

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: 31670      PERMIT:      LICENSE:**

**1. 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 Newton Vineyard LLC (State name of Petitioner) to appropriate water from unnamed stream tributary to Sulphur Creek thence Napa River, SW ¼ of SE ¼ of projected Section 35, T8N R6W, 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 as follows: **From our investigations of these existing ponds, the SWRCB data shows a cancelled application on the upper POD and since the reservoir is existing this constitutes a trespass against the people and a violation of public trust uses resulting in a fine of \$500/violation/day (applicant states that these reservoirs have been operating for 30 years). Additionally, the point of diversion or the down stream existing reservoir is listed on the SWRCB as a pending storage point and also is in violation of SWRCB water rights. Both existing reservoirs**

are not permitted and therefore the applicant is now applying for a permit to appropriate the water the applicant is already using water from the creek and therefore both existing reservoirs are illegal. LRC may file a complaint. Both reservoirs are on stream. LRC contends that the Department of Fish and Game Code 5937 and 5946 are currently being violated as the current existing reservoir construction does not provide bypass flows for fish downstream. The Napa River watershed has below average rain fall for two years. Approving these permits can cause significant cumulative impacts that will further diminish flows in Sulphur Creek. Sulphur Creek is a blue line stream with steelhead populations now in medium to low numbers due to lack of flow for more than 6 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 niche habitats of flowing water above Napa Valley. Steelhead historically used the entire Napa River watershed from the valley floor to the high watershed habitats. The range and distribution of salmonid has greatly diminished mainly due to lack of flows. Cumulative diversions compounded by drought conditions are causing harm to these listed species throughout the water season. Steelhead survival rate is directly limited by low flows in the Napa River basin. The applicant should determine cumulative impacts from current permits and illegal diversion which are estimated by the SWRCB to be 377 in the Napa River basin. Water availability should be determined by this applicant because it is not clear how much water is available due to illegal activities in the basin including these illegal PODs. This proposed diversion period of time, November 15 of each year through March 31<sup>st</sup> of the succeeding year, adversely impacts aquatic species such as steelhead by limiting the amount of water available for migration, spawning and rearing given illegal diversion and drought conditions. The Napa River is already fully appropriated during October 31-May 15 but little rain makes real conditions in the watershed such that diversions in November-March will harm special status species since they are already stressed from low flows. The Governor of California and the State Attorney General has legislated that projects must determine their impacts on global warming. This project has not taken into account climate change and current drought conditions we are currently experiencing. Both of these reservoirs are located on stream. On stream reservoirs pose hazards to down stream fish habitats due to: 1.) non native fish over flowing the reservoirs and populating salmon habitats where invasive species of bass, sunfish, perch etc. will prey on salmonid fingerlings endangered species 2) sedimentation escaping the reservoirs and deposition into aquatic habitats during storm events 3) hazardous pollutants from fertilizers/pesticides overflowing to creek habitats impacting aquatic resources.

3. Under what conditions this protest may be disregarded and dismissed: 1.) Enforcement of these existing illegal diversions will result in fines. The applicant shall pay the fines or restore Sulphur Creek equivalent to the fines. 2) On-going bioassessment and hydrologic real time monitoring 3) Watershed stewardship is formed on Sulphur Creek 4) water availability based on Sulphur water analysis,

**illegal diversions and existing water rights. 5) Provide by-pass flows 6.) Change the season of diversion to February mean flow such as is recommended by Joint Guidelines between NOAA and DFG.**

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

Date: 1/13/09 \_\_\_\_\_  
Chris Malan-signed copy in the mail 1/13/09 \_\_\_\_\_

Protestant(s) Authorized Representative sign here

Type or print name or title of representative, if  
Applicable

Street Address

City and State

Telephone

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

Date: 1/13/09

(NOTE: Attached supplemental sheets as necessary)

PRO-APP (1-00)