

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: 31736 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 a new APPLICATION, **The Hess Collection Winery, Veeder Hills Ranch**, (State name of Petitioner) has filed an application to appropriate water from **unnamed stream tributary to Pickle Creek thence Redwood Creek, thence Napa Creek, thence Napa River**.

(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: **Pickle Creek has steelhead spawning and juvenile rearing habitat as has been documented by snorkel surveys done by Dr. Charley Dewberry (2000 and 2002) and data posted at the Napa County Watershed Information Center and Conservancy. Due to pervasive vineyard development in this watershed yearly the stream habitat is being steadily degraded by encroaching vineyards reducing riparian habitat and degrading water quality from increased water temperatures and water diversions. High vineyard demands for Pickle Creek water has reduced flows and killed young of year steelhead. LRC has seen isolated pools of steelhead die due to drought conditions and over diversion of the stream. A small niche habitat of Pickle creek in high water years will sustain fish through December or first rains. From June through September Pickle Creek suffers low flows and aquatic resources such as steelhead die in isolated warming pools. The applicant has an existing reservoir on stream that has caused harm to aquatic species depriving steelhead of flow especially in drought years. The applicant wants to expand existing reservoirs and build another POD yet the steelhead in the Napa River watershed and in particular this subwatershed are in rapid decline and headed to extirpation with dwindling returning adult spawners mostly due to habitat degradation associated with lack of flows. The applicant has 151 acres of existing vineyard in Pickle Creek watershed which constituted deforestation (redwood forest) groundwater and riparian aquifer depletion. The applicant is applying for a point of diversion that is pre-existing without a permit from the SWRCB, thereby which constitutes trespass against the State of California. Will the SWRCB be issuing fines of \$500/violation/day through an enforcement action? 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. Planting vineyards with illegal water, raises concerns of unfair business advantage to others who apply legally for water. Numerous environmental impacts are of concern such as: 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 (regionally thousands of oak trees are removed in Napa County bi-annually for vineyard development), what is the annual sediment yield from these reservoirs (over flows) and vineyards dependent upon this illegal water? 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.

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 Pickle Creek.
4. Do a CEQA environmental document for this application. This project will cause significant cumulative impacts to hydrology, geology and biology at the site so an EIR should be done.
5. If the construction of the reservoirs 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.
6. This applicant is using water without a permit for 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 EIR shall address carbon emissions and carbon sequestration losses from this project.
8. 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.
9. The applicant shall acquire all other agency permits and have them available at the SWRCB's website for easy public access.
10. Determine water availability that includes all illegal water diversions.
11. POD 3 not allowed due to onstream harm to significant cumulative impacts to aquatic resources.
12. Put a conservation easement on remaining forests and aquatic habitat in perpetuity.
13. Assurances that applicant will have conditions placed on this permit that restrict water diversions during drought conditions.
14. Real time monitoring is available to the public.

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

(Personally or by mail)

Date: 2/3/10 email submission 2/3/10

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 attached to the email and mailed to the applicant and the SWRCB.

PRO-PET (1-00)

Additional concerns/protest: