

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: 31694 PERMIT: LICENSE:

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 Tony Peju
(State name of Petitioner) to appropriate water from unnamed stream tributary to Dutch Henry Canyon
Creek hence Biter Creek hence Napa River, NW ¼ of Section 34, T9N, 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 a follows:

From our investigations of this existing pond, there is no permit which constitutes a trespass against the people and a violation of public trust uses resulting in a fine of \$500/violation/day. LRC may therefore file a complaint. LRC contends that the Department of Fish and Game Code 5937 and 5946 are currently being violated in this stream because diversions and cumulative impacts from water right permits, illegal diversions riparian rights and a two year drought are endangering special status species, Chinook and steelhead salmon. The Napa River watershed has below

average rain fall for two years. Approving this permit can cause significant cumulative impacts that will further diminish flows in Dutch Henry Creek. Dutch Henry Creek is a blue line stream with steelhead populations now in 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 pools nourished by ground water throughout Dutch Henry Creek during the dry periods. Diversions compounded by drought conditions are causing harm to these listed species throughout the water season. This diversion application will not only further diminish flows that are low but could tip the flows towards extirpation of steelhead throughout this subwatershed. Steelhead survival rate is directly limited by low flows in the Napa River basin. Dutch Henry Creek has very low numbers of steelhead and further loss of aquatic habitats by dewatering can be highly detrimental to the wild fish. 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 can not be determined by this applicant because it is not clear how much water is available due to illegal activities in the basin including this illegal pond. Below this exiting but non permitted POD there are isolated pools depending on flows for migration, spawning and rearing. This proposed diversion period of time, November 15th of each year through March 31st of the succeeding year, adversely impacts aquatic species such as steelhead by limiting the amount of water available for migration, spawning and rearing. The Governor of California and the State Attorney General has legislated that projects must determine their impact on global warming. This project has not taken into account climate change and current drought conditions we are currently experiencing. Excavation of this pond proposed in this application does not determine the environmental impacts from dredge and fill resulting from the excavation. The applicant proposes to put the excavated soil on the existing and/or future vineyard. However, excavation poses many environmental concerns remain such as: soil types of excavated material that may not support required vineyard cover crop (necessary to prevent erosion), erosion caused by storm water, existence of special status plants and animals in the project area, storm water pollution and increased peak flows from the additional vineyard development that this water right will allow. This application has potential significant environmental impacts resulting in the need for an environmental impact report required by CEQA.

3. Under what conditions this protest may be disregarded and dismissed:

1). Enforcement of this existing illegal diversion will result in fines. The applicant shall pay the fines or restore Dutch Henry Creek equivalent to the fines. 2) On-going bioassessment and hydrologic real time monitoring 3) Watershed stewardship is formed on Dutch Henry Creek 4) EIR 5) water availability based on Dutch Henry water analysis, illegal diversions and existing water rights. 5.) Provide the DFG report. 6) Change the period of diversion to NOAA and DFG Joint Guidelines for diversion during the February mean flow.

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

Protestant(s) Authorized Representative sign here

Type or print name or title of representative, if
Applicable
Chris Malan
Living Rivers Council

Street Address
1370 Tancas, Napa Ca. 94558

City and State: Napa Ca.

Telephone: 707-2550-7434

- 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)