

Jo/RJR

A029784

STATE WATER RESOURCES
CONTROL BOARD

2012 MAY -4 AM 9:55

DIV OF WATER RIGHTS
SACRAMENTO

May 3, 2012

State Water Resources Control Board
Division of Water Rights
Attn: Enforcement Section
P.O. Box 2000
Sacramento, CA 95812-2000

Re: Initial Statement of Water Division and Use and Request for Hearing related to
Administrative Civil Liability Complaint for Failure to Submit. Permit Application A029784

Dear Water Board:

I have received the Administrative Civil Liability complaint for failure to submit the Initial Statement of Water Diversion and Use. I have completed the statement as requested and it is enclosed for your review. I did not submit this statement previously because I thought I was exempt from the requirement to file. I would like to request a hearing to discuss my possible exemption from the filing requirement and reduction or elimination of the proposed fine outlined in your letter dated April 11, 2012.

I believe the basis for my exemption is outlined in the instructions for the Initial Statement of Water Diversion wherein it states that "the diversion occurs from a spring that does not flow off the property on which it is located and from which the aggregate diversions do not exceed 25 acre-feet in any year". My diversion is typically less than 10 acre-feet per year, and I estimated my diversion on the attached form for 2009 at 5 acre-feet.

While my application to appropriate water has been pending for over 20 years, there has been some disagreement between me and the SWRCB as to the status of Reservoir 2 and whether or not it constitutes on-stream or off-stream storage. My property does not contain a flowing stream and it is located on a hillside setting well above the limits of Steelhead migration. The site has been reviewed by your staff and the Department of Fish and Game and they have told me that my project consists primarily of sheet flow during the rainy season and that there is no permanent watercourse on the property. There are a few springs located in the drainage course and the most consistent year round flow occurs just below Reservoir 2 where my pipeline is installed to divert water to Reservoir 1. Late in the fall the flow at this spring may go completely dry, and in a wet year rarely exceeds 5 gpm.

I believe I have a riparian right to use or divert water at reservoir 2 and an appropriate right to use water at Reservoir 1. The spring located below Reservoir 2 probably benefits from the water stored above it and some underground leakage from the pond maintains flow that would otherwise be dry if the reservoir was not there.

May 3, 2012

My knowledge of water policy and related definitions of the terms used in the regulations may not be correct. Rather than argue about whether or not I am required to file the Initial Statement of Water Diversion, I have prepared the statement and enclosed it. However, I would like to request a hearing and/or review of the information that I have submitted to determine if I truly need to file this report. In addition I request that the Administrative Civil Liability Complaint be withdrawn and the proposed fine be eliminated.

I am available for discussion of this matter if we can handle it in a less formal manner by telephone. Otherwise I await your review of this information, and hope that I have completed the form correctly and within a timely manner so as to avoid and further penalties.

Sincerely,



David Burton
P.O. Box 255
Calistoga, CA 94515
707 942-9608
Email dburton33@gmail.com

Enclosures: Initial Statement of Water Diversion and Use
Sonoma County Assessor's Parcel Map
USGS Topo Map from Mark West Quad

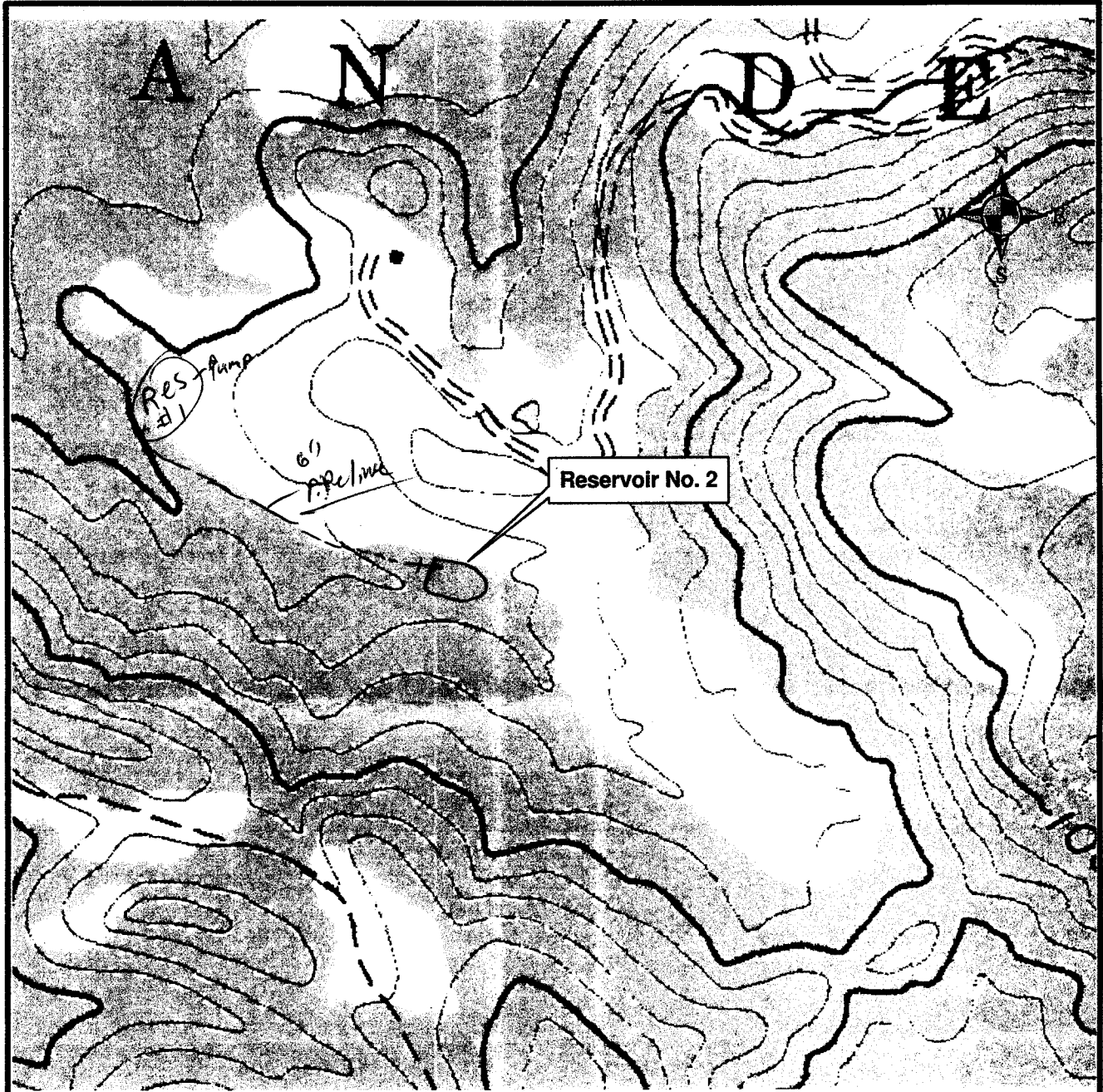
**State Water Resources Control Board
DIVISION OF WATER RIGHTS
INITIAL STATEMENT OF WATER DIVERSION AND USE**

NOTE: A Statement is not a Water Right
READ THE ATTACHED INFORMATION AND INSTRUCTION SHEET BEFORE COMPLETING THIS FORM

A. Claimant Information (required)		
Claimant Name(s): David Burton		
Mailing Address P.O. Box 255 Calistoga, CA 94515	City	State Zip
Phone Number 707 942-9608	Email Address (if available) dburton33@gmail.com	
Agent Name (if applicable)		
Mailing Address	City	State Zip
Phone Number	Email Address (if available)	
Land Owner Name (if different from claimant) Same as claimant		
Mailing Address	City	State Zip
B. Type of Claim		
Check the box(es) which describe the type of claim(s) under which you are diverting water.		
<input checked="" type="checkbox"/> Riparian	<input type="checkbox"/> Pre-1914	<input type="checkbox"/> Court Decree <input checked="" type="checkbox"/> Pending Appropriative Application
If you checked yes for Court Decree or Pending Appropriative Application, list the decree number or application ID:		
C. Water Course Description (required)		
Source Name at the point of diversion Unnamed stream tributary to Bidwell Creek	Tributary to Bidwell flows to Franz to Maccama and then Russian River	
D. Legal Land Description (required)		
Provide the location of the Point of Diversion using one of the following methods (check one box and enter coordinates, if applicable):		
<input checked="" type="checkbox"/> Latitude/Longitude Measurements: 38 Deg. 36.34 min. N by 122 Deg. 40.46 min. W	<input type="checkbox"/> California Coordinate System (NAD 1983): _____	
<input checked="" type="checkbox"/> USGS Topographic Map with point of diversion labeled on map (if checked yes, please attach map)		
County (required) Sonoma	Assessor's Parcel Number(s), if assigned 120-090-036	
Provide Public Land Description to nearest 40 acres (if assigned) _____ ¼ of the _____ ¼ of Section _____, Township _____, Range _____, B&M _____		
E. Place of Use Description (required)		
Provide a general description of the area in which the water was used. Water is diverted to off-stream storage reservoir with approximately 7 acre feet of capacity. Water is then pumped from this reservoir for ag use including 22 acres of vineyards.		
Provide an outline of the Place of Use using one or both of the following methods (check box indicating each map attached)		
<input checked="" type="checkbox"/> USGS Topographic map	<input checked="" type="checkbox"/> County Assessor's parcel map	
F. Purpose of Use Description (required)		
Provide a listing of use types (see instructions for a listing of water uses) Vineyard irrigation, watering gardens, landscape, domestic use, and frost protection		
Number of Acres (if applicable) 25	Persons Served (if applicable) 2	Stock Watered (if applicable) not at this time but part of original application

CONTINUE TO PAGE 2

From Mark West quad.



OWNER SPEEDY CREEK RANCH
DAVID BURTON

SOURCE UNNAMED STREAM
TRIBUTARY TO BIDWELL CREEK

COUNTY OF SONOMA

IMAGERY SOURCE USGS TOPOGRAPHIC MAPS
MARK WEST SPRINGS QUADRANGLE

IMAGERY DATE ORIGINAL COMPILED IN 1953; REVISED FROM AERIAL
PHOTOGRAPHS IN 1987; AND EDITED IN 1993

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

APPLICATION NO. A029784

*Point of diversion at
Res # 2, Pipeline to Res 1*

SCALE 1:6,000

DATE: 3/7/2012

DRAWN: KLW

CHECKED:

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.

COUNTY ASSESSOR'S PARCEL MAP

TAX RATE AREA
181-001



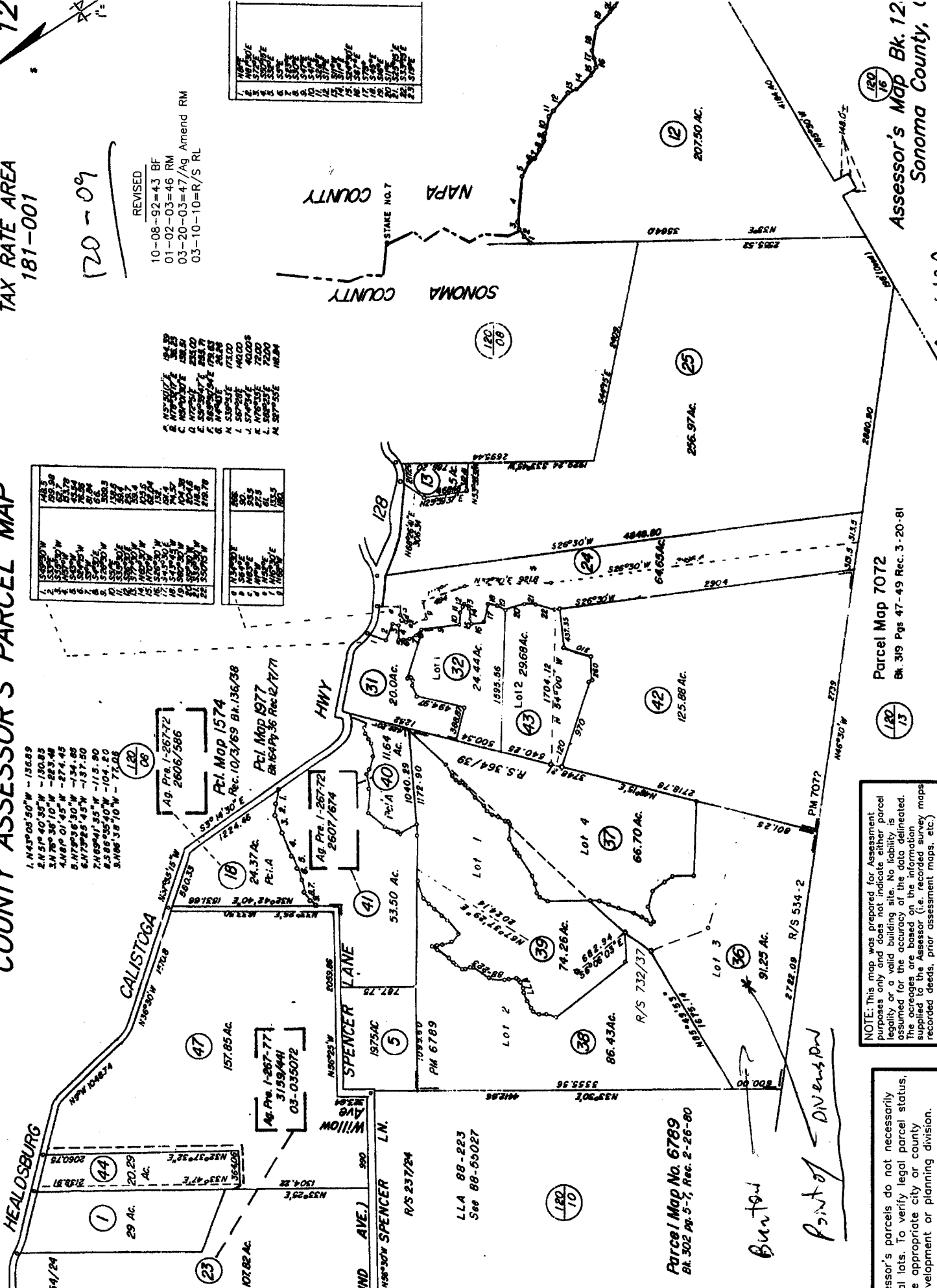
120-09

REVISED
10-08-92=43 BF
01-02-03=46 RM
03-20-03=47/Ag Amend RM
03-10-10=R/S RL

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NOTE: This map was prepared for Assessment purposes only and does not indicate either parcel legality or a valid building site. No liability is assumed for the accuracy of the data delineated. The acreages are based on the information supplied to the Assessor (i.e. recorded survey maps, recorded deeds, prior assessment maps, etc.)

essor's parcels do not necessarily all lots. To verify legal parcel status, e appropriate city or county velopment or planning division.

Parcel Map 7072
Bk. 319 Pgs 47-49 Rec. 3-20-81

Assessor's Map Bk. 12
Sonoma County,
HYBRID 3/10/10 RL
LOT 076

Parcel Map No. 6789
Bk. 302 Pgs 5-7, Rec. 2-26-80

LLA 88-223
S88 88-55027

Burtol
Printed by D. Venzon

Book 120 Pgs 09