

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2012-0025-DWR

In the Matter of Failure to File a Statement of Water Diversion and Use by

**Patrick Elliott-Smith Trust and Patrick Elliott-Smith (Trustee),
dba Elan Vineyards**

SOURCE: Unnamed Streams tributary to Stoney Creek

COUNTY: Napa County

Assistant Deputy Director James W. Kassel, Division of Water Rights, through authority delegated by the State Water Resources Control Board (State Water Board), hereby issues an Administrative Civil Liability Order (ACL Order) against Patrick Elliott-Smith Trust and Patrick Elliott Smith (Trustee), dba Elan Vineyards (Elliot-Smith). On April 10, 2012 the Division of Water Rights issued an Administrative Civil Liability Complaint (ACL Complaint) against Elliot-Smith (Exhibit A, attached), which is hereby incorporated by reference as part of this Order.

THE STATE WATER BOARD, OR ITS DELEGEE, FINDS AS FOLLOWS:

1. On April 10, 2012, the Assistant Deputy Director of the Division of Water Rights issued an ACL Complaint against Elliot-Smith, which proposes to collect \$2,000 from Elliot-Smith for a failure to file Initial Statements of Water Diversion and Use (Statement) with the State Water Board for its diversion and use of water from two points of diversion, pursuant to California Water Code section 5107(c)(1). The ACL complaint required Elliot-Smith to file Statements within 30 days, and either request a hearing within 20 days of receipt of the ACL Complaint to contest imposition of the proposed liability or remit payment of the proposed liability. Elliot-Smith has not requested a hearing nor remitted payment of the proposed liability.
2. Pursuant to California Water Code section 7, the State Water Board is authorized to delegate authority to the Deputy Director of Water Rights. State Water Resources Control Board Resolution No. 2012-0029 (Resolution) delegates some of the State Water Board's authority to the Deputy Director of Water Rights. Section 4.9.2 of the Resolution authorizes the Deputy Director to issue an order imposing administrative civil liability when a complaint has been issued and no hearing has been requested in the period provided by California Water Code section 1055. Section 4.9.2 of the Resolution allows this authority to be redelegated to the Assistant Deputy Director of Water Rights.
3. California Water Code section 5102 allows a person diverting water to designate an agent to file a Statement on his or her behalf. J Tevis Armstrong is the authorized agent representing Elliot-Smith for Application 31715. On April 10, 2012, the ACL Complaint was sent via certified mail to Elliot-Smith and his agent, J Tevis Armstrong. On April 25, 2012, the State Water Board received and later accepted Statements for the two points of diversion covered by Application 31715. The response, however, did not include a request for a hearing or remit payment of the liability.

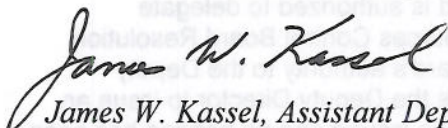
4. No hearing was requested within 20 days of issuance of the ACL Complaint in accordance with California Water Code section 1055(b). California Water Code section 1055(c) and Resolution No. 2012-0029 authorize the Assistant Deputy Director to issue an ACL Order for \$2,000, the amount proposed in the April 10, 2012 ACL Complaint. Accordingly, the Assistant Deputy Director of Water Rights is authorized to issue this final ACL Order imposing liability.

IT IS HEREBY ORDERED, PURSUANT TO CALIFORNIA WATER CODE SECTIONS 1055 AND 5107, ON BEHALF OF THE STATE WATER BOARD THAT:

1. The Administrative Civil Liability Complaint attached hereto as Exhibit A is fully incorporated herein and made part of this Order.
2. In adopting this Order, the State Water Board, or its delegate, have considered all relevant circumstances, including but not limited to those specifically identified in the ACL Complaint, as required by California Water Code section 1055.3 in determining that Elliot-Smith shall be assessed the civil liability of \$2,000.
3. Elliot-Smith shall remit, within 30 days of the date of this Order, a cashier's check or money order payment of the full penalty of \$2,000 to:

State Water Resources Control Board
Division of Water Rights
Enforcement Section
P.O. Box 2000
Sacramento, CA 95812-2000
4. Fulfillment of Elliot-Smith's obligations under this Order constitutes full and final satisfaction liability for the alleged violation specifically identified in this Order.
5. The Assistant Deputy Director of the Division of Water Rights is authorized to seek recovery of the liability imposed, as authorized by California Water Code section 1055.4, or will refer this matter to the Office of Attorney General for further enforcement action if Elliot-Smith fails to comply with remitting payment of the full penalty within 30 days of the date of this Order.

STATE WATER RESOURCES CONTROL BOARD


James W. Kassel, Assistant Deputy Director
Division of Water Rights

Dated: OCT 30 2012

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Failure to File a Statement of Water Diversion and Use by

**Patrick Elliott-Smith Trust and Patrick Elliott-Smith (Trustee),
dba Elan Vineyards**

Agent of Record: J. Tevis Armstrong

SOURCE 1 : Unnamed Stream tributary to Stoney Creek

SOURCE 2 : Unnamed Stream tributary to Stoney Creek

COUNTY: Napa County

YOU ARE HEREBY GIVEN NOTICE THAT:

1. California Water Code sections 5100-5107 establish a program requiring a person who diverts water from a surface stream or a subterranean stream flowing through a known and definite channel, including impoundment of water in a reservoir (with a few limited exceptions), to file a Statement of Water Diversion and Use (Statement).
2. Patrick Elliott-Smith, trustee for Patrick Elliot-Smith Trust, doing business as Elan Vineyards (Elliott-Smith) is alleged to have violated California Water Code section 5101, which states, in pertinent part:

Each person who, after December 31, 1965 diverts water shall file with the board, prior to July 1 of the succeeding year, a statement of his or her diversion and use . . .

3. California Water Code section 5107(c)(1) provides that the State Water Resources Control Board (State Water Board) may administratively impose civil liability in the amount of \$1,000 for the failure to file a Statement, plus \$500 per day for each additional day on which the violation continues if the person fails to file a Statement within 30 days after the State Water Board has called the violation to the attention of that person.
4. California Water Code section 1055, subdivision (a), provides that the Executive Director for the State Water Board may issue a complaint to any person or entity on which administrative civil liability (ACL) may be imposed. Pursuant to State Water Board Resolution 2007-0057, the Deputy Director for Water Rights is authorized to issue an order imposing an ACL when a complaint has been issued and no hearing has been requested within 20 days of receipt of the complaint. State Water Board Resolution 2007-0057 also authorizes redelegation of this authority from the Deputy Director for Water Rights to the Assistant Deputy Director for Water Rights. This authority has been redelegated.

ALLEGATIONS

5. On April 7, 2010, State Water Board, Division of Water Rights (Division) mailed a letter to all pending water right applicants with existing diversions notifying them of the new statutory reporting requirements. The April 7, 2010 letter is entitled "New Statutes for Statements of Water Diversion and Use that Affect Water Rights Applicants with Existing Water Diversions." The letter informed recipients that the Division's records indicated they were a water rights applicant that was currently diverting water, and was therefore required to file a Statement with the State Water Board. Furthermore, the letter informed recipients that "Failure to file a Statement for each diversion that occurred after January 1, 2009 may be subject to monetary penalties of up to \$1000. After the State Water Board notifies a diverter of his/her failure to file, the diverter is allowed 30 days to file. If the diverter does not file, additional penalties of up to \$500 per day may be assessed." One of the recipients of this letter was Elliott-Smith.
6. In December 2011, Division staff reviewed the list of recipients of the April 7, 2010 letter to determine which applicants had responded and filed a Statement with the State Board. Elliott-Smith did not file a Statement in response to the April 7, 2010 letter.
7. Elliott-Smith has a water rights application and a diversion that is subject to the filing requirements of California Water Code section 5101. Elliott-Smith is the applicant and signatory on pending water rights application (A031715) for Napa County Assessor's Parcel (APN) 032-540-035-000 and has a water diversion on the property. Property records review indicates that Patrick Elliott-Smith Trust is the current owner of APN 032-540-035-000. In February 2012 Division staff reviewed Elliott-Smith's application (A031715) which shows that the project consists of two points of diversion. Water is being collected to storage in the onstream reservoirs and according to the application water is, or will be used for irrigation, frost protection, recreation and stock watering. Elliott-Smith is diverting water by two onstream dams that collect water to storage in two onstream reservoirs. One of the reservoirs has an approximate capacity of 26 acre-feet and the second reservoir has an approximate capacity of 4.5 acre-feet. Staff also completed a detailed review of National Agriculture Imagery Program aerial photographs dated 2010 available from United States Department of Agriculture (USDA) (Exhibit A) and the Capell United States Geological Survey (USGS) Quadrangle, (originally dated 1953; revised from aerial photos in 1987; edited in 1993) (Exhibit B) which provide supporting evidence that water diversions are taking place on Elliott-Smith's property. Division staff has concluded that Elliott-Smith is required to file a Statement with the State Water Board for each dam.
8. As of March 1, 2012, State Water Board records show that Elliott-Smith has not filed an Initial Statement. California Water Code section 5102 requires a separate Statement to be filed for each point of diversion. In January 2012, Division staff researched the Division's three Statement databases (Deficiency, Accepted and 2011-12 Statements) for a Statement filed by Elliott-Smith. The databases were searched using the primary owner's name, and/or other names listed in the application. Division staff also conducted a search in the Electronic Water Rights Information Management System (eWRIMS) for a Statement. No record of a Statement filed by Elliott-Smith was found in either search. On February 16, 2012, Division staff contacted the Divisions Fee, Data, and Statement Management unit whose records show that Elliott-Smith had not submitted a Statement for either point of diversion.
9. Elliott-Smith is subject to the requirements of California Water Code sections 5100-5107 and did not file a Statement by March 1, 2012 with the State Water Board for either point of diversion. Failure to file a Statement is a violation of California Water Code section 5101. Elliott-Smith may be subject to additional administrative civil liability under California Water Code section 5107(c)(1) of up to \$500 per day if he does not file an Initial Statement within 30 days of the date of issuance of this ACL Complaint.

PROPOSED CIVIL LIABILITY

- 10. Elliott-Smith failed to submit the required Statement for either point of diversion 1 or point of diversion 2 for his 2009 diversions by the July 1, 2010 deadline, nor has he subsequently filed any Statements for his continued diversions. California Water Code section 5107(c)(1) provides that the State Water Board may administratively impose civil liability for a failure to file a Statement pursuant to section 1055 in an amount not to exceed \$1,000.
- 11. The potential maximum liability for the violations alleged is \$2,000.
- 12. In determining the appropriate amount of a civil liability, California Water Code section 1055.3 requires that the State Water Board consider all relevant circumstances.
- 13. Having taken into consideration all relevant circumstances, including but not limited to those specifically recited above, the Assistant Deputy Director for Water Rights recommends the imposition of \$2,000 in administrative civil liability (Proposed Liability).

RIGHT TO HEARING

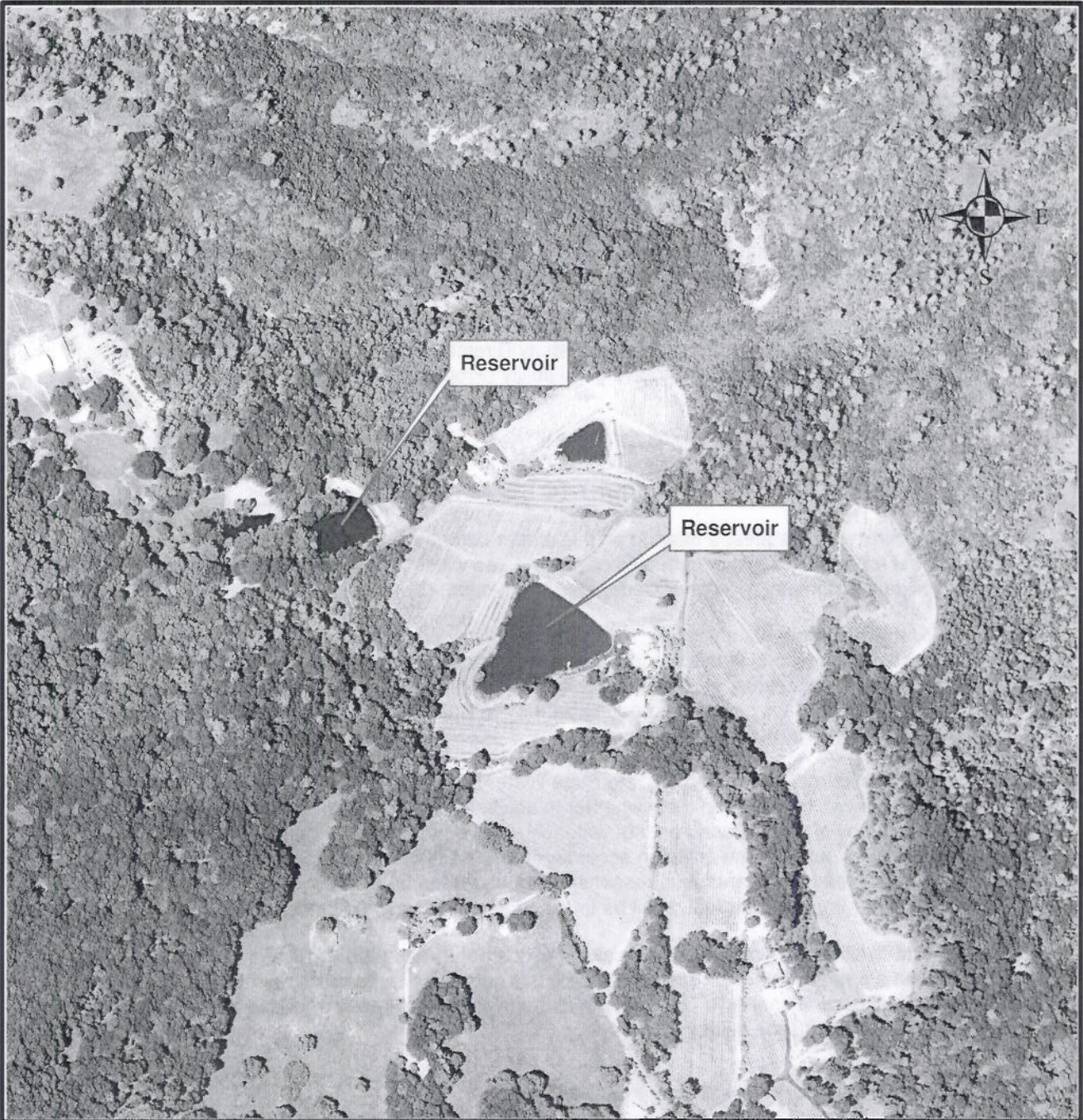
- 14. Elliott-Smith may request a hearing on this matter before the State Water Board. Any such request for hearing must be received or postmarked within 20 days of the date that Elliot Smith receives this complaint. (Water Code, sec. 1055, subd. (b).)
- 15. If Elliott-Smith requests a hearing, Elliott-Smith will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of an ACL by the State Water Board. If a hearing is requested, separate notice setting the time and place for the hearing will be mailed not less than 10 days before the hearing date. The State Water Board may convene a settlement conference prior to noticing a hearing date.
- 16. If Elliott-Smith requests a hearing, the State Water Board will consider at the hearing whether to impose the civil liability, and if so, whether to adjust the proposed liability within the amount authorized by statute. Based on the evidence received at the hearing, the State Water Board may take any appropriate action in accordance with sections 100, 275, and 1050 et seq. of the California Water Code and/or its responsibilities under the public trust doctrine. Any State Water Board order imposing an ACL shall be final and effective upon issuance.
- 17. If Elliott-Smith does not remit the necessary Statement(s) and the Proposed Liability amount, nor request a hearing within 20 days of the date this complaint is received, then the State Water Board will issue a final ACL Order and seek recovery of the liability imposed as authorized by California Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD

James W. Kassel
 James W. Kassel, Assistant Deputy Director
 Division of Water Rights

Dated:

MAR 10 2010



OWNER ELAN VINYARDS - PATRICK ELLIOT SMITH

SOURCE UNNAMED STREAMS TRIBUTARY TO STONEY CREEK

COUNTY OF NAPA

IMAGERY SOURCE UNITED STATES DEPARTMENT OF AGRICULTURE NATIONAL AGRICULTURE IMAGERY PROGRAM

IMAGERY DATE 2010

STATE OF CALIFORNIA
 CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

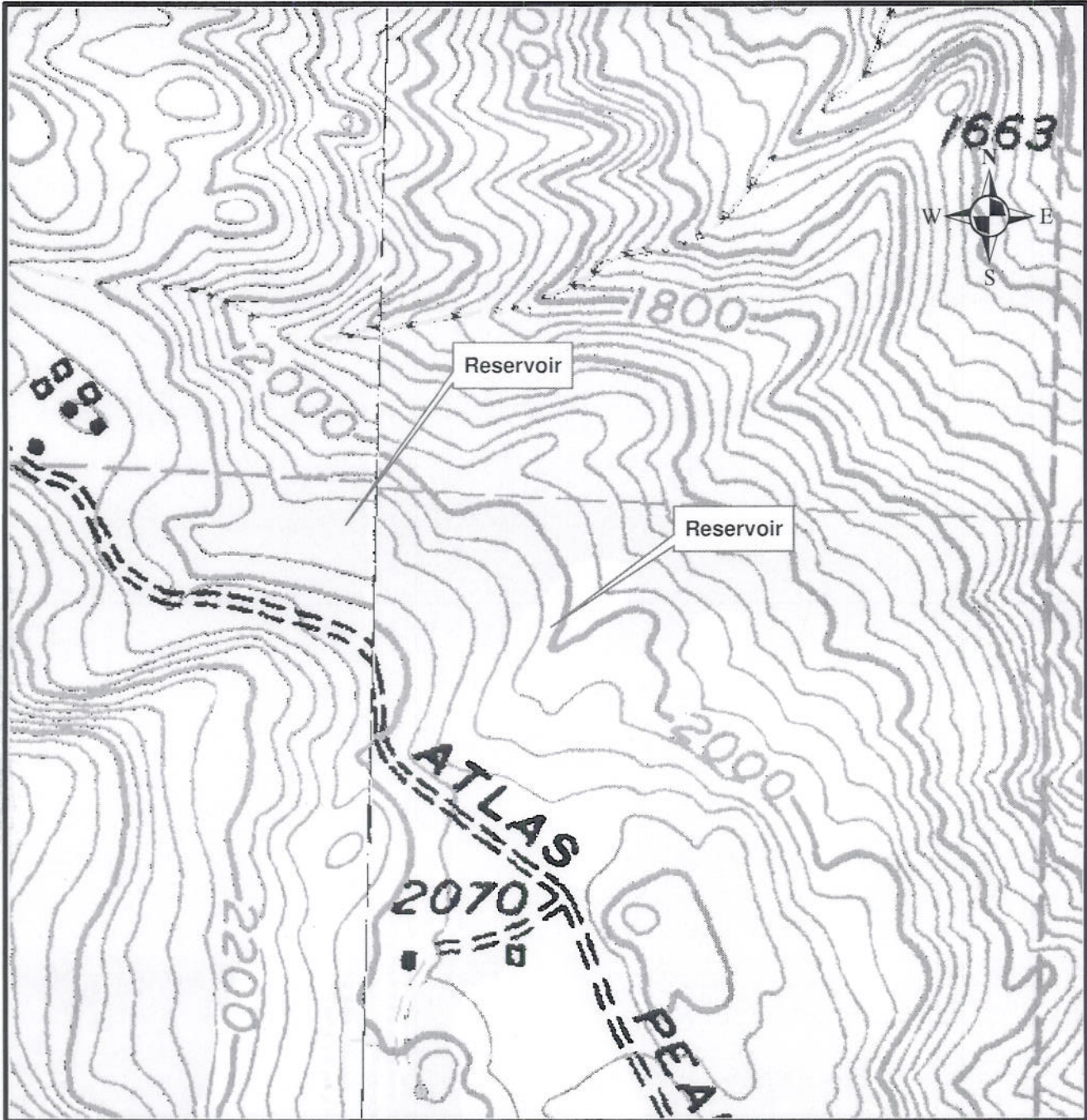
APPLICATION NO. A031715

NON-PERMITTED RESERVOIR MAP

DATE:	DRAWN:	CHECKED:
3/8/2012	KLW	

SCALE 1:6,000

Note: This map does not constitute a public land survey as defined by California Business & Professions Code section 8726. It has been prepared for descriptive purposes only.



OWNER	ELAN VINYARDS - PATRICK ELLIOT SMITH	STATE OF CALIFORNIA CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY	
SOURCE	UNNAMED STREAMS TRIBUTARY TO STONEY CREEK	STATE WATER RESOURCES CONTROL BOARD DIVISION OF WATER RIGHTS	
COUNTY OF	NAPA	APPLICATION NO. A031715	
IMAGERY SOURCE	USGS TOPOGRAPHIC MAPS CAPELL VALLEY QUADRANGLE	NON-PERMITTED RESERVOIR MAP	
IMAGERY DATE	ORIGINAL COMPILED IN 1953; REVISED FROM AERIAL PHOTGRAPHS IN 1987; AND EDITED IN 1993	DATE:	CHECKED:
	SCALE 1:6,000	3/8/2012	KLW

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