhead exist above Lake Berryessa and are protected species under the Endangered Species Act. This requires an Environmental Impact Report, (EIR). 3) The applicant claims he has planted 13 acres of vineyard with illegal water thereby giving the applicant an unfair business advantage to others who apply legally for water. 4.) How many trees were removed for these illegal reservoirs? What is the carbon sequestration loss for putting in these reservoirs? How has this effected climate change locally and regionally. What are the cumulative impacts? Regionally thousands of oak trees are removed in Napa County bi-annually for vineyard development. This requires an EIR. 4.) The applicant planted 13 acres of vineyard that depended on this illegal water. Napa County Planning and Conservation Department requires that applicants who apply for Erosion Control Plans for developing vineyards must have legal water right permits. How did the applicant get a legal Erosion Control Permit without a water right permit for the vineyards now existing? What is the annual sediment yield from these**

reservoirs and vineyards dependent upon this illegal water? This requires an EIR. 5.) Is this vineyard organic? What pesticides and herbicides are used on this vineyard? Putah Creek is an impaired water body listed for mercury, sediment and nutrients. This requires an EIR for this project. 6.) The applicant shall do an EIR that includes impacts of the reservoirs and the vineyards that is supported by the reservoirs. 7.) The applicant shall determine water availability based on all water diversions in the watershed above Lake Berryessa. What is the water availability taking into consideration all the illegal water diversions? 8.) We are in drought conditions. Current rain fall is not supporting migration and spawning for fish. Additional water diversions are creating hazardous conditions for aquatic life. What conditions are placed on the applicant to insure that the applicant does not divert water during drought conditions?

Under what conditions this protest may be disregarded and dismissed.

1. Eliminate all non-native aquatic plants and animal species in these illegal reservoirs.
2. This applicant must post a bond with the SWRCB prior to this application for water diversion.
3. The applicant shall pay fines and commence a riparian restoration plan for Stoney Creek.
4. Do a CEQA environmental document on the pre- existing reservoirs to determine if special status plants or animals were harmed. If the construction of the reservoirs harmed special status plants and/or animals then the applicant must mitigate for the harm on site. This area is known for rare and special status plants and animals.
5. This applicant is using water without a permit on a vineyard planted prior. The applicant shall notify the Napa County Planning and Conservation Department that the reservoirs are illegal and shall propose that the reservoirs be mitigated.
7. The applicant shall do an EIR due to significant cumulative impacts from grading the reservoirs and planting vineyards with water not permitted causing significant cumulative impacts to aquatic resources. The EIR shall address carbon emissions and carbon sequestration losses from this project. This water right application has violated the Public Trust Doctrine and Living Rivers Council would request that public resources be protected to the fullest possible extent. Riparian resources are devastated in this region due to drought conditions and illegal water diversions. The SWRCB shall assert their jurisdiction and protect water resources before aquatic species are extirpated from this stream and poor water quality (lack of flows) destroys beneficial uses.

A true copy of this protest has been served upon the petitioner by mail.

(Personally or by mail)

Date: 12/29/09

Chris Malan  
Living Rivers Council  
Manager

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):

1.) Aerial photography maps one and two attached to the email and mailed to the applicant and the SWRCB.

PRO-PET (1-00)

Additional concerns/protest: