

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: 31549 PERMIT: LICENSE:

I, *Living Rivers Council, 1370 Trancas, PMB 614, Napa Ca. 94559* (Name and address of Protestant)

have read carefully a notice relative to a petition for a new APPLICATION, Frank Family Vineyards, LLC (State name of Petitioner) has filed an application to appropriate water from **unnamed stream tributary to Capell Creek thence Putah 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: **The applicant is applying for a water right for one 70 acre existing reservoir. This application represents the grandfathering in of an illegal reservoir whereby the applicant trespassed against the State of California by stealing water without a permit. Stealing water for the development of vineyards gives this applicant an unfair advantage over others who apply legally to appropriate water thereby giving Frank Family Vineyards LLC an unfair business advantage over individuals who go through the water right process legally. This applicant disregards the Public Trust by stealing water for vineyards and depriving downstream natural resources of necessary flows. The applicant claims they have permission from the Water Master but this information is not transparent and unavailable on the SWRCB website.**

This application is incomplete and inaccurate. It not clear that the existing 70 acre reservoir is off stream. There are no pictures of the site for the proposed 30 acre water diversion.

POD 1 and 2 has and will have agricultural run off not discussed by the applicant which can and will overflow from the reservoirs into the waters of the State. It disregards environmental laws and public trust values. To proceed further the applicant will need an EIR. Class 3 streams have fishery habitat value because they provide water flow, and food resources for fish in Class 2 and 1 streams.

Under what conditions this protest may be disregarded and dismissed.

- 1. Eliminate all non-native aquatic plant, animals and fish.**
- 2. If the construction of the reservoir harmed or will harm 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. No biological surveys have been done.**
- 3. Napa County requires an Erosion Control Plan for projects. The applicant has not shown that they have an approved grading plan for the reservoirs.**
- 4. The EIR shall address carbon emissions and carbon sequestration losses from this project due to natural habitat losses for the reservoirs and the vineyards.**
- 5. The applicant shall acquire all other agency permits and have them available at the SWRCB's website for easy public access. Determine water availability that includes all illegal water diversions above the POD.**
- 6. Assurances that applicant will have conditions placed on this permit that restrict water diversions during drought conditions.**
- 7. Real time stream flow monitoring is available to the public.**
- 8. Applicant shall mitigate on site for damage to the environment for putting in reservoirs without permits.**
- 9. Proof that the existing reservoir is off stream.**
- 10. Restore the stream by removing Himalayan blackberry and planting native vegetation.**

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

Date: 8/16/10 email submission 8/16/10

Protestant(s) Authorized Representative sign here:

Chris Malan
Living Rivers Council
Manager

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: