

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

**ORDER WR 2007-0003-EXEC**

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In the Matter of the Petition for Reconsideration of

**Newton Vineyard, LLC**

(Application 30690)

Regarding Order Canceling Application

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SOURCE: Unnamed Stream tributary to Sulphur Creek thence Napa River

COUNTY: Napa

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**ORDER DENYING RECONSIDERATION**

BY THE EXECUTIVE DIRECTOR:

**1.0 INTRODUCTION**

J. Tevis Armstrong, as agent for Newton Vineyard LLC (Applicant) petitions the State Water Resources Control Board (State Water Board) for reconsideration of the Division of Water Rights' (Division) order canceling Application 30690. Applicant asks the State Water Board to reinstate the application. The State Water Board Executive Director finds that the petition fails to raise substantial issues related to the causes for reconsideration set out in California Code of Regulations, title 23, section 768 and denies Applicant's petition for reconsideration.

**2.0 RECONSIDERATION OF A DECISION OR ORDER**

Any interested person may petition the State Water Board for reconsideration of a decision or order on any of the following grounds:

- (a) [i]rregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
- (b) [t]he decision or order is not supported by substantial evidence;
- (c) [t]here is relevant evidence which, in the exercise of reasonable diligence, could not have been produced;
- (d) [e]rror in law. (Cal. Code Regs., tit. 23, § 768.)

The State Water Board may refuse to reconsider a decision or order if the petition for reconsideration fails to raise substantial issues related to the causes for reconsideration set forth in section 768 of the State Water Board's regulations. (*Id.*, § 770, subd. (a)(1).) Alternatively, after review of the record, the State Water Board also may deny the petition upon a finding that the decision or order was appropriate and proper, set aside or modify the decision or order, or take other appropriate action. (*Id.*, subd. (a)(2)(A)-(C).)

State Water Board Resolution No. 2002-0104 delegates to the Executive Director the authority to supervise the activities of the State Water Board. Unless a petition for reconsideration raises matters that the State Water Board wishes to address or requires an evidentiary hearing before the State Water Board, the Executive Director's consideration of a petition for reconsideration falls within the scope of the authority delegated under Resolution No. 2002-0104. Accordingly, the Executive Director has the authority to refuse to reconsider a petition for reconsideration, deny the petition, set aside or modify the decision or order, or take other appropriate action. The State Water Board has not designated decisions by the Executive Director as precedent decisions pursuant to the Administrative Procedures Act. (Board Order WR 96-1, at p. 17, fn. 11.)

### **3.0 FACTUAL BACKGROUND**

Newton Vineyard (Applicant) filed water right application 30690 with the Division on April 1, 1998, requesting the right to divert 32 acre-feet per annum (afa) of water from an unnamed stream tributary to Sulphur Creek thence Napa River in Napa County. The water would be diverted at an existing onstream reservoir. The proposed purposes were irrigation and fire protection.

The Division published a public notice of the application on September 4, 1998. Nine parties protested. Six protests were eventually dismissed. The three pending protests that have not been dismissed were filed by Friends of the Napa River, Beringer Wine Estates, and the California Department of Fish and Game (DFG).

In accordance with California Water Code section 1275, the Division requested on March 8, 2005 that Applicant submit by September 8, 2005 a Memorandum of Understanding by which the Applicant would hire qualified consultants to conduct a water availability analysis and prepare environmental impact assessment documents for the project in accordance with

the California Environmental Quality Act (CEQA). The Division never received the required information.

On December 6, 2006, the Division cancelled Application 30690. On December 16, 2006, Applicant filed a timely petition for reconsideration of the cancellation order.

#### **4.0 DISCUSSION**

Applicant argues for reconsideration based upon confusion surrounding a change of ownership and Applicant's resulting lack of action on the application. This does not constitute cause for reconsideration under section 768 of the State Water Board's regulations. Applicant has presented no grounds that warrant reconsideration.

#### **5.0 CONCLUSION**

The petition submitted by Applicant fails to raise substantial issues related to the causes for reconsideration. For this reason, the State Water Board finds that the Division's order canceling the application was appropriate and proper.

### **ORDER**

IT IS HEREBY ORDERED that the petition for reconsideration is denied.

Dated: February 9, 2007

*ORIGINAL SIGNED BY*  
Thomas Howard  
Acting Executive Director