

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

ORDER WR 2019 - 0053 - EXEC

In the Matter of the Diversion and Use of Water by
RHYS VINEYARDS LLC

**ORDER APPROVING SETTLEMENT AGREEMENT
AND CEASE AND DESIST ORDER**

BY THE EXECUTIVE DIRECTOR¹

1.0 INTRODUCTION

This matter comes before the Executive Director of the State Water Resources Control Board (State Water Board or Board) following negotiation for an Administrative Civil Liability (ACL) before issuance to Rhys Vineyards LLC (Settling Respondent). In accordance with the Settlement Agreement and Stipulation for Proposed Orders ("Settlement Agreement"), attached herein as Exhibit A, the State Water Board's Division of Water Rights Prosecution Team (Water Rights Prosecution Staff) and Rhys Vineyards LLC have agreed to settle this matter in lieu of proceeding to ACL complaint, Cease and Desist Order (CDO), or both. California Department of Fish & Wildlife, North Coast Regional Water Quality Control Board, Water Rights Prosecution Staff and Rhys Vineyards LLC are collectively referred to as the Parties. Together, the Parties engaged in joint settlement discussions and executed the attached Settlement Agreement before Water Rights Prosecution Staff issued an ACL complaint, draft CDO, or both.

The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60.

¹ State Water Board Resolution No. 2012 - 0061 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

2.0 BACKGROUND

The Settling Respondent is alleged to have violated Water Code section 1052, for which the State Water Board may impose civil liability. Specifically, three reservoirs constructed or operated by the Settling Respondent is alleged to be unauthorized diversions of water constituting a trespass.

Reservoir 1, located on APN's 015-050-61-00 and 015-050-60-00 is located on-stream to an ephemeral drainage, a tributary to the South Fork Eel River, and has an estimated capacity of 7.2 acre-feet.

Reservoir 2 and Reservoir 3 are located on APN 015-050-62-00. Reservoir 2 has an estimated storage capacity of 9.8 AF. Reservoir 3 has an estimated storage capacity of 4.6 AF. Both reservoirs divert water from perennial streams, tributaries to the North Fork Ten Mile River. Two Statements of Diversion and Use (Statement) subsequently filed for Reservoirs 2 and 3 on July 20, 2016 identifies that these two ponds support 50 head of cattle.

On September 29, 2015 Water Rights Prosecution Staff conducted a site inspection accompanied by the California Department of Fish & Wildlife, North Coast Regional Water Quality Control Board, and U.S. Army Corps of Engineers.

On June 21, 2016, Water Rights Prosecution Staff sent by certified mail a copy of the Division's September 29, 2015 Report of Inspection ("ROI") to Kevin Harvey and Rhys Vineyards LLC. The ROI documents three on-stream unauthorized diversions. Water Rights Prosecution Staff provided the Diverter 30 days from the date of the ROI to come into compliance with the State Water Board's permitting authority by satisfying one of the following requirements: 1) provide evidence satisfactory to the State Water Board that demonstrates the reservoirs do not seasonally store water, or can be operated without storing water subject to the State Water Board's permitting authority; or 2) remove the

reservoirs or render them incapable of storing water or 3) File an application and/or registration with the State Water Board seeking permission to appropriate water for beneficial use, and cease any unauthorized diversion of water to the reservoirs until the necessary permit or registration is obtained. Water Rights Prosecution Staff also instructed the Settling Respondent to submit a Statement for each point of diversion within the 30-day period.

The Settling Respondent has filed a compliance plan for Reservoir 1 by submitting a plan to operate the reservoir without storing water subject to the State Water Board's permitting authority to the Permitting and License Section of the Division of Water Rights.

On February 22, 2017 a consultant submitted a Livestock Stockpond Use application on the Settling Respondent's behalf for Reservoir 2 and Reservoir 3.

The Parties agreed to settle the matters identified in the Settlement Agreement before Water Rights Prosecution Staff issued an ACL complaint, draft CDO, or both.

3.0 SETTLEMENT AGREEMENT

The Parties executed the Settlement Agreement attached hereto. The general terms of the settlement adopted in this Order are that Rhys Vineyards LLC waives its rights to reconsideration of this Order, pays a penalty of \$37,500, and agrees to the terms to cease and desist as described in the Settlement Agreement and Stipulation for Proposed Orders, paragraph 19, and incorporated herein. The Settlement Agreement includes other requirements subject to an order issued by the North Coast Regional Water Quality Control Board and enforcement by the Department of Fish and Wildlife.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Water Rights Prosecution Staff and Rhys Vineyards LLC is approved and the Settling Respondent shall:

1. Pay a total of \$37,500 by cashier's check or money order to the *State Water Board Water Rights Fund* no later than 30 days from issuance of this Order; and
2. Comply with the Stipulation for Water Right Compliance in Paragraph 19.a through 19.f.

This Order also constitutes a Cease and Desist Order for purposes of Division 2, Part 2, chapter 12 of the California Water Code (commencing with section 1825). Violations of this Settlement Agreement and the Order will be subject to further enforcement under Water Code section 1845 at the discretion of the State Water Board.

Upon the failure of any person or entity to comply with a Cease and Desist Order issued by the State Water Board, and upon the request of the State Water Board, the Attorney General shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Wat. Code, § 1845, subd. (a).)

Section 1845, subdivision (b) of the Water Code provides:

- (1) A person or entity who violates a cease and desist order issued pursuant to this chapter may be liable in an amount not to exceed the following:
 - (A) If the violation occurs in a critically dry year immediately preceded by two or more consecutive below normal, dry, or critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based on drought conditions, ten thousand dollars (\$10,000) for each day in which the violation occurs.
 - (B) If the violation is not described by subparagraph (A), one thousand dollars (\$1,000) for each day in which the violation occurs.

- (2) Civil liability may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums.
- (3) Civil liability may be imposed administratively by the board pursuant to Section 1055.

STATE WATER RESOURCES CONTROL BOARD



Eileen Sobeck
Executive Director

Dated:

SETTLEMENT AGREEMENT AND STIPULATION FOR PROPOSED ORDERS

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Proposed Orders ("Settlement Agreement") is entered into by and between the Prosecution Staff for the North Coast Regional Water Quality Control Board ("Water Quality Prosecution Staff"), Prosecution Staff for the State Water Resources Control Board ("State Water Board"), Division of Water Rights, the California Department of Fish and Wildlife ("Fish and Wildlife"), and Rhys Vineyards, LLC ("Settling Respondent") (collectively "Parties") and is presented to the North Coast Regional Water Quality Control Board ("Regional Water Board") and State Water Board for adoption as orders, by settlement, pursuant to Government Code section 11415.60.

As discussed in greater detail below, it is alleged that Settling Respondent violated laws and regulations for which the Regional Water Board, State Water Board, and Fish and Wildlife may seek administrative and judicial penalties. The alleged violations resulted from and/or are related to the Settling Respondent filling a wetland and stream to construct a vineyard, improper construction and maintenance of roads and stream crossings, and building and operating one on-stream reservoir and operating two additional on-stream reservoirs without obtaining necessary permits or authorization from the Regional Water Board, State Water Board, and Fish and Wildlife.

Section II: RECITALS

1. The Settling Respondent conducted activities resulting in the alleged violations on the Clarke Ranch (Property), which straddles the divide between the South Fork Eel River and the Ten Mile River watersheds. The South Fork Eel River and the Ten Mile River and their respective tributaries are waters of the state, as well as waters of the United States (references hereinafter to waters of the United States include waters of the state). The Property is subject to the requirements set forth in Clean Water Act ("CWA") sections 301 and 401, Water Code section 13376, and waste discharge prohibitions specified by the Water Quality Control Plan for the North Coast Region ("Basin Plan").
2. CWA section 301 (33 U.S.C. § 1311) and Water Code section 13376 prohibit the discharge of dredge and fill materials to surface waters except in compliance with an Army Corp of Engineers CWA section 404 dredge and fill permit and a CWA section 401 water quality certification from the Regional Water Board.
3. The Regional Water Board adopted the Basin Plan on March 20, 1975, and then thereafter amended it on March 25, 1976 and again in January 2007. The Basin Plan establishes water quality objectives, designates beneficial uses, and contains discharge prohibitions. The Basin Plan's Action Plan for Logging, Construction, and Associated Activities contains the following discharge prohibitions:

Prohibition 1 - The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.

Prohibition 2 - The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could be passed into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.

4. Water Code section 1052 prohibits the diversion or use of water subject to Division 2 of the Water Code, other than as authorized in that Division, and defines such unauthorized diversion or use as a trespass for which the State Water Board may impose civil liability. During a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based on drought conditions, the State Water Board may administratively impose civil liability not to exceed a sum of \$1,000 for each day the trespass occurs and \$2,500 for each acre-foot of water diverted or used in excess of that diverter's water right. For unauthorized diversion or use during any other period, the State Water Board may administratively impose civil liability not to exceed a sum of \$500 for each day the trespass occurs.
5. Fish and Game Code section 5650 makes it unlawful to deposit in, permit to pass into, or place where it can pass into the waters of the state materials deleterious to fish, plant life, mammals, or bird life. "Waters of the state," under Fish & Game Code section 89.1, means "waters of the state" as defined in California Water Code section 13050, subdivision (e), including all surface water or groundwater within the boundaries of the state.
6. Fish and Game Code section 1602 generally makes it unlawful to substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of any river, stream, or lake or deposit or dispose of debris, waste, or other material where it may pass into any river, stream, or lake without submitting a written notification and fee to Fish and Wildlife and obtaining from the agency a lake or streambed alteration agreement, if one is needed.
7. The Settling Respondent is alleged to have violated CWA section 301, Water Code section 13376, and Basin Plan Prohibitions 1 and 2 cited above by discharging sediment while conducting activities that included constructing a vineyard on top of a stream and wetland by grading and filling a water of the

United States, discharging earthen and woody debris at numerous stream crossings, increasing hillslope instability, and filling additional wetlands through grading, road construction, and active use of the Property without adequate erosion controls. The alleged violations are subject to administrative civil liability, pursuant to Water Code section 13385, subdivision (c). Based on information the Settling Respondent provided through their consultant in response to a Notice of Violation by the Regional Water Board, the Settling Respondent placed a total of 537 cubic yards (108,460 gallons) of fill in 2,148 feet of the stream bed and 2,178 cubic yards (439,901 gallons) of fill in 0.54-acre of wetland. The Regional Water Board is authorized to impose administrative civil liability for these violations, referred to as the "Discharge Violations," pursuant to Water Code section 13385, subdivision (c). The Discharge Violations are described in the Regional Water Board staff reports dated September 29, 2015 and January 13, 2017 staff report included in Attachment A.

8. The Settling Respondent is alleged to have violated Water Code section 1052, for which the State Water Board may impose civil liability. Specifically, one reservoir constructed and operated and two reservoirs operated by the Settling Respondent are alleged to be unauthorized diversions of water constituting a trespass for which the State Water Board may impose civil liability in an amount not to exceed \$500 for each day that the unauthorized diversion or use of water occurs or, during a proclaimed state of emergency under the California Emergency Services Act (Govt. Code § 8550 *et seq.*) based on drought conditions, a sum not to exceed \$1,000 for each day the trespass occurs and \$2,500 for each acre-foot of water diverted or used in excess of that diverter's water right. These violations are referred to as "State Water Board Violations." The Settling Respondent agrees to pay the liability for the State Water Board Violations to the State Water Board in accordance with this Settlement Agreement. The State Water Board Violations are described in the Report of Inspection, sent to the Settling Respondent by certified mail on June 21, 2016 ("Attachment B").
9. The Settling Respondent is alleged to have violated Fish and Game Code sections 5650 and 1602 by discharging sediment while conducting activities that included constructing a vineyard on top of a stream and wetland by grading and filling a water of the state, discharging earthen and woody debris at numerous stream crossings, filling additional wetlands through grading, road construction, and active use of the Property without adequate erosion controls, and obstructing the flow of an unnamed tributary by creating an earthen dam across the creek, all without first notifying Fish and Wildlife as required under Fish and Game Code section 1602. These violations are referred to as "Fish and Wildlife Violations." The Regional Water Board is not authorized to impose administrative civil liability for these violations; nevertheless, the Parties agree to settle these matters and the Settling Respondent agrees to pay the liability for the Fish and Wildlife Violations in accordance with this Settlement Agreement.

10. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy ("Enforcement Policy"). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. Although the Enforcement Policy was updated in 2017, the Discharge Violations occurred while the 2010 Enforcement Policy remained in effect. Therefore, the Discharge Violations remain subject to the substantive provisions of the 2010 Enforcement Policy.
11. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The Water Quality Prosecution Staff considered the methodology set forth in the Enforcement Policy for the Discharge Violations, as shown in Attachment A, which is attached hereto and incorporated by reference as though fully set forth herein.
12. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Settlement Agreement and a proposed order to the Regional Water Board for adoption as an order by settlement, pursuant to Government Code section 11415.60. To resolve the violations alleged by consent, the Parties have agreed to the imposition of \$3,763,391 in liability against the Settling Respondent, and to the Scope of Work set forth in Attachment C the Settling Respondent must perform. The amount of administrative civil liability imposed pursuant to this Settlement Agreement is the amount calculated by Water Quality Prosecution Staff using the Enforcement Policy, and exceeds the estimated economic benefit plus ten percent and staff costs, and includes Fish and Wildlife and State Water Board penalties, which are in addition to the penalties described in Attachment C. In addition, a portion of the overall liability (\$1,651,376) shall be suspended pending completion of the Lower Ten Mile River Supplemental Environmental Project ("SEP") described in Attachment D. Water Quality Prosecution Staff believe this resolution of the alleged violations is fair and reasonable, fulfills its enforcement objectives, and that no further action is warranted concerning the Discharge Violations, except as provided in this Settlement Agreement, and that this Settlement Agreement is in the best interest of the public.
13. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Settlement Agreement and a proposed order to the State Water Board for adoption as an order by settlement, pursuant to Government Code section 11415.60. To resolve the State Water Board Violations alleged by consent, the Parties have agreed that the Settling Respondent will complete the activities described in Paragraph 19. The Parties will submit this Settlement Agreement and a draft approving order to the State Water Board Executive Director for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement before an agency pleading. The requirements described in Paragraph 16.c and Paragraph 19 of this Settlement Agreement will become effective when the State Water Board's Executive Director issues an order approving the settlement,

provided that the Parties concur in any substantive changes to the approving order proposed by the Executive Director.

Section III: STIPULATIONS

The Parties stipulate to the following:

14. **Recitals Incorporated:** The preceding Recitals are incorporated herein.
15. **Administrative Civil Liability:** The Settling Respondent hereby agrees to the imposition of an administrative civil liability totaling **\$3,763,391**. Recovery of this liability amount includes and is in excess of the estimated costs incurred by Regional Water Board staff (\$23,139.38) and State Water Board staff (\$9,469) to investigate and prosecute this action. The allocation and payment of liability is discussed in greater detail in Paragraph 16.
16. **Payment of Administrative Civil Liability:** No later than 30 days from issuance of the Order, the Settling Respondent agrees to pay a total of \$3,763,391 in administrative civil liability as follows:
 - a. **For the North Coast Regional Water Quality Control Board:**
 - i. For administrative civil liability and staff costs, a total of \$1,674,515 by cashier's check or money order payable to the *State Water Pollution Cleanup and Abatement Account* and mailed to the State Water Resources Control Board, Accounting Office, ATTN: ACL Payment, P.O. Box 1888, Sacramento, California 95812-1888, with a copy mailed to Joshua Curtis, Assistant Executive Officer, North Coast Regional Water Quality Control Board, 5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403. A copy of the cashier's check or money order shall be provided to Kenneth Petruzzelli, State Water Resources Control Board, Office of Enforcement, 801 K Street, 23rd Floor, Sacramento, California 95814. The remaining \$1,651,376 in administrative civil liability (referred to as the "SEP Amount") shall be suspended upon completion of the Lower Ten Mile River SEP, described in Paragraph 17 herein and in the SEP Proposal in Attachment D.
 - ii. The State Water Board last updated its Supplemental Environmental Project (SEP) Policy, which applies to the Regional Water Board, in 2017, and the State Water Board adopted the amended SEP Policy on December 5, 2017 before the effective date of the revisions to section 162 of the Internal Revenue Code that year, and currently has no position as to whether a SEP constitutes restitution, including remediation of property, for damage or harm which was or may have been caused by the violation of any law or the potential violation of any law, or is paid to

come into compliance with any law which was violated or otherwise involved in the investigation or inquiry related to the violation or potential violation. However, for purposes of this settlement, this Settlement Agreement recognizes that the SEP Amount constitutes restitution, including remediation of property, for damage or harm that was or may have been caused by the violation of a law of the potential violation of a law under section 162, subdivision (f)(2) of the Internal Revenue Code, as amended in 2017. The Settling Respondents recognize, at this time, that the Regional Water Board is not required to make a return to the Internal Revenue Service.

- b. **For the Department of Fish and Wildlife:** A total of \$400,000 shall be paid as follows:
- i. A total of \$183,378.55 by cashier's check or money order payable to the *Department of Fish and Wildlife* and mailed to Lisa Wolfe, Attorney III, P.O. Box 160362, Sacramento, CA 95816-0362 for deposit into Fish and Wildlife's Fish and Wildlife Pollution Account.
 - ii. A total of \$118,824 by cashier's check or money order payable to *The Nature Conservancy* and mailed to The Nature Conservancy, Accounts Receivable, 201 Mission Street, 4th Floor, San Francisco, CA 94105, with the Project ID P119622 included in the notes line, for the Lower Ten Mile River SEP, described in Paragraph 17 herein and in the SEP Proposal in Attachment D. Fish and Wildlife currently has no position as to whether a SEP constitutes restitution, including remediation of property, for damage or harm which was or may have been caused by the violation of any law or the potential violation of any law, or is paid to come into compliance with any law which was violated or otherwise involved in the investigation or inquiry related to the violation or potential violation. However, for purposes of this settlement, this Settlement Agreement recognizes that this amount paid constitutes restitution, including remediation of property, for damage or harm that was or may have been caused by the violation of a law of the potential violation of a law under section 162, subdivision (f)(2) of the Internal Revenue Code, as amended in 2017. The Settling Respondents recognize, at this time, that Fish and Wildlife is not required to make a return to the Internal Revenue Service.
 - iii. A total of \$97,797.45 by cashier's check or money order payable to the *National Fish and Wildlife Foundation* and mailed to California Department of Fish and Wildlife, Office of Spill Prevention and Response, Legal Branch, P.O. Box 160362, Sacramento, California 95816-0362, for the Dutch Charlie Creek Instream Habitat Enhancement Project – Phase I. Fish and Wildlife currently has no

position as to whether the Dutch Charlie Creek Instream Habitat Enhancement Project – Phase I would constitute restitution, including remediation of property, for damage or harm which was or may have been caused by the violation of any law or the potential violation of any law, or is paid to come into compliance with any law which was violated or otherwise involved in the investigation or inquiry related to the violation or potential violation. However, for purposes of this settlement, this Settlement Agreement recognizes that this amount paid constitutes restitution, including remediation of property, for damage or harm that was or may have been caused by the violation of a law or the potential violation of a law under section 162, subdivision (f)(2) of the Internal Revenue Code, as amended in 2017. The Settling Respondents recognize, at this time, that Fish and Wildlife is not required to make a return to the Internal Revenue Service.

iv. A copy of each cashier's check or money order shall be provided to Kenneth Petruzzelli, State Water Resources Control Board, Office of Enforcement at 801 K Street, 23rd Floor, Sacramento, CA 95814.

c. **For the State Water Resources Control Board, Division of Water Rights:** A total of \$37,500 by cashier's check or money order payable to the *State Water Board Water Rights Fund* and mailed to State Water Resources Control Board, Division of Water Rights, Attn: Julé Rizzardo, P.O. Box 2000, Sacramento, CA 95812-2000. A copy of the cashier's check or money order shall be provided to Kenneth Petruzzelli, State Water Resources Control Board, Office of Enforcement at 801 K Street, 23rd Floor, Sacramento, CA 95814.

17. **Supplemental Environmental Project ("SEP"):** The Settling Respondent shall pay the SEP Amount of \$1,651,376 by cashier's check or money order payable to The Nature Conservancy ("TNC") and mailed to The Nature Conservancy, Accounts Receivable, 201 Mission Street, 4th Floor, San Francisco, CA 94105, with the Project ID P119622 included in the notes line, for the Lower Ten Mile River SEP described in Attachment D. The Lower Ten Mile River SEP is a project designed to increase available salmonid rearing habitat in the South Fork Ten Mile River through installation of large woody debris structures and construction of side channels and overflow channels. A more complete description of the SEP, including an implementation schedule, milestone dates, and budget, is contained in the SEP Proposal in Attachment D.

a. **Settling Respondent Agrees to Implement the SEP Through a Funding Agreement With The Nature Conservancy**

The Settling Respondent will implement the Ten Mile River SEP through a Funding Agreement with TNC, wherein the Settling Respondent will fund the

SEP for the SEP Amount, as described in this Settlement Agreement, and that TNC will effectuate the SEP. A copy of the Funding Agreement is attached to this Settlement Agreement as Attachment E. Although TNC has agreed to effectuate the Ten Mile River SEP, the Settling Respondent remains legally responsible for completion of the Ten Mile River SEP consistent with the requirements in this Settlement Agreement. Once Settling Respondent funds the Ten Mile River SEP, it shall not be required to further fund the SEP, even if TNC fails to perform or fails to complete the SEP work. Settling Respondent agrees to take all reasonably available steps to enforce the Funding Agreement.

b. Diligent Pursuit of all Necessary Permits and Other Applicable Agency Approvals

Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) agrees to diligently pursue all necessary permits and other applicable agency approvals to complete the Scope of Work included in Attachment D, including but not limited to a CWA section 404 permit from the Army Corps of Engineers, a CWA section 401 Water Quality Certification from the Regional Water Board, a lake or streambed alteration agreement from Fish and Wildlife, and agree to meet all local permitting requirements. Diligent pursuit of these approvals includes providing the required information and payment of all necessary fees.

c. SEP Progress Reports and Final Completion Date

The Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) shall provide quarterly reports of progress on the Lower Ten Mile River SEP to the Designated Regional Water Board Representative commencing on October 1, 2019 and continuing through the Certification of Completion described in Paragraph 17.f.ii, below. If no activity occurs during a quarter, a quarterly report so stating shall be submitted. The Lower Ten Mile River SEP shall be completed by December 31, 2021 (SEP Completion Deadline).

d. Request for Extension of Final SEP Completion Deadlines

If the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) cannot meet the SEP Completion Deadlines due to circumstances beyond its anticipation or control, the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) shall notify the Regional Water Board Executive Officer in writing within thirty (30) days of the date it first knew of the event or circumstance that caused or could have caused a violation of this Settlement Agreement. The notice shall describe the reason for the nonperformance and specifically refer to this Paragraph. The notice shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by the Settling

Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance. The Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) shall adopt all reasonable measures to avoid and minimize such delays.

The determination as to whether the circumstances were beyond the reasonable control of the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) and its agents will be made by the Regional Water Board Executive Officer. Where the Executive Officer concurs that compliance was or is impossible, despite the timely good faith efforts of the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent), due to circumstances beyond its control that could not have been reasonably foreseen and prevented by the exercise of reasonable diligence by the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent), a new compliance deadline shall be established and this Settling Agreement and Order and will be revised accordingly. The Regional Water Board Executive Officer will endeavor to grant a reasonable extension of time, if warranted.

e. Publicity Associated with SEP

If the Settling Respondent publicizes one or more elements of the Lower Ten Mile River SEP, it shall state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action by the Regional Water Board against the Settling Respondent.

f. Audits and Certification of SEP

i. Certification of Expenditures

The Regional Water Board has the right to require an audit of the funds the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) expends to implement the SEP. No later than March 21, 2022, the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) shall submit to the Designated Regional Water Board Representative a certified statement by the Settling Respondent (or TNC pursuant to a contractual agreement with the Settling Respondent) documenting the expenditures by Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) during the completion period for the Lower Ten Mile River SEP. In making such certification, the signatories may rely upon normal organizational project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) shall

provide any additional information requested by the Regional Water Board staff which is reasonably necessary to verify the expenditures of the Settling Respondent's funds for the Lower Ten Mile River SEP.

ii. **Certificate of Completion and Final Report**

On or before December 31, 2021 the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) shall complete the Lower Ten Mile River SEP and submit a Final Report under penalty of perjury, stating that the Lower Ten Mile River SEP has been completed in accordance with the terms of this Order.

g. **Regional Water Board Acceptance of Completed SEP**

Upon the Settling Respondent's satisfaction of its obligations under the Regional Water Board order approving this Settlement Agreement and the completion of the Lower Ten Mile River SEP and any audits, the Regional Water Board will issue a "Satisfaction of Order." The issuance of the Satisfaction of Order shall terminate any further obligations of the Settling Respondent under this Settlement Agreement.

h. **Failure to Expend Entire SEP Amount on the Approved SEP**

In the event that the Certification of Expenditures or an audit fail to demonstrate to the reasonable satisfaction of the Regional Water Board staff that the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) has spent the entire SEP Amount for the completed Lower Ten Mile River SEP, the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) shall pay the difference between the SEP Amount and the amount that the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) can demonstrate was actually spent on the Lower Ten Mile River SEP, as an administrative civil liability to the *State Water Pollution Cleanup and Abatement Account* within 30 days pursuant to the procedures identified in Paragraph 16.a after service of the Regional Water Board's determination. Upon confirmation of payment, the Regional Water Board will issue a Satisfaction of Order.

i. **Failure to Complete the SEP**

If the Lower Ten Mile River SEP is not fully implemented within the time required by the Regional Water Board Order, the Settling Respondent (or TNC, pursuant to a Funding Agreement with the Settling Respondent) shall pay the entire SEP Amount of \$1,651,376, less the value of any completed portion of the Lower Ten Mile River SEP.

18. **Stipulation for Future Compliance or Removal:** The Parties jointly stipulate and agree to the following terms and that those terms shall be enforceable as a Cleanup and Abatement Order issued in accordance with California Water Code section 13304 by the Regional Water Board:
- a. The Settling Respondent agrees to complete the Scope of Work described in Attachment C within the timelines established therein by October 15, 2024 to come into compliance with the law and for restoration or remediation. The Settling Respondent shall submit a Final Report by February 1, 2025 supporting/verifying that the Scope of Work described in Attachment C is complete.
 - b. Settling Respondent agrees to diligently pursue all necessary permits and other applicable agency approvals to complete the Scope of Work included in Attachment C, including but not limited to a CWA section 404 permit from the Army Corps of Engineers, a CWA section 401 Water Quality Certification from the Regional Water Board, a lake or streambed alteration agreement from Fish and Wildlife, and agree to meet all local permitting requirements. Diligent pursuit of these approvals includes providing the required information and payment of all necessary fees.
19. **Stipulation for Water Right Compliance:** The Parties jointly stipulate and agree to the following terms for compliance actions described below in Paragraph 19.a through Paragraph 19.f and that those terms shall be enforceable as a Cease and Desist Order issued in accordance with California Water Code section 1831. The Settling Respondent would undertake the compliance actions described below in Paragraph 19.a through Paragraph 19.f to come into compliance with the law and for restoration or remediation. The terms "Reservoir 1," "Reservoir 2," and "Reservoir 3" have the same meaning as those terms are used in Attachment B. The location of these reservoirs is shown as R-1, R-2 and R-3 on Attachment C-1, the "Map."
- a. The Settling Respondent shall diligently and in good faith implement the compliance plan for Reservoir 1, previously submitted to the State Water Board and dated June 29, 2018, that renders Reservoir 1 incapable of storing water subject to the State Water Board's permitting authority. The Settling Respondent shall satisfy all requests from the Division of Water Rights for information within the designated time frames allowed in the plan, or any extension of time granted by the Assistant Deputy Director for the Division of Water Rights ("Assistant Deputy Director"), until implementation of the compliance plan is determined by the Assistant Deputy Director to be complete. The Settling Respondent shall, within 30 days of issuance of any permits, approvals, or waivers for the project, transmit copies to the Assistant Deputy Director. The Settling Respondent shall provide the Assistant Deputy Director written notice of any failure to

meet any milestone dates set forth in the compliance plan.

- b. Within 10 days of completing implementation of the compliance plan for Reservoir 1, the Settling Respondent shall submit to the Assistant Deputy Director documentation signed by a professional engineer certifying that the compliance plan has been fully implemented and Reservoir 1 does not store water subject to the State Water Board permitting authority. The Assistant Deputy Director shall provide a written determination of whether implementation of the compliance plan is complete.
- c. The Settling Respondent shall diligently work with the Permitting and Licensing Section in the Division of Water Rights to complete the Livestock Stockpond Use application for Reservoir 2. The Settling Respondent shall satisfy all requests for information within the time frames the Permitting and Licensing Section designates. If the Livestock Stockpond Use application for Reservoir 2 is approved, the Settling Respondent shall notify the Assistant Deputy Director within 10 days of the approval.
- d. If the Livestock Stockpond Use application for Reservoir 2 is cancelled or denied, the Settling Respondent shall notify the Assistant Deputy Director of the cancellation or denial within 30 days. Within 150 days of notifying the Assistant Deputy Director of the cancellation or denial of the Livestock Stockpond Use application for Reservoir 2, the Settling Respondent shall submit a plan to the Assistant Deputy Director for permanently rendering Reservoir 2 incapable of storing water subject to the State Water Board's permitting authority. The plan shall include a time schedule not to exceed two years for completion of the proposed alteration and the identification of any permits or agreements necessary from other federal, state, and local agencies to complete the work. The Settling Respondent shall diligently comply with all provisions and time schedules of the plan. If the Settling Respondent is unable to comply fully with the plan due to other federal, state, or local agencies with authority over the work required, the Settling Respondent shall immediately alert the Assistant Deputy Director of the reason for the delay and any problems with fully complying with the provisions of the plan and diligently work to overcome such obstacles.
- e. The Settling Respondent shall diligently work with the Division of Water Rights, Permitting and Licensing Section to complete the Livestock Stockpond Use application for Reservoir 3. The Settling Respondent shall satisfy all requests for information within the time frames the Permitting and Licensing Section designates. If the Livestock Stockpond Use application for Reservoir 3 is approved, the Settling Respondent shall notify the Assistant Deputy Director within 10 days of the approval.

- f. If the Livestock Stockpond Use application for Reservoir 3 is cancelled or denied, the Settling Respondent shall notify the Assistant Deputy Director of the cancellation or denial within 30 days. Within 150 days of notifying the Assistant Deputy Director of the cancellation or denial of the Livestock Stockpond Use application for Reservoir 3, the Settling Respondent shall submit a plan to the Assistant Deputy Director for permanently rendering Reservoir 3 incapable of storing water subject to the State Water Board's permitting authority. The plan shall include a time schedule not to exceed two years for completion of the proposed alteration and the identification of any permits or agreements necessary from other federal, state, and local agencies to complete the work. The Settling Respondent shall diligently comply with all provisions and time schedules of the plan. If the Settling Respondent is unable to comply fully with the plan due to other federal, state, or local agencies with authority over the work required, the Settling Respondent shall immediately alert the Assistant Deputy Director of the reason for the delay and any problems with fully complying with the provisions of the plan and diligently work to overcome such obstacles.
20. **Compliance with Applicable Laws:** The Settling Respondent understands that payment of administrative civil liability in accordance with the terms of this Settlement Agreement is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may be subject to further enforcement, including additional administrative civil liability.
21. **Party Contacts for Communications related to this Settlement Agreement:**

For the Regional Water Board:

Joshua Curtis
Assistant Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Blvd. Suite A.,
Santa Rosa, CA 95403
Phone: (707) 543-7128
Joshua.Curtis@Waterboards.ca.gov

Kenneth Petruzzelli, Attorney III
Office of Enforcement
State Water Resources Control Board
801 K Street, 23rd Floor
Sacramento, CA 95814
Phone: (916) 319-8577
kenneth.petruzzelli@waterboards.ca.gov

For Rhys Vineyards LLC:

Tina Wallis
Law Offices of Tina Wallis, Inc.
3581 Westwind Blvd.
Santa Rosa, CA 95403
Phone: (707) 595-8681
twallis@twallislaw.com

Rhys Vineyards
Attn.: Luciel Leis
2965 Woodside Rd.
Woodside, CA 94062
Phone: 650-234-3982
Lleis@rhysvineyards.com

For the State Water Board:

Skyler Anderson
Senior Environmental Scientist
North Coast Enforcement Unit
Division of Water Rights
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
Phone: (916) 341-5307
Skyler.anderson@waterboards.ca.gov

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kenneth.petruzzelli@waterboards.ca.gov

For Fish & Wildlife:

Lisa V. Wolfe, Attorney III
Office of Spill Prevention and Response
California Department of Fish and Wildlife
P.O. Box 160362
Sacramento, CA 95816-0362
Phone: (916) 327-9952
lisa.wolfe@wildlife.ca.gov

22. **Media Notifications:** Solely as a courtesy, the Settling Respondent shall be notified and provided a copy of any media notification or press release no less than 72 hours before a media notification or press release is issued.
23. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
24. **Matters Addressed by Stipulation:**
- a. Upon adoption by the Regional Water Board as an Order, this Settlement Agreement represents a final and binding resolution, subject to Paragraph 17.d) and settlement of all claims, violations or causes of action for the Discharge Violations alleged herein, or which could have been asserted against the Settling Respondent, as of the date this Settlement Agreement is signed. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Paragraph 16.a and 16.c, and the Settling Respondent's full satisfaction of the obligations described in Paragraphs 17 and 18.
 - b. Upon adoption by the State Water Board as an Order, this Settlement Agreement represents a final and binding resolution and settlement of all claims, violations or causes of action for the State Water Board Violations alleged herein, or which could have been asserted against the Settling Respondent, as of the date this Settlement Agreement is signed. The provisions of this Paragraph are expressly conditioned on the Settling Respondent's full satisfaction of the obligations described in Paragraph 19.
25. **Public Notice:**
- a. The Parties agree that this Settlement Agreement, as signed by the Parties, and the proposed order for the Regional Water Board will be noticed for a 30-day public comment period prior to being presented to the Regional Water Board for adoption. If the Regional Water Board Assistant Executive Officer or other Water Quality Prosecution Staff receives significant new information that reasonably affects the propriety of presenting this Settlement Agreement to the Regional Water Board for adoption as an Order by settlement, the Assistant Executive Officer may unilaterally declare this Settlement Agreement void and decide not to present the Order to the Regional Water Board. The Settling Respondent agrees that it may not rescind or otherwise withdraw approval of this proposed Settlement Agreement.

- b. The Settling Parties agree that the proposed Order for the State Water Board will be included in the notice above, under Paragraph 25.a, prior to being presented to the State Water Board. If significant new information is received that significantly affects the propriety of presenting this Settlement Agreement to the State Water Board for adoption as an Order by settlement, the Executive Officer may unilaterally declare this Settlement Agreement void and decide not to present the Order to the State Water Board.
26. **Interpretation:** This Settlement Agreement shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Settling Respondent is represented by counsel in this matter.
27. **Modification:** This Settlement Agreement shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties and approved by the Regional Water Board and State Water Board.
28. **If Order Does Not Take Effect:** In the event that this Settlement Agreement does not take effect because it is not approved by the Regional Water Board, or its delegate, or by the State Water Board, or its delegate, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that it expects to proceed to one or more contested evidentiary hearings before the Regional Water Board, the Water Board, or both, to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including:
- a. Objections related to prejudice or bias of any of the Regional Water Board or State Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board and State Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Settlement Agreement and proposed order approving the Settlement Agreement, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review, but only to the extent this period has been extended by these settlement proceedings.
29. **Regional Water Board, State Water Board and Fish and Wildlife Shall Not Enforce on Each Other's Behalf:** The Regional Water Board, State Water

Board, and Fish and Wildlife are each responsible for enforcing this Order with respect to the matters falling under their respective jurisdiction.

30. **Waiver of Hearing:** The Settling Respondent has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waive their right to an evidentiary hearing before the Regional Water Board prior to the adoption of the Order. The Settlement Agreement will be heard as a settlement agreement before the Regional Water Board, but the hearing will not be an evidentiary hearing.
31. **Waiver of Right to Petition:** The Settling Respondent hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
32. **No Precedent:** This Settlement Agreement involves unique facts and legal issues and shall not be used as a precedent decision of the State Water Board.
33. **Waiver of Reconsideration:** The Settling Respondent waive the right to request reconsideration of the State Water Board Order approving this Settlement Agreement, provided no material modifications to this Settlement Agreement or additional requirements beyond the requirements of this Settlement Agreement are included in that order.
34. **Additional Documents:** The Parties agree that they will cooperate fully in executing any additional documents necessary to give full effect to this Settlement Agreement.
35. **Settling Respondent' Covenant Not to Sue:** The Settling Respondent's covenant not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to this Settlement Agreement.
36. **Reasonableness of Settlement:** The Parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.
37. **Entire Agreement:** This Settlement Agreement reflects and represents the entire agreement between and among the parties and supersedes any and all prior understandings, representations, and agreements whether written or unwritten. Each party represents that it has not relied on any inducements, promises or representations made by the other party other than those contained in this Settlement Agreement.

38. **Section Headings:** The Parties intend that the paragraph headings of this Settlement Agreement be used solely as a convenient reference and that it shall not in any manner amplify, limit, modify or otherwise aid in the interpretation of this Settlement Agreement.
39. **Choice of Law:** This Settlement Agreement shall be interpreted and governed by the laws of the State of California.
40. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board or State Water Board under the terms of this Settlement Agreement shall be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Regional Water Board or State Water Board regarding submissions or notices shall be construed to relieve the Settling Respondent of the obligation to obtain any final written approval required by this Settlement Agreement.
41. **Authority to Bind:** Each person executing this Settlement Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Settlement Agreement on behalf of and to bind the entity on whose behalf he or she executes the Settlement Agreement.
42. **Additional Documents:** Each Party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Settlement Agreement.
43. **Independent Judgment:** Each Party represents and declares that in executing this Settlement Agreement it is relying solely on its own judgment, knowledge and belief concerning the nature, extent and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in the execution of this Settlement Agreement by any representations or statements regarding any matters made by other parties hereto or by any person representing them. The parties are represented by counsel.
44. **Successors and Assigns:** This Settlement Agreement is binding on any successors or assigns of the Settling Respondent, the Regional Water Board, the State Water Board, and Fish and Wildlife.
45. **Effective Date:**
 - a. The obligations under Paragraphs 15 through 18 of this Settlement Agreement are effective and binding only upon the entry of an Order by the Regional Water Board, which incorporates the terms of this Settlement Agreement.

- b. The obligations under Paragraph 19 of this Settlement Agreement are effective and binding only upon the entry of an Order by the State Water Board, which incorporates the terms of this Settlement Agreement.
- 46. **Severability:** This Settlement Agreement is severable; should any provision be found invalid or should the Regional Water Board or State Water Board fail this Settlement Agreement, the remainder shall remain in full force and effect.
- 47. **Counterpart Signatures:** This Settlement Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED.

North Coast Water Quality Control Board Prosecution Staff
North Coast Region

By:  Digitally signed by Joshua Curtis
Date: 2019.06.19 12:41:59
Joshua Curtis
Assistant Executive Officer

Date: _____

State Water Resources Control Board
Division of Water Rights, Permitting and Enforcement Branch

By: _____
Julé Rizzardo
Assistant Deputy Director

Date: _____

Department of Fish and Wildlife

By: _____
Thomas M. Cullen Jr.
Administrator
Office of Spill Prevention and Response

Date: _____

Settling Respondent

By: _____
Robert J. Guenley
Chief Financial Officer
Rhys Vineyards LLC

Date: _____

IT IS SO STIPULATED.

North Coast Water Quality Control Board Prosecution Staff
North Coast Region

By: _____
Joshua Curtis
Assistant Executive Officer

Date: _____

State Water Resources Control Board
Division of Water Rights, Permitting and Enforcement Branch

By: Juli Rizzardo
Juli Rizzardo
Assistant Deputy Director

Date: 06/19/19

Department of Fish and Wildlife

By: _____
Thomas M. Cullen Jr.
Administrator
Office of Spill Prevention and Response

Date: _____

Settling Respondent

By: _____
Robert J. Guenley
Chief Financial Officer
Rhys Vineyards LLC

Date: _____

IT IS SO STIPULATED.

North Coast Water Quality Control Board Prosecution Staff
North Coast Region

By: _____
Joshua Curtis
Assistant Executive Officer

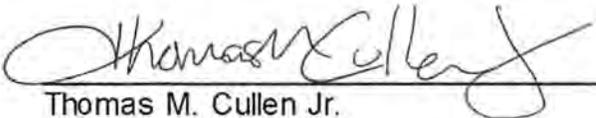
Date: _____

State Water Resources Control Board
Division of Water Rights, Permitting and Enforcement Branch

By: _____
Julé Rizzardo
Assistant Deputy Director

Date: _____

Department of Fish and Wildlife

By:  _____
Thomas M. Cullen Jr.
Administrator
Office of Spill Prevention and Response

Date: _____

Settling Respondent

By: _____
Robert J. Guenley
Chief Financial Officer
Rhys Vineyards LLC

Date: _____

IT IS SO STIPULATED.

North Coast Water Quality Control Board Prosecution Staff
North Coast Region

By: _____
Joshua Curtis
Assistant Executive Officer

Date: _____

State Water Resources Control Board
Division of Water Rights, Permitting and Enforcement Branch

By: _____
Julé Rizzardo
Assistant Deputy Director

Date: _____

Department of Fish and Wildlife

By: _____
Thomas M. Cullen Jr.
Administrator
Office of Spill Prevention and Response

Date: _____

Settling Respondent

By: _____

Robert J. Guenley
Chief Financial Officer
Rhys Vineyards LLC

Date: 4/20/19

ATTACHMENTS:

- Attachment A – Administrative Civil Liability Methodology for Discharge Violations
- Attachment B – Division of Water Rights Report of Investigation
- Attachment C – Scope of Work (Sediment and Roads)
- Attachment D – South Fork Ten Mile Scope of Work and Budget
- Attachment E – Rhys Vineyards-TNC Funding Agreement

Attachment A: Penalty Methodology

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- Item 1: Penalty Methodology
- Item 2: Attachment A-1: Rhys Vineyards 6-30-2017 response to NOV/13267
- Item 3: Attachment A-2: Regional Water Board September 29, 2015, Inspection Report
- Item 4: Attachment A-3: Regional Water Board January 13, 2017, Inspection Report
- Item 5: Attachment A-4: Mitigation Assessment Temporal Loss
- Item 6: Attachment A-4 A: Determining Mitigation Ratios
- Item 7: Attachment A-4 B: 12501.2 SPD Wetland Loss Mitigation Calculator
- Item 8: Attachment A-4 C: 12501.2 SPD Stream Loss Mitigation Calculator
- Item 9: Attachment A-4 D: Rhys stream dredge and fill calculator
- Item 10: Attachment A-4 E: Rhys wetland dredge and fill calculator
- Item 11: Attachment A-4 F: Rhys Stream Loss Analysis-East Contra Costa County HCP (permanent impacts)
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- Item 14: Attachment A-4 I: Rhys Vineyards Stream Loss -East Contra Costa County HCP (permanent impacts)

Attachment 1 Calculation of Penalties

The State Water Resources Control Board's Water Quality Enforcement Policy ("Enforcement Policy") of 2010 applies to this analysis and establishes a methodology for determining administrative civil liability by addressing the factors that must be considered under California Water Code (Water Code) section 13385(e). Although the Enforcement Policy was updated in 2017, the discharges at issue occurred before the update. Therefore, the 2010 Enforcement Policy applies.

Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

The steps below provide the analysis of the enforcement policy methodology leading to the weighting of the penalty for two discharge violations, caused by the grading and complete earthen fill of 2148 feet of stream and a 0.54-acre interconnected wetland, which when functioning provided watershed services to downstream receiving waters. The analysis addresses the values of both habitats in terms of the beneficial uses at risk and the physical, chemical, and biologic processes that affect these waters through direct placement of earthen fill and grading at extents that leaves no habitat remaining.

Summary of alleged violation: Unauthorized point source and non-point source discharge of waste to waters of the United States and to Waters of the State.

Section 301 of the Clean Water Act prohibits the discharge and dredge and fill of waters of the United States without first receiving the required permits and permissions as ensconced in Clean Water Code sections 401 and 404. The Water Code section 13243 authorizes the development of regional plans and policies often referred to and included within a regional Water Quality Control Plan. The Water Quality Control Plan for the North Coast Basin (Basin Plan)¹ prohibits the discharge and threat of discharge of point source waste and of non-point source waste into to waters of the State and the United States, respectively, without a National Pollutant Discharge Elimination System permit or waste discharge requirements. The discharge caused by developing a vineyard on top of a stream and wetland completely filling and grading these natural waters is a violation of Clean Water Act section 301 and Water Code section 13376; such violations are subject to administrative civil liability pursuant to Water Code section 13385(c).

Specifically, the following prohibitions represent potential charges of water code violations for the discharge subject to the enforcement policy penalty methodology as assessed herein.

Water Code section 13376

A person who discharges pollutants or proposes to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state or a person who discharges dredged or fill material or proposes to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with the procedures set forth in Water Code section 13260.

¹ https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/083105-bp/basin_plan.pdf

Basin Plan Action Plan for Logging, Construction, and Associated Activities

The following waste discharge prohibitions pertain to logging, construction, and associated activities in the North Coast Region.

1. The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.
2. The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.

These violations described herein are administratively prosecutable under separate subsections of the Water Code section 13385 (a) (1) (4) and (5).

(1) Section 13375 or 13376

(4) An order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(5) A requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the federal Clean Water Act (33 U.S.C. Sec. 1311, 1312, 1316, 1317, 1318, 1341, or 1345), as amended.

Step 1. Potential for Harm for Discharge Violations

The potential for harm is assessed by evaluating three factors and is the sum of the factors: 1) the potential for harm to beneficial uses, 2) the physical, chemical, biological or thermal characteristics of the discharge, and 3) the susceptibility for cleanup or abatement (<50%).

Factor 1: Harm or Potential Harm to Beneficial Uses (Score=Major-5)

Although the ensuing discussion of the actual or potential for harm to beneficial uses is primarily stream oriented, wetlands share beneficial uses and promote good water quality through the surface and subsurface interactions inherent to the hydrologic and ecologic interactions of flows and organisms across the habitat gradients relative to connected streams and wetlands. Wetlands are almost always linked with streams; if not surficial, then through groundwater interaction. In this instance we know that they are linked based upon the information provided by LACO Associates, an engineering firm the Discharger retained to perform various engineering services, including filing a Report of Waste Discharge. (Attachment 1) which includes the LACO Forensic Wetland Delineation (LACO Delineation). The LACO Delineation demonstrates visually (figure 2) and in text (Run Off Patterns) that this wetland is connected to the associated stream system. As such, we interpret that the beneficial uses associated with the origination of the stream and ecologic connection to the wetland are interrelated and therefore bear a reasonable association in terms of the benefits these features provided to the watershed in pre-disturbance conditions. Filling of the wetland is equivalent to filling the stream in terms of habitat loss, but differs in terms

of assessing sediment transport. However, all the objectives and the beneficial uses affected by an obliteration of a habitat are relevant in assessing the impact and loss. Intact wetlands and headwater streams provide natural flood control, recharge groundwater, trap pollutants and sediments, recycle nutrients, create and maintain biological diversity, and sustain biological productivity of downstream rivers (Meyer et. al 2003, Meyer et al 2007)

This penalty methodology analyzes two discrete violations that when considered in the landscape setting we recognize as connected and related in fluvial and ecological/watershed processes. As such, we emphasize the habitat effects on streams in our analysis. We caution the reader to understand that this does not diminish the value accorded a wetland connected to a headwater stream. Headwater streams and associated wetlands are the nation's fresh water sources and the beginning of fluvial instream processes of stream development transitions from one order to another as fresh water makes its journey to the sea. The source from headwater stream and wetland to the sea provides for many beneficial uses. The beneficial uses of the stream are the beneficial uses of the wetland, because the wetland and the stream exist as the beginning of a stream tributary to the South Fork Eel River.

The Clarke Ranch is located within both the South Fork Eel River and the Ten Mile River watersheds, which are federal Clean Water Act section 303(d)-listed for sediment and temperature impairments. The area of concern for this penalty methodology is within the Laytonville Hydrologic Subarea of the South Fork Eel River. The United States Environmental Protection Agency approved the South Fork Eel River temperature and sediment TMDL in December of 2000.

The primary purpose of the South Fork Eel River Total Maximum Daily Load for Sediment (TMDL) is to identify the maximum allowable amount of sediment that the stream can receive and still meet water quality standards. The State water quality standards related to sediment require that sediment "not adversely affect beneficial use." The primary beneficial use of concern is native cold-water and fisheries.²

The South Fork Eel River TMDL load allocation places an emphasis on meeting Water Quality standards based on an 80% reduction in sediment from roads. For temperature, the TMDL identifies that benefits will occur through meeting the sediment load allocation, and further recommends addressing effective shade on streams by encouraging the management of vegetation along streams to mimic natural shade. The TMDL defines "natural shade" as 85% canopy coverage.

The total maximum daily load was set to protect the beneficial uses of Cold Freshwater Habitat; Spawning, Reproduction, and/or Early Development; Migration of Aquatic Organisms; and Commercial and Sport Fishing to recover populations of endangered salmonids such as steelhead trout, Coho Salmon, and chinook salmon. The South Fork Eel River is within the California Coastal ESU for Chinook Salmon, where they are listed as threatened by the U.S. Endangered Species Act (ESA), and within the Southern Oregon/Northern California Coast ESU for Coho Salmon, where

² https://www.waterboards.ca.gov/northcoast/water_issues/programs/tmdls/eel_river_south_fork/pdf/eel.pdf

they are listed as Threatened by the ESA. In the South Fork Eel River steelhead trout are listed as Threatened by the ESA within the Northern California distinct population segment.

The beneficial uses of water in the South Fork Eel River watersheds are as follows. Municipal & Domestic Supply; Agricultural Supply; Industrial Service Supply; Industrial Process Supply; Freshwater Replenishment; Navigation; Hydropower Generation; Water Contact Recreation; Non-Contact Recreation; Commercial & Sport Fishing; Cold Freshwater Habitat; Wildlife Habitat; Rare, Threatened or Endangered Species; Migration of Aquatic Organisms; Spawning, Reproduction and/or Early Development; Aquaculture; Wetlands (WET); Flood Peak Attenuation/Flood Water Storage (FLD); and Water Quality Enhancement (WQE). Of these beneficial uses, those likely to have been impacted by the discharges include, but are not necessarily limited to: Cold Freshwater Habitat; Wildlife Habitat; Rare, Threatened, or Endangered Species; Migration of Aquatic Organisms; Commercial and Sport Fishing; and Spawning, Reproduction, and/or Early Development; Wetlands (WET); Flood Peak Attenuation/Flood Water Storage (FLD); and Water Quality Enhancement (WQE). The beneficial uses of a water body generally apply to the tributaries to that water body.

The Basin Plan provides further guidance in identifying violations and assessing the impacts of violations through prescriptive prohibitions against discharge and water quality objectives. In terms of water quality objectives, the Basin Plan states controllable water quality factors shall conform to the water quality objectives. When other factors result in the degradation of water quality beyond the levels or limits established within the Basin Plan as water quality objectives, then controllable factors shall not cause further degradation of water quality. Controllable water quality factors are those actions, conditions, or circumstances resulting from human activities that may influence the quality of the waters of the State and that may be reasonably controlled. Road and vineyard construction are controllable water quality factors and Regional Water Board staff inspection reports document observations of discharge to the stream system from the vineyard development (Attachments 2 and 3).

The discharge presents an Major threat to beneficial uses through the deposition of earthen materials directly into streams and wetlands, which increased the potential for erosion and destroyed aquatic habitat. The Water Quality Control Plan for the North Coast Region (Basin Plan) contains water quality objectives for all waters within the Region. The objectives identify constituents that are of concern when discharged into the aquatic environment. The objectives that are likely to have been violated in this case are as follows:

Color

Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.

Suspended Material

Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.

Settleable Material

Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.

Sediment

The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

Turbidity

Turbidity shall not be increased more than 20% above naturally occurring background levels. Allowable zones of dilution within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waivers thereof.

Steelhead trout and coho salmon both spawn and rear in freshwater with the resulting offspring spending from 1-3 years in the freshwater system before returning to the ocean to grow to adults of spawning size. This life cycle begins in the stream sediment bottom, and is dependent upon adequate freshwater spawning and rearing habitat. Steelhead trout and Coho salmon begin life as an egg deposited in a nest (redd) in the stream bottom. The female develops the redd by digging with her tail in rapid thrusts as she turns on her side and winnows out the fine sediments leaving behind a depression in the stream bed where eggs are deposited. The winnowing of fine sediment in the redd and the creation of a shelf in the forefront of the redd increases flows through the gravel, ensuring an adequate supply of fresh water and oxygen through the redd to the eggs. The success of egg survival in the redd is dependent upon many parameters several of which are, intragravel flows, water flow, and sediment size and deposition rate.

Intragravel flow is required to ensure that the eggs and alevin (emergent fish with egg sac attached) receive adequate oxygenation and that metabolic wastes are transported out of the redd. The permeability of the redd is an important factor influencing intragravel flow and the productivity of spawning beds. Sediment deposition in streams can decrease the permeability of the substrate. The impacts of excess sediment in a stream environment can cause impacts to aquatic habitat throughout the year. Large sediment loads lead to a loss of pool volume, increase laminar flat water and riffles as pools fill in, resulting in channel aggradation. The resulting reduction in pool depth can lead to increased water temperatures. Increased water temperature leads to physiological stress through increased metabolic demand, and indirect effects like decreased disease resistance and increased susceptibility to parasites (Cairns et. al. 2005). The sediment deposits also bury aquatic habitat such as the spawning redds, and interstitial cavities between gravels and cobbles on the stream bed (niches) utilized by macroinvertebrates

High sediment loads can increase sediment routing efficiency. This can lead to increased sediment transport and deposition in redds, as increased routing efficiency leads to increased deposition on falling limbs of storms (Lisle 1992).

Fine sediment increases in streams through the process of erosion. Fine sediment is easily transportable as suspended solids and is visible as muddy water. Increases in fine sediment affect juvenile rearing through a reduction in pool volumes and changes in bed load composition. These changes also affect food sources such as aquatic macroinvertebrates, and increase turbidity; this in turn increases physiological stress, causes gill damage, increases predation, and decreases feeding effectiveness.

Evidence of increased fine sediment load is visible and measurable as turbidity and as deposition in the flood zone of a stream, and on a stream bottom in pools and riffles. The higher the sediment

load or discharge, then the more sediment deposition is readily visible in riffles and pools, and the greater the potential for turbidity. Turbidity is a term used to describe the clarity of water. Turbidity is measured by measuring the amount of light scattering in water. Large amounts of suspended particles may affect the light wavelengths used by fish, and in a chronic turbidity environment, as little as 25 NTU has been shown to reduce fish growth (Sigler 1984). A chronic source occurs frequently over a long duration.

Inspection observations and information provided by LACO and Associates in response to the Regional Water Board's Notice of Violation/13267 Order have disclosed fine sediment deposition and substantial instream fill in the South Fork Eel River Watershed through the complete burial of a Class II stream system and associated wetland complex. Over the course of approximately a year, and through two inspections, Regional Water Board staff identified multiple locations where actions associated with the illegal road construction triggered slope failures and erosion from the developed, roads and erosion was observed occurring from the vineyard development, resulting in episodic sediment transport on an ongoing basis. The potential for harm from these activities and the resultant discharges is rated as (5) (Major) in accordance with the Enforcement Policy for both the buried wetland and the buried stream segment.

Factor 2: The physical, chemical, biological or thermal characteristics of the discharge

In this case, the violations consist of completely grading and placing earthen materials directly into and filling a wetland and a stream associated with the work of constructing and reconstructing roads, ponds, and hillslope preparation for vineyard planting. The discharge itself is earthen materials in each violation incident.

Violation 1: Instream processes (1)

Earthen materials when placed where gravity and water can affect the materials have physical properties such as erodibility and solvency. Earthen materials have mass. When placed in a stream where gravity can move water and water can dissolve earthen solids, this mass can occlude the flow of water, causing the water to become dark and unable to receive light or transmit light. Earthen materials with mass, when exposed to water and gravity, can dissolve and erode. The eroded materials transport in the water through the effect of gravity and dissolution as suspended solids as rains or stream flows change the effect of gravity on earthen mass. Changes then occur in the movement of sediments and suspended solids suspending or depositing eroded earthen materials. These deposits can fill interstitial niches necessary for aquatic life and create changes in channel configuration, diverting gravity-powered stream flows into stream banks increasing the erosive force of the earthen deposit through misdirection of the stream into new sources of earthen materials. The effects of gravity on the earthen materials amplifies as the mass of the discharge accumulates through interaction with gravity, solvency, and stream flow and substrates.

Where earthen materials are deposited in a stream channel and completely obliterate the stream there is an increased loss of habitat through the physical occupancy of habitat by earthen material; in some cases, in perpetuity. Where such a discharge has occurred, the physical, chemical, biological or thermal characteristics of the discharge is rated as (1) as the materials are relatively

inert and subject to transport or activation through episodic or annual erosional events related to rainfall runoff and drainage area.

Violation 2: Wetland Processes (1)

The earthen material and grading of 0.54 acres of wetland is a loss of wetland function and hydrologic connection to surface waters. The complete loss of the wetland through earthen fill placement replaces a wetland function with native or imported dirt. The physical, biological, chemical and thermal characteristics of inert dirt are a value of (1).

Where earthen materials are deposited in a wetland and completely obliterate the wetland there is an increased loss of habitat through the physical occupancy of habitat by earthen material in some cases in perpetuity. Where such a discharge has occurred the physical, chemical, biological or thermal characteristics of the discharge is rated as (1), as the earthen fill materials are inert and generally no longer subject to a hydrology capable of resulting in transport.

Factor 3: Susceptibility to Cleanup or Abatement:

Category: <50% Susceptible to Cleanup or Abatement

A final consideration in ranking the potential for harm of a discharge is the susceptibility of the discharge to cleanup and abatement. In this case, we see that the Discharger has completely converted a stream and wetland to a vineyard, installed tile drains, and planted grapes on top of the buried features. Due to the occupancy of the habitats by earthen soils and the complete restructuring of the site hydrology through installation of drain tiles, we are considering the susceptibility to cleanup and abatement as less than 50% as such an additional value of (1) is added.

Violation 1: Impacts to a stream

Potential for harm to beneficial uses= 5

The physical, chemical, biological or thermal characteristics of the discharge= 1

Susceptibility to cleanup and abatement= <50% = 1

Final Score = 7

Violation 2: Impacts to wetlands

Potential for harm to beneficial uses= 5

The physical, chemical, biological or thermal characteristics of the discharge= 1

Susceptibility to cleanup and abatement= <50% = 1

Final Score = 7

Deviation from Requirements (Major)

In assessing habitat loss in terms of the deviation from requirements for the violations analyzed above is **Major** for both the filling of the .54 acres of wetlands and the filling of the 2148 feet of stream. The activity of developing the vineyard and pond through filling a stream and a wetland, without permits, rendered requirements of Porter Cologne, the Clean Water Act, and the Basin

Plan completely ineffective. Had the Dischargers applied for the appropriate permitting, the project would have been significantly different, had it been permitted at all, with mitigation and restoration having been required at the beginning of the project.

Step 2 Per-Gallon Assessment of Discharge violations

Based upon the LACO Hydrology Report (Attachment 1) we are assessing penalties for the fill associated with the actual vineyard and pond construction that resulted in discharges to a wetland and stream. Grading and excavation to clear and contour slopes and to create the pond resulted in the burial of the stream that was visible on 2014 Google Earth images.

For Violation 1, the length of stream channel buried by the grading is reported as 2148 linear feet multiplied by a reported cross-sectional area of 6.75 feet for a total in stream fill volume of 537 yds³. This is equal to 108,460 gallons.

For Violation 2, 2.5 feet of fill was placed in 0.54 acres of wetlands (23522.49 ft²), which when multiplied by 2.5' represents 58,806 ft³ or 2,178 yds³. of earthen materials (LACO Forensic Wetland Delineation) or 439,901 gallons of discharge.

Under Water Code section 13385, subdivision (c),

Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

- (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.
- (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

Violation 1: Grading and filling 2148 feet of stream resulting in 537 yds³. or 108,460 gallons of discharge.

Instream Fill (potential for harm factor of 7)

The deviation from requirements is **Major**, which results in a multiplier of 0.31 for the discharge violations.

Violation 1-discharge volume **108,460 gallons**

$(108,460 - 1,000 = 107,460 \text{ gallons}) \times (0.31 \text{ per gallon factor}) \times (\$10 \text{ per gallon}) = \mathbf{\$333,126}$

Violation 2: Grading and infilling a wetland

The second violation as described above represents 439,901.055 gallons of discharge to the .54-acre wetland.

Wetland Fill (Potential for Harm Factor of 7)

The deviation from requirements is Major, which results in a multiplier of 0.31 for the discharge violations.

Violation 2 discharge volume = **439,901.055 gallons**

(439,901 - 1,000 = 438,901 gallons) x (0.31 per gallon factor) x (\$10 per gallon) = \$1,360,593.10

Initial Liability Amounts

Violation 1- Initial Liability Amount **\$333,126.00**

Violation 2- Initial Liability Amount **\$1,360,593.00**

Per Day Determination

Not assessed at this time. If or when we assess penalties for observed discharges associated with the inspection(s), per day assessments would be appropriate.

Step 3. Assessment for Non-Discharge Violations

No penalties are being assessed at this time for non-discharge violations.

Step 4. Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the discharger's culpability, efforts to clean up and/or cooperate with regulatory authority, and the discharger's compliance history.

a. Culpability (**1.3**)

Higher liabilities should result from intentional and negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Dischargers were assessed a multiplier value of (**1.3**) because, as the owners and operators of the site, they have had extensive experience developing vineyard sites. We have no information indicating that the Dischargers attempted to obtain or otherwise receive any required permits for road, pond or vineyard development. A reasonable and prudent person would have consulted with permitting agencies and addressed required regulatory requirements prior to constructing a vineyard in a stream and wetland.

A multiplier value of 1.3 is a reasonable assessment of culpability where the Dischargers' intentionally filled 0.54 acres of wetland and 2148 feet of stream channel due to the grading and infilling of the natural features. Had the discharger applied for the appropriate permits and permissions, the discharger would likely have been required to follow the common process associated with impact assessment of wetlands and streams often referred to as avoidance, minimization and subsequently mitigation for all impacts that cannot be avoided. Had the discharger followed the law and received required permits through local and state agencies it is likely that this project would have required substantial modification to meet requirements. A reasonable and prudent person would have consulted with regulatory agencies prior to developing a vineyard in a stream and wetland.

b. Cleanup and Cooperation (1.5)

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 can be used, with a higher multiplier when there is a lack of cooperation.

In this case, the stream and wetland has been completely destroyed and lost permanently. The Discharger has been cooperative in responding to the Notice of Violation and allowing the Regional Board and Department of Fish and Wildlife staff access to the site to conduct follow-up inspections. The Discharger has also offered to conduct restoration activities elsewhere but has nonetheless insisted on retaining the vineyard. We therefore assess a multiplier of **1.5** due to the Discharger's determination to retain the vineyard.

c. History of Violations (1.0)

This factor is to be used when there is a history of repeat violations. A minimum multiplier of 1.0 can be used, and is to be increased as merited by history of violations. In this case, because the Dischargers have a prior known history of problems but no record of adjudication associated with known violations, the minimum factor of **1** is used.

In June of 2010, the Discharger applied for an appropriative water right with the Division of Water Rights (Water Rights Application A031838) to divert 14 acre-feet of water from an unnamed tributary to Floodgate Creek, a tributary to the Navarro River in Mendocino County. After submitting the application, the Discharger, under the guidance and direction of Mr. Javier Tapia Meza, had MBC Construction develop a vineyard site and install a pond. In the fall of 2009, these activities resulted in the Department of Fish and Wildlife issuing a citation for violations of Fish and Game Code section(s) 5650 and 1602. The violations resulted from: a) sediment and pollution discharge into the Unnamed tributary of Floodgate Creek and into Perry Gulch Creek, b) for substantial alteration of the bed, bank and channel of a stream (multiple sites), and c) for the unpermitted diversion of water at the reservoir site, without prior notification to DFG. Alterations to the existing stream channel and habitat occurred at the reservoir site and where they had installed stream crossings (culverts). Although cited, the Discharger was ultimately never prosecuted for this citation.

These documented violations and the pattern of practice are substantially similar to the violations detailed in Regional Water Board inspection reports. Mr. Tapia Meza was the manager of Rhys Vineyards LLC when the violations currently alleged occurred. Although this demonstrates a history of problems, the Discharger nonetheless has no adverse final orders or judgments for similar violations. Therefore, we assess a factor of **1.0**.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors (Step 4) to the Initial Liability Amount (Step 2).

(Initial liability) x (culpability factor) x (cleanup and cooperation factor) x (history of violations factor) = Total base liability amount

Discharge Violation 1
\$333,126.00 x 1.3 x 1.5 x 1.0 = \$649,595.70

Discharge Violation 2
\$1,360,593.00 x 1.3 x 1.5 x 1.0 = \$2,653,156.35

Total Base Liability
Violation 1 + Violation 2 = Total Base Liability
\$649,596.00+ \$2,653,156.00= \$3,302,752.00

Step 6. Ability to Pay and to Continue in Business

The Enforcement Policy provides that if the Regional Water Board has sufficient financial information to assess the Discharger’s ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator’s ability to continue in business, then the Total Base Liability amount may be adjusted downward.

Based on a preliminary asset search of the public records, the Rhys Vineyards LLC has assets in the United States consisting of five (5) recorded properties with a value in excess of \$18,870,000.00. D&B Worldbase reports annual estimated sales of \$3,148,107.00. This ability to pay analysis does not capture all listed assets nor does the analysis analyze any credit or debt Rhys vineyards LLC may have incumbent upon the Limited Liability Corporation. Based on the information available in the public record, the Rhys Vineyard LLC has assets of approximately \$18,870,000. This is adequate to pay the total base liability amount. This value is based on the sum of the values attributed to properties owned by Rhys Vineyard as listed and valued in Westlaw. The Prosecution Team has met its initial burden in demonstrating the Dischargers’ ability to pay the proposed liability.

Step 7. Other Factors as Justice May Require

Costs of Investigation and Enforcement:

The costs of investigation and enforcement are other factors as justice may require, and should be added to the liability amount.

As of the date of drafting this methodology, Prosecution Staff has incurred costs of investigation and enforcement of at least \$23,139.38. This is a conservative amount based on 253 hours of staff time invested, including 20 hours for site inspections and interviews, and 233 hours for data analysis, interagency coordination, and writing the report and calculating penalties at \$91.46 per hour. **Staff Costs: \$23,139.38.**

Total Base Liability Amount: \$3,302,752.00+ \$23,139.38 =\$3,325,891.00

Given the damage to the unnamed tributary and the wetland from the Dischargers' failure to responsibly manage vineyard development operations in compliance with water quality laws, the Prosecution Team determined that the penalty derived in applying the methodology is fair and an appropriate deterrent against similar operations that choose to operate irresponsibly. No reduction in the proposed liability is justified.

Step 8. Economic Benefit

Pursuant to Water Code section 13385, subdivision (e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation.

Any estimate of economic benefit is not able to capture the fact that the Regional Water Board would not have issued waste discharge requirements or a dredge and fill permit for a project that did not practice the general requirements applied to project development to ensure that all waters of the state meet anti-degradation requirements and State and federal no net loss of wetlands polices. These general requirements are commonly practiced as follows: 1) avoidance is the first step in project development. Activities resulting in a loss of habitat are generally revised to address the loss and or mitigate the loss if it cannot be avoided unless a project proponent can show that there has been no loss of waters/beneficial uses through the project's development. In the event a project proponent cannot show no loss of waters because of project planning, then the project must demonstrate that all measures have been taken to 2) minimize the effect of the project to compensate for the potential loss of habitat. The final step is 3) assigning a mitigation ratio for the take of waters that will occur if the project is approved. For enforcement actions, mitigation ratios are generally assigned though the use of the United States Army Corps of Engineers 12501-SPD Regulatory Program Standard Operating Procedure for Determination of Mitigation Ratios (Attachment 4A). The lowest ratio assigned to a project is a 1:1 mitigation ratio. This analysis does not address required mitigation for the loss of habitat caused by illegal development, however, Attachment 4 does analyze this loss and provide the required mitigation

compensation and a cost basis for assessing the value of the initial and ongoing temporal loss of stream and wetland habitat.

Potentially, to develop the vineyard multiple permits and approvals would have been required from State, federal, and local agencies.

Department of Fish & Wildlife Lake or Streambed Alteration Agreement - Assuming the department would have issued such an agreement for the filling of the wetland and the stream, and when considered as one long term project; and if the project cost was \$300,000.00³, then the fees would have been \$4,780.75 + \$1500 deposit for CEQA based upon the 2014-2016 fee schedule, for a total of 6,280.75.

ACOE-no cost

Regional Water Board Clean Water Act section 401 Certification Costs-\$37,700

Regional Water Board Clean Water Act section 401 Certification potential mitigation banking costs avoided-\$164,430

Mendocino County large grading project-\$3000

Avoided Permitting Costs Summary

Department of Fish & Wildlife Lake or Streambed Alteration Agreement- \$6,280.75

Regional Water Board Clean Water Act section 401 Certification – \$37,700

Regional Water Board Clean Water Act section 401 Certification potential wetland mitigation banking costs avoided-\$164,430

Regional Water Board Clean Water Act section 401 Certification potential stream mitigation costs avoided = \$55,392.62

Mendocino County Large Grading Project⁴-\$3000

Avoided permitting and mitigation bank costs total = \$266,803.37

This estimated economic benefit of noncompliance does not account for 1) the total cost of mitigation to replace the temporal and permanent loss of the stream or 2) any financial gain derived from the competitive advantage of operating without complying with the law. It is unlikely that the Dischargers could have obtained the necessary permits and authorization to legally develop the vineyard as was done without approvals or permits. The profits or costs avoided from conducting the illegal activity should be considered part of the competitive advantage derived from these violations. For example, 20 acres of ranch land was converted to vineyard lands through illegal land conversion practices, resulting in a potential future profit from increased land value and potential future profit in perpetuity from cultivating grapes on these 20 acres. In addition, due to developing the vineyard site illegally it is likely that the lands converted to vineyard production also provide an economic advantage through getting the grapes produced

³ We do not know the Project cost.

⁴ Form 207-27 http://www.co.mendocino.ca.us/aqmd/pdf_files/207-27-Grading-NOA-2014.pdf

to market sooner as the avoidance of permit requirements allowed the vineyard to be planted one to two years earlier subsequently allowing the vines to mature one to two years earlier.

To put the increase in land values that occurred through illegal site development and operating without waste discharge requirements in context, vineyard lands sell from \$14,000-\$40,000 per acre in inland Mendocino County⁵. Rhys Vineyards LLC in 2015 purchased the Clarke Ranch from the Amaral, Julia R. Trust 1993 for \$7,500,000. The Clarke Ranch is approximately 4591 acres in size. Therefore, the-per acre purchase price of the Clarke Ranch is about \$1633 per acre. By illegally developing a 20-acre piece of this property Rhys vineyards has realized a property value increase on the 20 acres developed of a magnitude from 10 – 70 times purchase value. The economic benefit, based on the -value of vineyard lands in Mendocino County, is estimated below.

Average Value of \$14,000 – \$40,000 = \$32,000 for the purposes of this case we are using \$15,000 to account for variability in market conditions and to provide an estimate of the potential future profit available through illegal land conversion.

20-acre purchase price = 20 x \$1633 = \$32,660

Estimated 20-acre value after illegal development = 20 x \$15,000 = \$300,000 – \$32,660.00
= \$267,340.00)

\$267,340 represents the potential future profit from illegal land conversion as an assessment of the potential future increase in the value of the developed 20 acres. It is likely that the potential future increase in profit is much higher.

This valuation does not address the future additive valuation of producing grapes annually on the illegally converted 20 acres. In 2015, the average yield of a vineyard on a per acre basis produced \$5,236 per acre (gross). It takes about three years for a vineyard to produce a crop. One can reasonably expect that in 2018 Rhys Vineyards will see a productive crop from the harvest of grapes. The land value has been increased through illegal activities, and there is the potential for a profit from a crop in 2017 and 2018; estimated for 2018 as an ongoing gross annual income from the 20 acres of roughly \$100,000. The estimate is based upon the average value and yield for vineyards lands in Mendocino county

Economic Benefit Summary

Estimated permit and mitigation fees avoided = \$266,803.37

Estimated property value increase = \$267,340

Estimated annual Agricultural Crop Benefit (one year) = \$100,000

Total Potential Economic Benefit = (\$634,143.37)

The Enforcement Policy requires that the adjusted Total Base Liability Amount be at least 10% higher than the economic benefit amount of **\$634,143.37**. The economic benefit amount plus 10% would be **\$697,557.70**. The adjusted combined Total Base Liability Amount of **\$3,325,891.00** is more than the economic benefit of noncompliance plus 10%. Therefore, no liability adjustment is required.

⁵ http://www.calasfinra.com/db_trends/2017Trends_ebook.pdf

Step 9. Maximum and Minimum Liability Amounts

The maximum and minimum amounts for the violations are shown below. The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. The maximum administrative liability amount is the maximum allowed by Water Code section 13385: (1) \$10,000 for each day of violation, and (2) on a per gallon basis in an amount not to exceed \$10 per gallon of waste discharged but not cleaned up in excess of 1,000 gallons. Though there is no statutory minimum, the Enforcement Policy requires 10% more than the economic benefit. The proposed liability falls within the maximum and minimum amounts.

a. Maximum Liability Amount: **\$5,463,610**

Violation 1

$(108,460 - 1,000 = 107,460 \text{ gallons}) \times (\$10 \text{ per gallon}) = \mathbf{\$1,074,600}$

Violation 2

$(439,901 - 1,000 = 438,901 \text{ gallons}) \times (\$10 \text{ per gallon}) = \mathbf{\$4,389,010}$

b. Minimum Liability Amount:

Economic benefit + 10% = **\$697,557.70**

Step 10. Final Administrative Civil Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the proposed administrative civil liability is **\$3,325,891.00**

Bibliography

Meyer, Judy L., Kaplan, Louis A., Newbold, Denis, Strayer, David L., Woltemade, Christopher, J., Zedler, Joy B., Beilfuss, Richard, Carpenter, Quentin, Semlitsch, Ray, Watzin, Mary C., Zedler, Paul H., Where Rivers are Born: The Scientific Imperative for Defending Small Streams and Wetlands, September 2003, Sierra Club Foundation

Meyer, Judy L., David L. Strayer, J. Bruce Wallace, Sue L. Eggert, Gene S. Helfman, and Norman E. Leonard, 2007. The Contribution of Headwater Streams to Biodiversity in River Networks. Journal of the American Water Resources Association (JAWRA) 43(1):86-103 DOI: 10.1111/j.1752-1668.2007.00008.x

Cairns, M. A., Ebersole, J. L., Baker, J. P., Wigington, P. J., Lavigne, H. R., Davis, S. M., Influence of Summer Stream Temperatures on Black Spot Infestation of Juvenile Coho Salmon in the Oregon Basin, Transactions of the American Fisheries Society 134:1471-1479 2005

State Water Resources Control Board

DIVISION OF WATER RIGHTS REPORT OF INSPECTION

Date of Inspection: 9/29/2015

Inspection Performed by: Stephanie Ponce and Skyler Anderson

Consent by or Warrant: Consent provided by Javier Tapia, Rhys Vineyards LLC Manager

Facility Owner Information

Facility Name:	Rhys Vineyards LLC	Statement:	N/A
Facility Owner:	Kevin Harvey	Registration:	N/A
Mailing Address:	11715 Skyline Blvd.	Application:	N/A
City and State:	Los Gatos	Permit:	N/A
Zip:	95033	License:	N/A
Phone:	Unk		
Email:	Unk		
County:	Mendocino		

Water Rights Information

Additional Information: At the time of inspection Mr. Javier Tapia, Rhys Vineyards LLC Manager, and contractor, Mr. Ken Seckora, M.B.C. Construction, Inc., were present throughout the duration of the inspection. Mr. Tapia identified that the Rhys Vineyards LLC property (Property), approximately 4,591 acres spanning over 41 parcels of land, was recently purchased from Golden Ram Sportsmen's Club on January 20, 2015. The Division inspected areas of the Property with potential water rights violations which were located on 3 of the 41 parcels.

Recent grading for the installation of an onstream reservoir (Reservoir 1) and a 14-16-acre vineyard was observed on Mendocino County Assessor Parcel Number (APN) 015-050-60-00 and 015-050-61-00. The source of water for the reservoir is an ephemeral drainage (Ephemeral Drainage), tributary to the South Fork Eel River. APN 015-050-62-00 contained two pre-existing reservoirs (Reservoir 2 and 3) which were both onstream located on separate unnamed perennial streams (referred to as Unnamed Streams 1 and 2), tributaries to the North Fork Ten Mile River.

Parcel Number:	015-050-60-00, 015-050-61-00, 015-050-62-00
Site Address:	Unknown
Site City:	Laytonville, CA
Site Zip:	95454

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

Point of Diversion (POD) Information

Total Number of PODS: 3

POD ID: Reservoir 1
Source Water: Ephemeral drainage, thence Unnamed Creek, thence South Fork Eel River
Diversion Type: Point of Onstream Storage
POD Lat/Long: 39.607822/-123.554499
Parcel Number: 015-050-61-00, 015-050-60-00

POD Description: The point of diversion (POD) is a recently constructed reservoir with a capacity of 7.2 acre-feet and located onstream to an ephemeral drainage, a tributary to the South Fork Eel River. Upstream from Reservoir 1, Division staff observed two adjoining hillsides creating a natural valley that can also be identified in topographic contour lines (Map 6). Alluvial sediment was present within the ephemeral drainage further supporting the determination of a natural ephemeral drainage. The inspection was conducted at the end of 2015's dry season and at the time, Reservoir 1 was not storing water as no surface water was present in the ephemeral drainage at this time of year (photo 1 and 2); However, California Department of Fish and Wildlife (CDFW) Warden Brandon Rose returned to the Property for an additional site visit on December 19, 2015 and observed an ongoing water diversion occurring in Reservoir 1 (Photo 3).

A section of the ephemeral drainage directly above Reservoir 1 had been recently graded and filled in with soil to establish a future vineyard (photo 2, 4 and 5). Downstream from Reservoir 1, where the recent grading stops, a naturally defined channel with bed and banks was observed by Division staff. Mr. Tapia asserted that the recently excavated reservoir was created from extracting chert rock used for road maintenance. Given the close proximity of Reservoir 1 to the planned 14-16-acre vineyard, it is reasonable to assume the reservoir could be used to provide water for irrigation of the 14-16-acre of future vineyard.

At the end of the inspection, Division staff informed Mr. Tapia that the reservoir is considered a threat of Unauthorized Diversion because it was constructed onstream to a jurisdictional source of water and although no water was present at the time of inspection, the reservoir was capable of diverting and storing water with no basis of right on file with the Division. Furthermore, Division staff informed Mr. Tapia that once significant precipitation occurs, water would be diverted into the reservoir and would then be considered an unauthorized diversion unless efforts were made to render it incapable of storing water, water was bypassed downstream of the dam, or until an appropriate water right permit was obtained.

POD ID: Reservoir 2
Source Water: Unnamed Stream 1 thence North Fork Ten Mile River
Diversion Type: Point of Onstream Storage
POD Lat/Long: 39.602413/-123.541626
Parcel Number: 015-050-62-00

POD Description: Reservoir 2 is an onstream reservoir with an approximate 9.85 acre-feet capacity of storage located on an unnamed perennial stream (Unnamed Stream 1; photo 6 and 7). Unnamed Stream 1 is a tributary to the North Fork Ten Mile River that flows southwest and has a visible natural channel above and below the reservoir with naturally defined bed and banks (Photo 5). Water from Unnamed Stream 1, if not diverted to storage, would naturally flow off the Property below the reservoir dam. At the time of the inspection the reservoir was filled to capacity with a steady discharge of water flowing from the outlet pipe below the reservoir (photo 8). Reservoir 2 is a pre-existing reservoir, prior to Rhys Vineyards LLC's purchase of the

Property on January 20, 2015. Mr. Tapia has no information regarding the history of when the reservoir was created. At the time of inspection, Mr. Tapia stated that there were no consumptive uses of water from Reservoir 2 and no consumptive uses were observed.

POD ID: Reservoir 3

Source Water: Unnamed Stream 2 thence North Fork Ten Mile River

Diversion Type: Point of Onstream Storage

POD Lat/Long: 39.601225/ -123.541447

Parcel Number: 015-050-62-00

POD Description: Reservoir 3 is an onstream reservoir with an approximate 4.6 acre-feet capacity located on an unnamed perennial stream (Unnamed Stream 2), approximately 300ft southeast from Reservoir 2 (photo 9-10; Map 3). Similarly to Reservoir 2, the water from Unnamed Stream 2, if not diverted to storage, would naturally flow off the Property below the reservoir dam. At the time of the inspection the reservoir was filled to capacity with a steady discharge of water flowing from the outlet pipe below the reservoir dam. Reservoir 3 is a pre-existing reservoir, prior to Rhys Vineyards LLC's purchase of the Property on January 20, 2015. Mr. Tapia has no information regarding the history of when the reservoir was created. At the time of inspection, Mr. Tapia identified to Division staff that there is no consumptive use of water from Reservoir 3 and no consumptive uses were observed.

Place of Use (POU) Information:

POD ID: Reservoir 1

POU ID: Future Vineyard

POU Lat/Long: 39.608179/-123.554457

POU Type: Irrigation

POU Description: The Future Vineyard is located in a portion of a south facing slope where fill material has been placed. The Vineyard is currently not in operation however Mr. Tapia identified this location as the future location for a 14-16-acre vineyard (photo 2 and 3). The Future Vineyard could likely receive water from the adjacent Reservoir 1 as no other water sources were identified on the Property. Mr. Tapia stated that the Vineyard would use a low-impact drip system rather than a traditional irrigation system but did not identify the source of water that was intended to supply water through the drip system.

Facility Violations

POD ID: Reservoirs 1, 2 and 3

Violation: Unauthorized Diversion or Use of Water

Violation Description: Reservoir 1 is a recently constructed onstream reservoir to an ephemeral drainage, tributary to the Unnamed Creek thence South Fork Eel River and has an approximate storage capacity of 7 acre-feet. On December 19, 2015, CDFW provided photo documentation that illustrates Reservoir 1 storing water supplied by the Ephemeral Drainage (Photo 3). Rhys Vineyards LLC is riparian to Reservoir 1's source of water; however, a riparian water right does not include a right to divert water to storage for later use without an Appropriate Water Right. The Division has no record of an existing Appropriate Water Right or pending application that would authorize the storage of water in Reservoir 1 and the Division finds that Reservoir 1 is an unauthorized diversion or use of water occurring pursuant to California Water Code (Water Code), section 1052.

Reservoir 2 and 3 are both pre-existing, prior to Rhys Vineyards LLC purchase of the Property, onstream reservoirs to two separate perennial streams, and tributaries to the North Fork Ten Mile River. Reservoir 2 has an approximate capacity of 9.85 acre-feet and Reservoir 3 has an approximate capacity of 4.6 acre-feet while both were filled to capacity with water at the time of the inspection. Rhys Vineyards LLC is riparian to Reservoir 2 and 3's water sources; however, a riparian water right does not include a right to divert water to storage without an Appropriative Water Right. The Division has no records of an existing Appropriative Water Right or pending application that would authorize the storage of water in Reservoir 2 or 3 and the Division finds that Reservoir 2 and 3 are unauthorized diversions or use of water pursuant to Water Code, §1052.

The following is a list of corrective actions and compliance options that shall be taken to come into compliance with California Water Code:

- Render all reservoirs incapable of storing water permanently or until an appropriate water right permit or other authorization (e.g., registration) is obtained (Note: if your reservoirs are located within the North Coast Instream Flow Policy Area and located on a Class I or II stream, your application may be subject to rejection);
- Submit application and/or registration to appropriate water within 30 days from receipt of this inspection report;
- Submit a Statement of Diversion and Use (Statement) for each point of diversion by July 1, 2016

Corrective Action Description:

Unauthorized Diversion and Use of Water

Based on the information gathered from the field inspection and subsequent photo evidence provided by CDFW Warden Rose on December 19, 2015, Reservoir 1, 2 and 3 have been identified as onstream unauthorized diversions or use of water which are seasonally storing water subject to the State Water Resources Control Board's (State Water Board) permitting authority.

Reservoir 1 is an onstream diversion from an ephemeral water source. Due to the placement of the reservoir, all surface flows, up to 7.02 acre-feet, may be diverted. Reservoirs 2 and 3 are both onstream diversions from Unnamed Stream 1 and 2. Unnamed Streams 1 and 2 are tributaries to the North Fork Ten Mile River and if not diverted, would otherwise flow off the Property.

A search of the Division's records did not identify an application to appropriate water or an existing water right that authorizes the seasonal storage of Reservoirs 1, 2 or 3. Based on these findings, Division staff concludes that Rhys Vineyards LLC is diverting water subject to the State Water Board's permitting authority without the benefit of a water right. Additionally, on June 30, 2010, Rhys Vineyards LLC filed a pending application to appropriate water, A031838, and has filed a Statement, S020464, within the Upper Navarro watershed therefore; Rhys Vineyard LLC is familiar with procedures of filing an appropriate water application and Statements of water diversion and use.

The seasonal storage of water in a reservoir without an existing water right is considered an unauthorized diversion of water. Based on staff findings, Rhys Vineyards LLC is required within 30 days from the date this inspection report is mailed, to either: (1) provide evidence

satisfactory to the State Water Board that demonstrates the reservoirs do not seasonally store water, or can be operated without storing water subject to the State Water Board's permitting authority; (2) remove the reservoirs or render them incapable of storing water; or (3) file an application and/or registration with the State Water Board seeking permission to appropriate water for beneficial use, and cease any unauthorized diversion of water to the reservoirs until the necessary permit or registration is obtained. Please note that if you reservoirs are located within the North Coast Instream Flow Policy Area and located on a Class I or II stream, your application may be subject to rejection.

Information and forms on the different types of appropriate water right applications can be found at the following website at: <http://www.waterboards.ca.gov/waterrights/>.

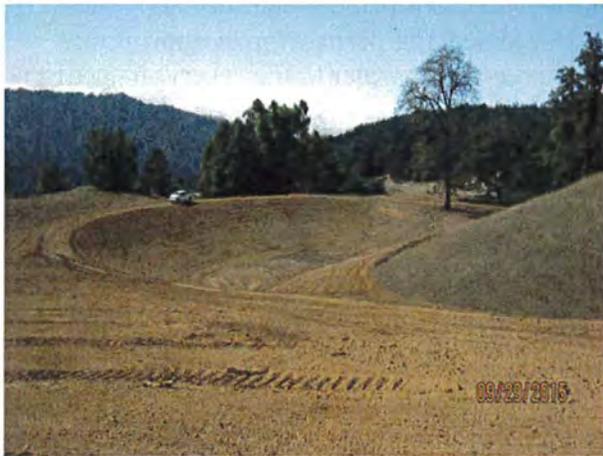
An unauthorized diversion of water or use constitutes a trespass against the State for which the State Water Board may impose a civil liability in an amount not to exceed \$500 for each day that a trespass occurs (Water Code, §1052, et seq.). During two or more consecutive dry or critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency based on drought condition the State Water Board may impose an alternative civil liability of up to \$1,000 for each day the trespass occurs and \$2,500 for each acre-foot of water diverted or used in excess of that diverter's water right (Water Code, §1052(c)(1)).

Statement of Water Diversion and Use

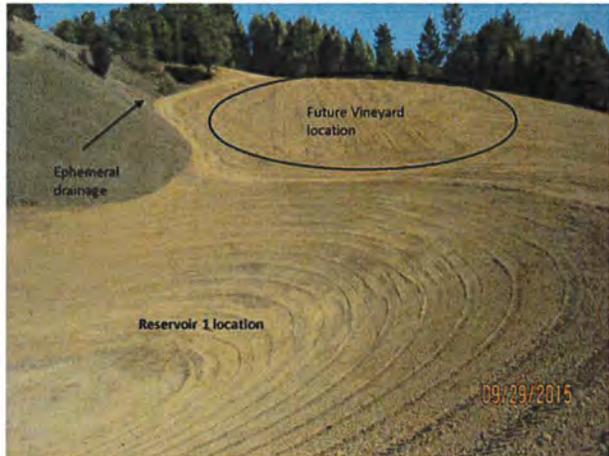
Water Code, §5101 requires, with minor exceptions, that a person who diverts water from a stream in the absence of a permit, license, or registration must file a Statement with the State Water Board. A Statement must be filed for each point of water diversion on the Property by July 1, 2016 including, but not limited to Reservoirs 1, 2 and 3.

The State Water Board may administratively impose a civil liability in the amount of \$1,000 for the failure to file a Statement for diversions that have occurred since 2009, 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 pursuant to Water Code, §5107. This letter constitutes your notice that you will be in violation of Water Code, §5101 if you fail to file three Statements for the three reservoirs identified on the Property by July 1, 2016.

The State Water Board retains the authority and discretion to take an enforcement action based on the facts and allegations contained herein. Therefore, this matter requires immediate attention and continued diligence. Within 30 days from the date this inspection report is mailed, all the recommended actions described above should be taken or otherwise a response should be submitted indicating any course of action Rhys Vineyards LLC intends to take with an implementation plan with a schedule. The State Water Board will take into consideration any corrective actions taken.



1. Reservoir 1, west facing



2. Reservoir 1, east facing



2. Reservoir 1. Photo courtesy of Warden Brandon Rose, December 19, 2015



4. Reservoir 2 filled with water to capacity



5. Reservoir 2, to the left, located onstream to a perennial stream (Stream 1) to the right



6. Spillway pipe located below Reservoir 2



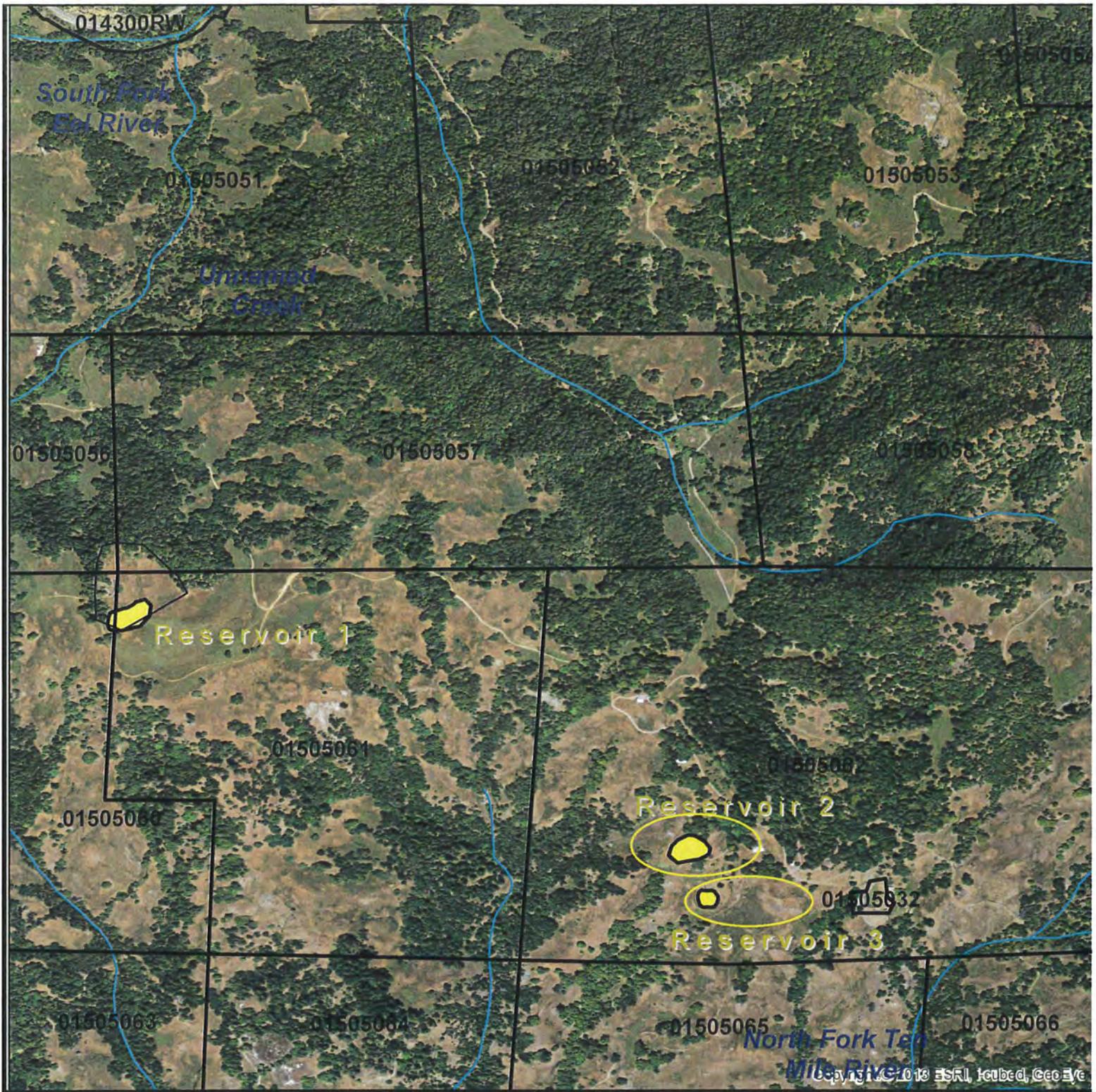
7. Reservoir 3 in the foreground with perennial stream (Stream 2) feeding into the reservoir



8. Stream 2 in the foreground with Reservoir 3 in the background



9. Spillway pipe located below Reservoir 3, south facing



0 0.1 0.2 0.3 0.4 Miles

00.05 0.1 0.2 0.3 0.4



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 RHYS VINYARDS LLC
 SOURCE UNNAMED CREEK, TRIBUTARY
 TO SOUTH FORK EEL RIVER
 UNNAMED STREAM(S) TRIBUTARY
 TO NORTH FORK 10 MILE RIVER

OF PROJECTED 8, T11N, R12W, MDB&M
 SECTION

COUNTY OF MENDOCINO

STATE OF CALIFORNIA
 CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

STATE WATER RESOURCES CONTROL BOARD
 DIVISION OF WATER RIGHTS

INSPECTION OF RESERVOIR(S) WITH
 UNDETERMINED WATER RIGHTS

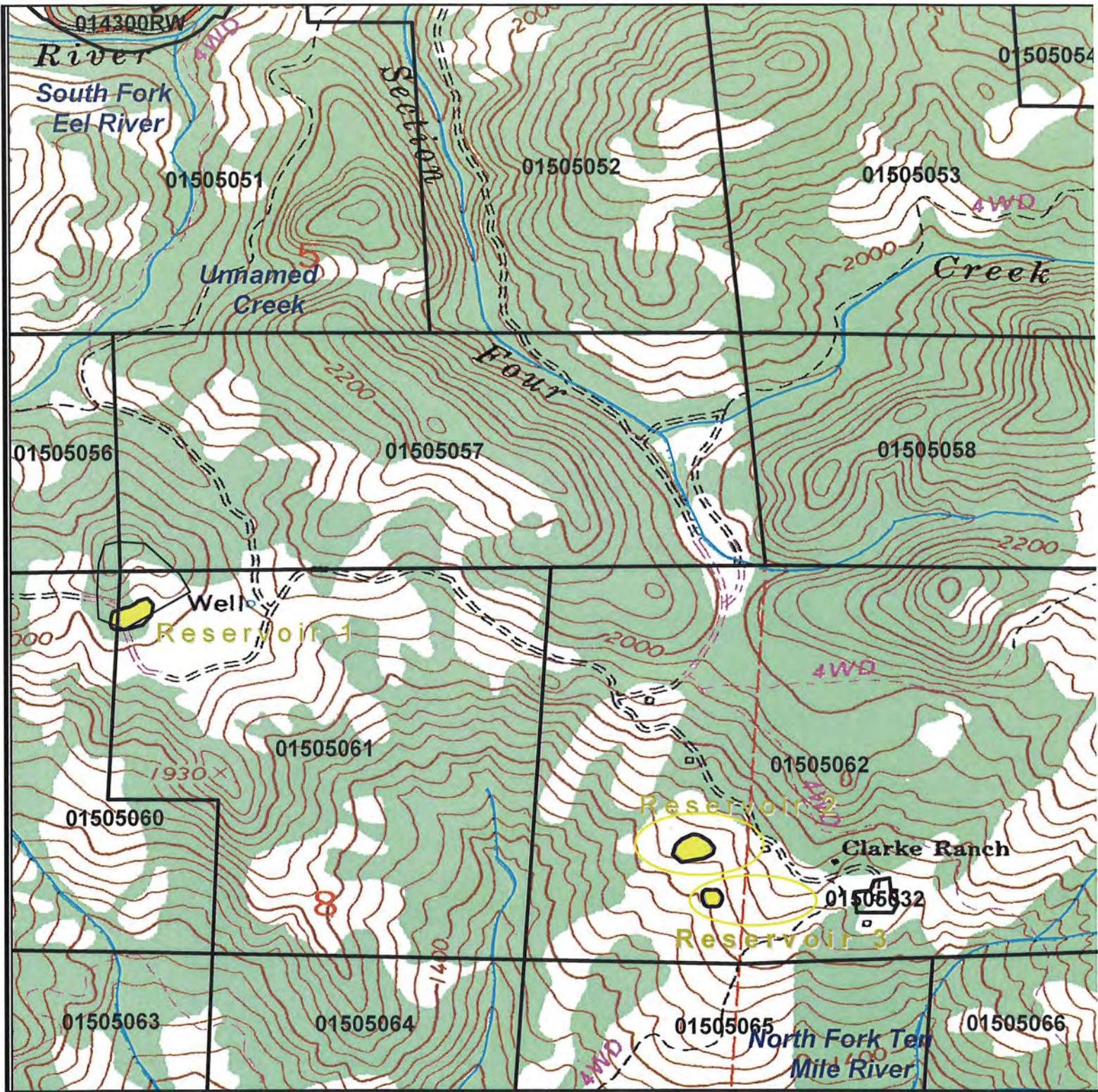
DIVISION FILE # UN001010

SCALE: 1:13 500

DATE: 05/05/2016

MAP: 1 of 6

DRAWN: SPONCE



0 0.1 0.2 0.3 0.4 Miles

00.05.1 0.2 0.3 0.4

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 RHYS VINYARDS LLC
 SOURCE UNNAMED CREEK, TRIBUTARY TO SOUTH FORK EEL RIVER
 UNNAMED STREAM(S) TRIBUTARY TO NORTH FORK 10 MILE RIVER

OF PROJECTED 8, T11N, R12W, MDB&M SECTION

COUNTY OF MENDOCINO

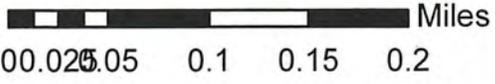
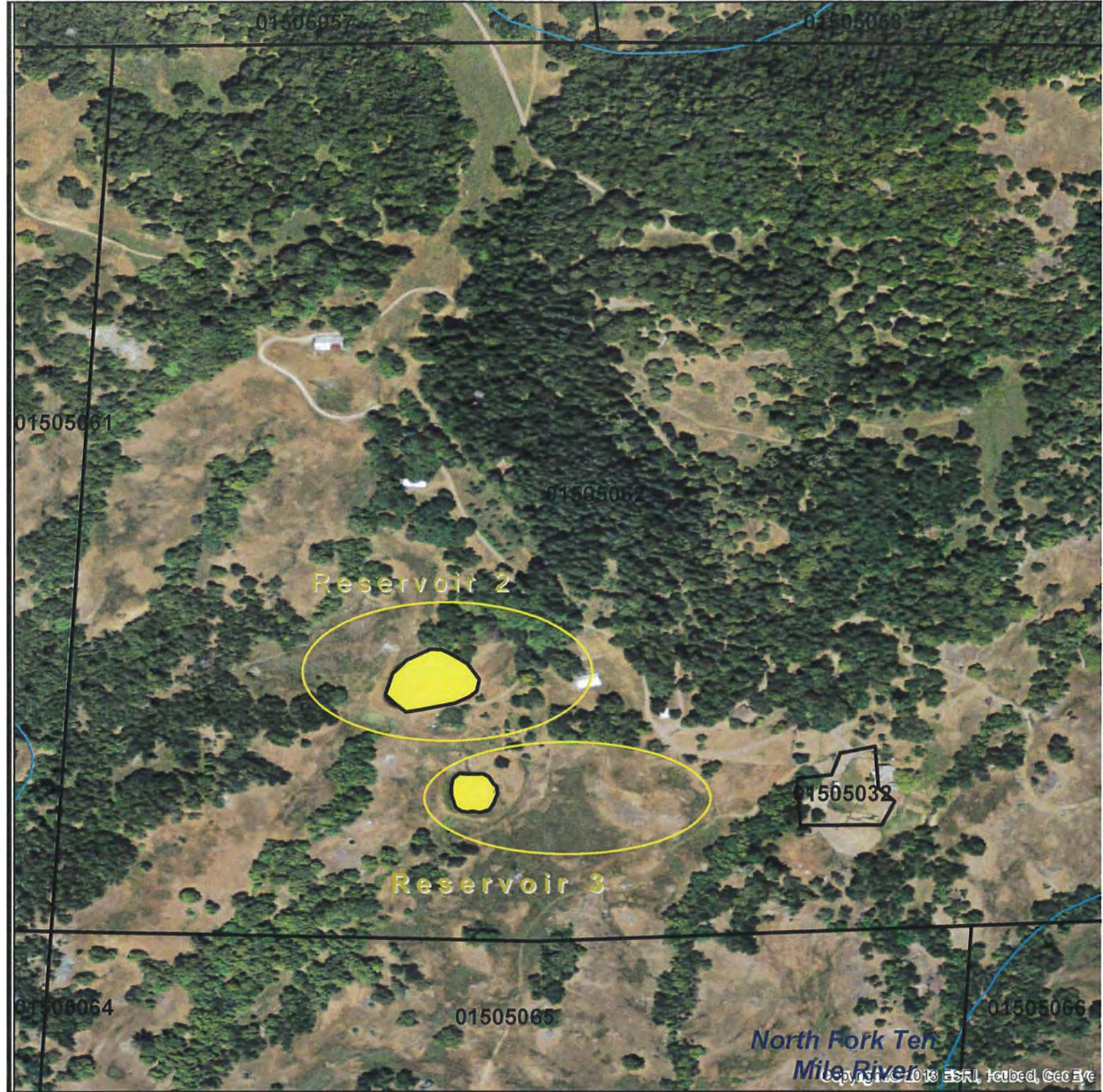
STATE OF CALIFORNIA
 CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
 STATE WATER RESOURCES CONTROL BOARD
 DIVISION OF WATER RIGHTS
 INSPECTION OF RESERVOIR(S) WITH UNDETERMINED WATER RIGHTS
 DIVISION FILE # UN001010

SCALE: 1:13 500

DATE: 05/05/2016

MAP: 2 of 6

DRAWN: SPONCE



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 RHYS VINYARDS LLC

SOURCE UNNAMED STREAM(S) TRIBUTARY TO NORTH FORK 10 MILE RIVER

OF PROJECTED 8, T11N, R12W, MDB&M SECTION

COUNTY OF MENDOCINO

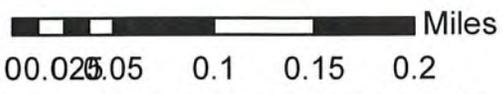
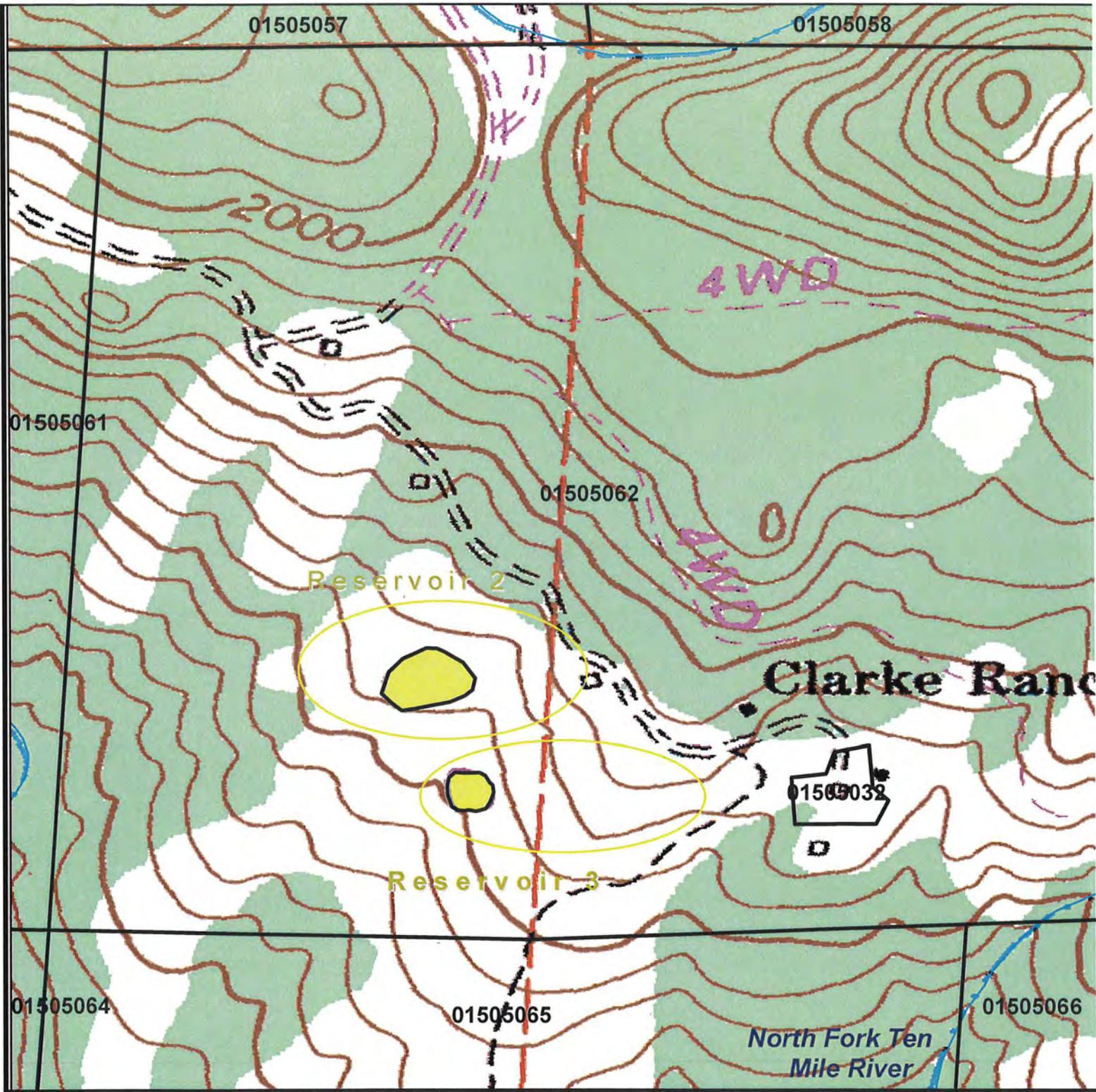
STATE OF CALIFORNIA
 CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

INSPECTION OF RESERVOIR(S) WITH UNDETERMINED WATER RIGHTS

DIVISION FILE # UN001010

SCALE: 1:6,000 DATE: 05/05/2016 MAP: 3 of 6 DRAWN: SPONCE



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 RHYS VINYARDS LLC

SOURCE UNNAMED STREAM(S) TRIBUTARY
TO NORTH FORK 10 MILE RIVER

OF PROJECTED 8, T11N, R12W, MDB&M
SECTION

COUNTY OF MENDOCINO

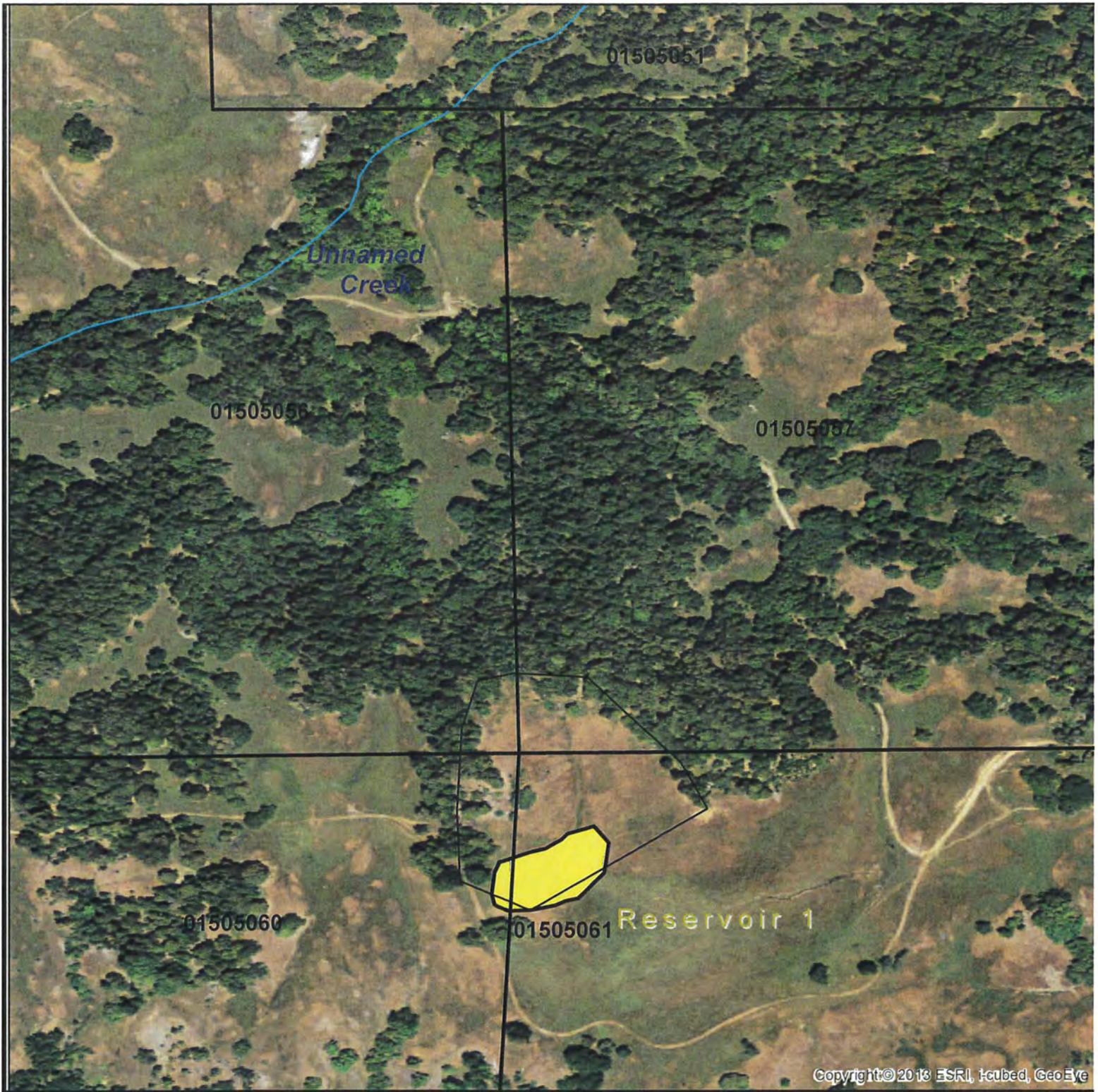
STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

INSPECTION OF RESERVOIR(S) WITH
UNDETERMINED WATER RIGHTS

DIVISION FILE # UN001010

SCALE: 1:6 000 DATE: 05/05/2016 MAP: 4 of 6 DRAWN: SPONCE



0 0.04 0.08 0.12 0.16 Miles



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 RHYS VINYARDS LLC

SOURCE UNNAMED CREEK TRIBUTARY
TO SOUTH FORK EEL RIVER

OF PROJECTED 8, T11N, R12W, MDB&M
SECTION

COUNTY OF MENDOCINO

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

INSPECTION OF RESERVOIR(S) WITH
UNDETERMINED WATER RIGHTS

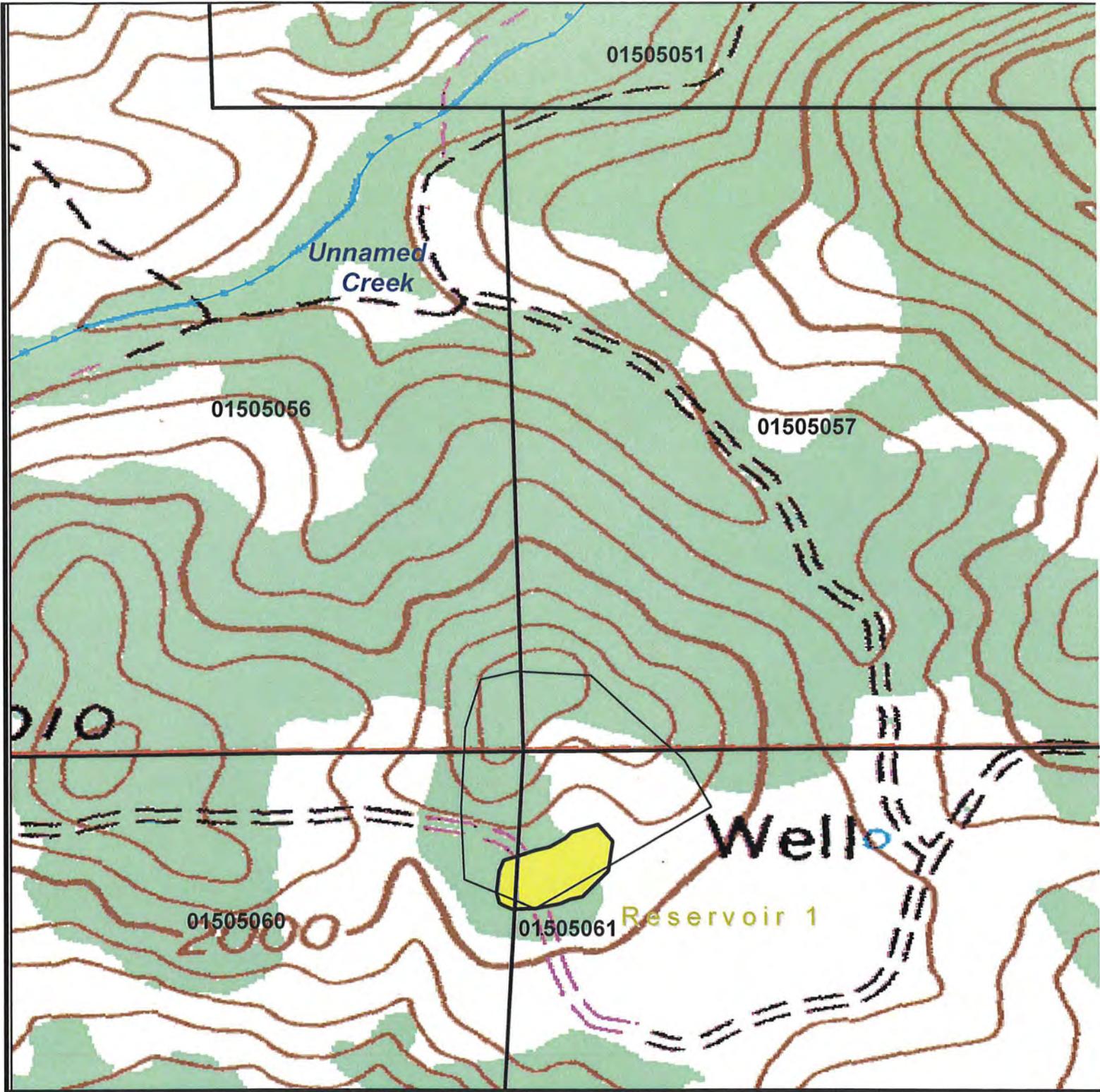
DIVISION FILE # UN001010

SCALE: 1:5,000

DATE: 05/05/2016

MAP: 6 of 6

DRAWN: SPONCE



0 0.04 0.08 0.12 0.16 Miles



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 RHYS VINYARDS LLC

SOURCE UNNAMED CREEK TRIBUTARY
TO SOUTH FORK EEL RIVER

SECTION OF PROJECTED 8, T11N, R12W, MDB&M

COUNTY OF MENDOCINO

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

INSPECTION OF RESERVOIR(S) WITH
UNDETERMINED WATER RIGHTS

DIVISION FILE # UN001010

SCALE: 1:5 000

DATE: 05/05/2016

MAP: 6 of 6

DRAWN: SPONCF

State Water Resources Control Board

Attachment C Description of Required Work and Completion Dates

Rhys Vineyards LLC agrees to conduct the following scope of work to satisfy the Proposed Order No. R1-2019-00XX, Administrative Civil Liability Settlement Agreement and Stipulation of Entry of Order. Order conditions as stipulated below apply to the Properties identified below as owned and controlled by Rhys Vineyards LLC:

1. **Responsible Parties:** The Discharger, Rhys Vineyards LLC, as the current property owner and/or operator and the person discharging or creating a threat of discharge, with the legal ability to control the activities that resulted in the discharge and/or threat of discharge, is the responsible party for purposes of this Order. This Order finds that Rhys Vineyards LLC is the responsible party.
 - A. Per records from Westlaw, Rhys Vineyards LLC acquired the Clarke Ranch on January 8, 2015 with a closing date of January 20, 2015. The Clarke Ranch includes a number of Mendocino County Assessor Parcels (APNs) as follows: APN's 014-300-18, 015-050-50, 014-300-11, 014-300-19, 015-050-51, 014-420-59, 015-050-52, 014-420-60, 015-050-53, 014-420-61, 014-430-64, 014-420-62, 014-430-65, 015-050-54, 015-060-49, 015-050-48, 015-050-56, 015-050-57, 015-050-58, 015-050-59, 015-050-50, 015-050-60, 015-050-61, 015-050-63, 015-110-46, 015-050-64, 015-110-47, 015-110-48, 015-050-65, 015-110-49, 015-050-66, 015-110-50, 015-110-51, 015-120-37, 015-110-52, and 015-120-38, hereafter referred to as the Property.
2. **Property Location and Description:** The Property is located in Mendocino County off Branscomb Road at 6501 Branscomb Road. There are several access points to the Property via dirt roads adjoining with Branscomb Road. For the purposes of this Order the Property is defined as Mendocino County Assessor Parcels (APN): APN's 014-300-18, 015-050-50, 014-300-11, 014-300-19, 015-050-51, 014-420-59, 015-050-52, 014-420-60, 015-050-53, 014-420-61, 014-430-64, 014-420-62, 014-430-65, 015-050-54, 015-060-49, 015-050-48, 015-050-56, 015-050-57, 015-050-58, 015-050-59, 015-050-50, 015-050-60, 015-050-61, 015-050-63, 015-110-46, 015-050-64, 015-110-47, 015-110-48, 015-050-65, 015-110-49, 015-050-66, 015-110-50, 015-110-51, 015-120-37, 015-110-52, and 015-120-38. For the Purposes of this Order and addressing violations observed by Regional Water Board staff during inspections on September 29, 2015 and January 13, 2017, the violation project area

is defined as those area inspected on Mendocino County APN's 015-050-50, 014-300-19,015-050-51, 015-050-56, 015-050-57, 015-050-50, and 015-050-61.

3. 180 days from the date of this Order,

- A. The Discharger shall submit a geologic investigation report¹ of the access roads identified in Regional Water Board inspection reports for the inspections on September 29, 2015 and January 13, 2017 and the LACO and Associates Hydrology report wherein the roads are named Two Mile drive (denotes main access road) and Middle Road (denotes the majority of the road constructed/reconstructed in 2015) and Orchard Loop Lane. These Roads are identified in Attachment C-1, the "Map." The Map indicates the approximate Property boundaries, the Orchard Loop 11 Crossings; the 51 Crossings; the Eel River Watershed Boundary and the three reservoirs. The various crossings are labelled "ER" for Eel River and "TM" for Ten-Mile River. The Geologic review must be conducted by a geologist licensed in the State of California. The geologic review must recommend mitigations for restoration of unstable cut banks and slopes associated with the illegal road reconstruction and construction; and
- B. Submit a Monitoring and Reporting Program for all work conducted that provides for regular quarterly progress reports and for inspection and reporting on all work completed at least three times annually for each CSS repaired and/or while unrepaired that effectively identifies problems prior to the winter period, includes one inspection during rainfall events equal to or greater than 1 inch in 24 hours, and one inspection in February or March of each year until all work is completed. The Monitoring and Reporting Program shall include photo point monitoring of each CSS identified. Annual Monitoring Reports are required until the completion of all required work and/or until required permit monitoring and reporting supersedes these requirements, at which point the Monitoring and Reporting will no longer be required.

¹ The Geologic investigations report shall be developed to the standards of CGS Note 45 (Guidelines for Engineering Geologic Reports for Timber Harvesting Plans) as relative to assessing and mapping unstable features associated with the access road(s) described.

4. **270 days from the date of this Order**, the Discharger shall submit a complete inventory² of all roads³ on the Clarke Ranch parcel with the potential to deliver sediment to watercourses. The Map contained in Attachment C-1 does not limit what the inventory must include. The inventory must include: 1) identification of all controllable sediment sources⁴ (CSS) discharging from roads to watercourses; 2) a narrative description of each CSS; 3) measured volume of sediment discharged from each CSS; 4) measured volume of sediment threatening to discharge from each CSS; 5) prioritization of each CSS identified based upon the threat to water quality and the beneficial uses of water; 6) all geologic recommendations as a result of Item 1 above shall be incorporated into the scope of work; 7) a complete implementation

² An inventory should include the following elements:

- A brief description of the methods used to conduct the inventory
- A description of each site; the information provided should be sufficient to determine why this is a site and understand current conditions;
- A topographic map at a scale of 1:12000 or greater (e.g. 1:6000) with no greater than 80-foot contours;
- A narrative description of the site-specific management measures proposed to remedy the problem including sufficient design and construction standards to evaluate effectiveness of the proposed remedy. (Design and construction standards may include, but are not limited to, diagrams, minimum rock size, and/or performance standards as needed to implement effectively).
- Priority for repair and a time schedule for the repairs should also be included. Identify priority by considering the estimated deliverable sediment volume of a site, the potential for immediate or delayed failure, and the sensitivity of receiving waters. In general, the highest priority is assigned to sites with large sediment volumes with an imminent risk of failure into waters that support domestic water supplies, or fish. The time schedule should schedule work based upon potential for site failure and site priority. The schedule can specify a time range as necessary to allow for operational flexibility within the time allotted for completion of this work through this Order.

³ A "road" is defined as any feature on which vehicles can travel.

⁴ Controllable Sediment Source means sites or locations within the Project area that meet all the following conditions:

1. is discharging or has the potential to discharge sediment to waters of the state in violation of the Water Quality Control Plan for the North Coast Region (Basin Plan) or adopted total maximum daily load (TMDL) or TMDL Implementation Plans;
2. was caused or affected by human activity,
3. may feasibly and reasonably respond to prevention and minimization management measures.

time schedule for all work required to repair CSS's, including the timing for application submittal and approval of required permits to conduct the scope of work; 8) identification of roads with the potential to deliver sediment to watercourses that will be decommissioned and a schedule for decommissioning the roads, 9) design and construction standards for each CSS to bring the features up to the required standard conditions⁵ for water course crossings, and road surfaces. The inventory

-
- ⁵ a. Roads with the potential to deliver to surface waters shall be maintained as appropriate (with adequate surfacing and drainage features) to avoid developing surface ruts, gullies, or surface erosion that results in sediment delivery to surface waters.
- b. Roads, driveways, trails, and other defined corridors for vehicle traffic of any kind shall have adequate ditch relief drains or rolling dips and/or other measures to prevent or minimize erosion along the flow paths and at their respective outlets.
- c. Roads and other features shall be maintained so that surface runoff drains away from potentially unstable slopes or earthen fills. Where road runoff cannot be drained away from an unstable feature, an engineered structure or system shall be installed to ensure that surface flows will not cause slope failure.
- d. Roads, clearings, fill prisms, and terraced areas (cleared/developed areas with the potential for sediment erosion and transport) shall be maintained so that they are hydrologically disconnected, as feasible, from surface waters, including wetlands, ephemeral, intermittent and perennial streams. Connected roads are road segments that deliver road surface runoff, via the ditch or road surface, to a stream crossing. A connected drain is defined as any cross-drain culvert, water bar, rolling dip, or ditch-out that appears to deliver runoff to a defined channel. A drain is considered connected if there is evidence of surface flow connection from the road to a defined channel or if the outlet has eroded a channel that extends from the road to a defined channel.
- e. Ditch relief drains, rolling dip outlets, and road pad or terrace surfaces shall be maintained to promote infiltration/dispersal of outflows and have no apparent erosion or evidence of soil transport to receiving waters.
- f. Stockpiled construction materials are stored in a location and manner to prevent their transport to receiving waters.
- g. Culverts and stream crossings shall be sized to pass the expected 100-year peak streamflow.
- h. Culverts and stream crossings shall be designed and maintained to address debris associated with the expected 100-year peak streamflow.

must present the required scope of work to allow for submittal of applications to respective agencies for required permits. Upon Executive Officer Approval, submit the Inventory and Scope of work to responsible agencies for required permits.

5. **By October 15, 2024**, complete all required work described in the inventory.
6. **By February 1, 2025** submit a Completion Report for the Inventory and Scope of Work for approval by the Regional Water Board or its delegated officer. The Completion Report shall include accurate depictions, documentation, and as-built of all completed restoration construction and/or abatement measures implemented as required in the approved Inventory and Scope of Work. This report shall also include pre- and post-construction photographs taken at each photo point, as depicted on site maps/figures.

Duty to Use Qualified Professionals: The Discharger shall provide documentation that plans and reports required under this Order are prepared under the direction of appropriately qualified professionals. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. The Discharger shall include a statement of qualification and registration numbers of the responsible lead professionals in all plans and reports required under this Order. The lead professional shall sign and affix their registration stamp to the report, plan, or document. The required activities must be implemented by the appropriately qualified/licensed professional as otherwise required by law.

Signatory Requirements: All technical reports submitted by the Discharger shall include a cover letter signed by the Discharger, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the

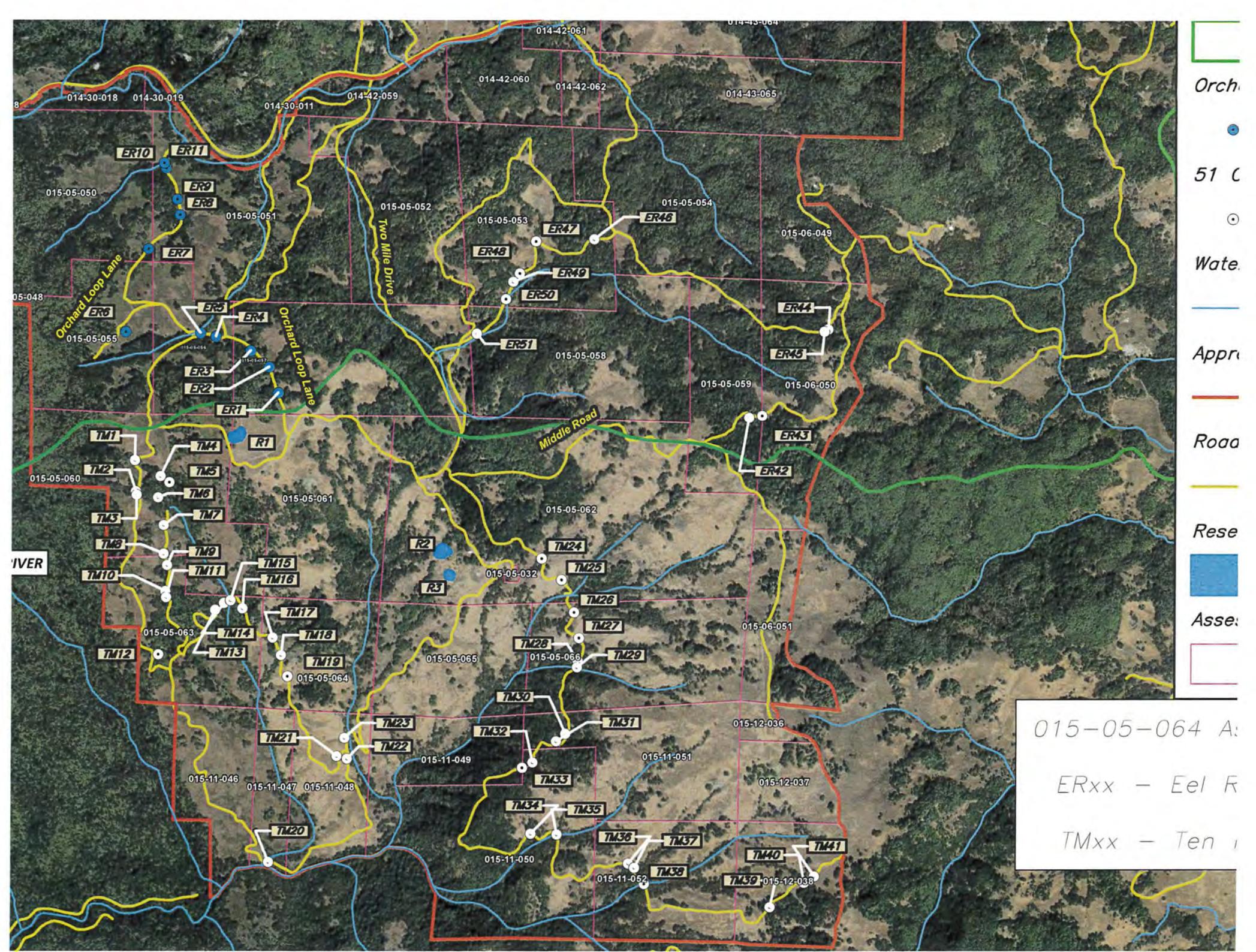
-
- i. Culverts and stream crossings shall allow passage of all life stages of fish on fish-bearing or restorable streams and allow passage of aquatic organisms on perennial or intermittent streams.
 - j. Stream crossings shall be maintained to prevent or minimize erosion from exposed surfaces adjacent to, and in the channel and on the banks.
 - k. Culverts shall align with the stream grade and natural stream channel at the inlet and outlet where feasible. If infeasible inlets and outlets of culverts shall be armored with rock of adequate size to remain in place during high flows placed to ensure protection of the streams bed and banks.
 - l. Stream crossings shall be maintained to prevent stream diversion in the event the culvert/crossing is plugged, and critical dips shall be employed with all crossing installations where feasible. If infeasible install a critical dip.

report and that to the best of his/her knowledge, the report is true, complete, and accurate. Nothing in the following certification shall be construed as requiring the Discharger to certify the accuracy of any item requiring a professional license if the signer does not have that license. The Discharger shall also state in the cover letter whether he/she will implement the recommendations/proposals provided in the report and the schedule for implementation. Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

No Limitation of Water Board Authority: This Order in no way limits the authority of the Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the Property consistent with the Water Code. This Order may be revised as additional information becomes available.

Restitution and Remediation. The costs of the work set forth in this Order shall be paid for by the Discharger in order to come into compliance with any law that was violated, and includes costs related to restitution, including property remediation, for the purposes of coming into compliance with the law.



Attachment D.

Project Description and Budget

The Nature Conservancy's South Fork Ten Mile River Habitat Enhancement Project

Phase 1B Construction Administration and Construction

The following scope of work outlines the tasks and deliverables for The Nature Conservancy (TNC) to construct sites SF10, SF11, SF12, and SF18 on the Phase 1B Habitat Enhancement Project on the South Fork Ten Mile River, which will occur in summer, 2020. Site specific designs will be modified as part of this project to address comments recently provided by CDFW and NOAA technical staff. The sites will include habitat enhancement elements such as flooded wetlands and alcoves (SF11), high-flow secondary channels (SF10 and SF18), and engineered log jams to backwater, redirect flows, and provide complex in-channel habitat (SF10, 11, 12, and 18). Overall project management will be administered by TNC; design revision, regulatory compliance, construction administration and site management will be conducted by Prunuske Chatham, Inc (PCI); and construction will be accomplished by Wylatti Resource Management, LLC.

All plan revisions will follow "*Lower Ten Mile River Habitat Enhancement Plan and Concept Designs*" (Attachment A) and the appendix to that document "*Appendix A: South Fork Ten Mile River Project Options*" (Attachment B). Complete plan sets can be reviewed in these documents.

Project Tasks

Task 1 – Design Revision, Regulatory Compliance, Construction Administration (June 2019-June 2020)

Task 1 is the construction preparation component of the project. In this phase all design revisions, regulatory compliance (permit development and submission to agencies), and preliminary construction administration will occur. Construction administration is defined as all contracting and invoicing tasks needed to retain subcontractors for construction and revegetation. In coordination with TNC, Prunuske Chatham, Inc (PCI) (project administration, and construction management subcontractor) will perform the following project management tasks (shown by year and quarter). Each quarterly report, if provided during a construction period, will include photo point monitoring of the construction activities. At the completion of operations, a final summary report of expenditures and construction activities shall be provided that includes photo point monitoring of construction and post construction work completion to provide for a project summary of work and restoration sites:

- **2019 Q3 Activities:**
 - Initiate plan revisions
 - Develop permit applications
- **2019 Q3 Deliverables**
 - Summary of plan revision progress
 - Summary of permit package progress
- **2019 Q4 Activities:**
 - (pre) Construction administration
 - Plan Revision Progress
 - Permit application Progress
- **2019 Q4 Deliverables**
 - Summary of construction administration progress
 - Summary of plan revision progress
 - Summary of permit package progress

- **2020 Q1 Activities:**
 - Completion of (pre) construction administration
 - Completion of final plans and construction documents
 - Permit package monitoring
- **2020 Q1 Deliverables:**
 - Summary of (pre) construction administration progress
 - Final plans and construction documents
 - Summary of permit package monitoring progress
 - Log procurement completion

Task 2 – Construction Administration, Site Management, Construction, Revegetation (April 2020-March 2021)

Task 2 is the construction component of the project. During the summer and fall of 2020, all construction tasks will be completed, including log procurement. Concurrent with the construction tasks will be the revegetation tasks, which will extend into the spring of 2021. All components of the project, including final invoicing, will be completed by May 2021.

- **2020 Q2 Activities:**
 - Permits issued
 - Construction administration progress
 - Site management initiation and progress
 - Construction initiation and progress
 - Log procurement initiated
- **2020 Q2 Deliverables:**
 - Summary of permits issued
 - Summary of construction administration progress
 - Summary of site management progress
 - Summary of construction progress
 - Summary of log procurement progress
- **2020 Q3 Activities:**
 - Construction administration progress
 - Site management completion
 - Construction completion
 - Log procurement completion
- **2020 Q3 Deliverables:**
 - Summary of construction administration progress
 - Summary of Site management activities
 - Construction completion
 - Summary of log procurement completion
- **2020 Q4 Activities:**
 - Construction administration progress
 - Revegetation initiation and completion
 - Site management completion
- **2020 Q4 Deliverables**
 - Summary of construction administration progress
 - Summary of site management actions
 - Summary of revegetation completion
- **2021 Q1 Activities:**
 - Construction administration completed

- **2021 Q1 Deliverable:**
 - Summary of construction administration completion

Table of Deliverables by Expected Costs and Quarterly Dates

Deliverable	Expected Cost	Expected Delivery Date
Plan Revision Progress		
Permit Package Progress	\$107,624	September, 2019
Permit Package Progress		
Plan Revision Progress		
(pre) Construction Administration Initiation and Progress	\$174,934	December, 2019
Permit Package Progress		
Plan Revision Completion		
(pre) Construction Administration Completion	\$128,324	March, 2020
Site Management Initiation and Progress		
Log Procurement		
Permit Package Completion		
Construction Administration Initiation and Progress		
Construction Initiation and Progress	\$175,075	June, 2020
Site Management Progress		
Construction Completion		
Log Procurement Completion		
Construction Administration Progress	\$949,819	September, 2020
Construction Administration Progress		
Site Management Completion		
Revegetation Initiation and Completion	\$202,238	December, 2020
Construction Administration Completed	\$32,185	March, 2021
Total	\$1,770,199	

Exhibit B
Budget

	2019			2020				2021				Total
	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	
	Apr May Jun	Jul Aug Sep	Oct Nov Dec	Jan Feb Mar	Apr May Jun	Jul Aug Sep	Oct Nov Dec	Jan Feb Mar	Apr May Jun	Jul Aug Sep	Oct Nov Dec	
TNC Salary and Fringe	\$ -	\$ 7,643	\$ 7,643	\$ 10,343	\$ 11,954	\$ 11,954	\$ 10,343	\$ 10,343	\$ -	\$ -	\$ -	\$ 70,222
Misc	\$ -	\$ 100	\$ 100	\$ 700	\$ 900	\$ 935	\$ 900	\$ -	\$ -	\$ -	\$ -	\$ 3,635
Contracts	\$ -	\$ 77,000	\$ 130,000	\$ 90,000	\$ 125,000	\$ 735,000	\$ 148,000	\$ 15,000	\$ -	\$ -	\$ -	\$ 1,320,000
Subtotal	\$ -	\$ 84,743	\$ 137,743	\$ 101,043	\$ 137,854	\$ 747,889	\$ 159,243	\$ 25,343	\$ -	\$ -	\$ -	\$ 1,393,857
Indirect Costs (27%)	\$ -	\$ 22,881	\$ 37,191	\$ 27,281	\$ 37,221	\$ 201,930	\$ 42,995	\$ 6,842	\$ -	\$ -	\$ -	\$ 376,341
Total	\$ -	\$ 107,624	\$ 174,934	\$ 128,324	\$ 175,075	\$ 949,819	\$ 202,238	\$ 32,185	\$ -	\$ -	\$ -	\$ 1,770,199

Funding Agreement

This **Funding Agreement** ("**Agreement**") is dated as of _____, and is entered into by and between **Rhys Vineyards, LLC**, a California Limited Liability Company ("**Rhys**"); and **The Nature Conservancy**, a District of Columbia non-profit corporation ("**TNC**"); who are sometimes hereinafter referred to individually as a "**Party**" or jointly as the "**Parties**"; with respect to the following matters:

A. TNC is a private, non-profit 501(c)(3) conservation organization, dedicated to ensuring the preservation of the full spectrum of natural diversity by protecting biologically sustainable ecosystems, exemplary natural communities, and threatened species.

B. Rhys is proposing to enter into a multi-agency order and settlement agreement with the **State of California Water Board, Division of Water Rights** ("**SWB**"), the **North Coast Regional Water Quality Control Board** ("**the Regional Water Board**") and the **California Department of Fish and Wildlife** ("**CDFW**"), which is sometimes hereinafter referred to as the "**Settlement Agreement**", and it is anticipated that the Settlement Agreement will require Rhys to provide certain funds to TNC (collectively, the "**Funds**"), representing restitution and remediation payments by Rhys, for TNC to use in what is commonly known as its "**South Fork Ten Mile River Habitat Enhancement Project**" ("**Project**"), as more particularly described in TNC's "**Supplemental Environmental Program South Fork Lower Ten Mile River Habitat Enhancement Plan**" ("**Plan**"), a copy of which is attached hereto as **Exhibit A**. The Parties are entering into this Agreement in order to set out their agreement as to the terms under which the Funds are to be provided and utilized.

Now, therefore, in consideration of the above recitals and the mutual covenants and conditions contained herein, TNC and Rhys hereby agree as follows:

1. **Funding.** The Funds shall be disbursed directly to TNC within 30 days after the Settlement Agreement and Order is signed by the Executive Officer of the Regional Water Board, to be applied by TNC as provided herein. It is anticipated that the Settlement Agreement will require that funds totaling \$1,770,200 must be provided to TNC, of which \$1,651,376 is to be attributed under the Settlement Agreement as required by Regional Water Board ("**Regional Water Board Funds**") and \$118,824 is to be attributed under the Settlement Agreement as required by CDFW (the "**CDFW Funds**"). The Funds shall be delivered to TNC by means of two cashier's checks or money orders from Rhys, one cashier's check or money order in the amount described above as the Regional Water Board Funds, and one cashier's check or money order in the amount described above as the CDFW Funds. The checks shall be made out to TNC and shall be sent to TNC at the following address, with the appropriate accounting center number as indicated below:

The Nature Conservancy
Accounts Receivable
Accounting Center P119622
201 Mission Street, 4th Floor
San Francisco, CA 94105

2. **Management and Disbursement of the Funds.** TNC shall deposit, maintain, and disburse the Funds for the purposes and by the terms which are set forth in this Agreement. The Funds

shall be invested with TNC's centrally pooled funds, and shall be used only for the specific tasks which are described in the Plan (the "Designated Tasks"). The Funds shall be used solely to pay for the direct costs and allowable indirect and administrative costs incurred with respect to the Designated Tasks during the period which begins once the Funds have been delivered to TNC and ends on December 31, 2021 (the "**Funding Period**"), following TNC's established procedures. Included in **Exhibit A** is a budget for the application of the Funds (the "**Budget**"), but the Parties agree that the Budget shall be subject to revision as necessary during the course of carrying out the Designated Tasks. TNC shall have the right to reallocate amounts among line items in the Budget from time to time, up to a total of 10% of the total Budget amount, but any greater reallocation of Funds shall require the prior written approval of the Regional Water Board and the CDFW, in the manner indicated below.

3. **Contingency.** This Agreement is contingent upon the Settlement Agreement being fully executed and implemented. If the Settlement Agreement is not executed and implemented, this Agreement shall be null and void, and automatically terminate with no further action by Funder or TNC needed.

4. **TNC's Status and Use of Funds.** TNC represents, warrants, and agrees with Rhys as follows concerning TNC and the use of the Funds, on the understanding that Rhys is and will be relying materially on the truth of the following representations and warranties, and the compliance by TNC with the following agreements, in providing the Funds to TNC:

(a) TNC holds Section 501(c)(3) status for tax purposes under the Internal Revenue Code ("**Code**"), and TNC is not a "private foundation" as defined by Section 509 of the Code. TNC will advise Rhys immediately in writing of any notice from the Internal Revenue Service ("**IRS**"), or from any applicable state, local, or other tax authority, that the tax status of TNC has been changed, or is being challenged, questioned, or reviewed.

(b) TNC shall maintain reasonably detailed books, records, documents and other evidence pertaining to the use of the Funds, reflecting all costs and expenses which are funded or for which reimbursement is claimed under this Agreement, and in full compliance with all applicable regulations of the IRS. Rhys shall have the right at all reasonable times, upon reasonable prior written notice, for a period of three (3) years after the end of the Funding Period, to inspect, audit, copy, and retain for their records copies of such books and records, in order to verify the compliance of TNC with the conditions of this Agreement, and TNC shall be responsible for reimbursing any Funds which such audit reveals to have been used improperly, in the manner indicated below in this Agreement, promptly after receipt of a written reimbursement request and verification by TNC that the request is valid.

(c) TNC shall not use any of the Funds:

- (1) to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to cause any private benefit to occur without realizing charitable benefit in return, or to take any other action inconsistent with Section 501(c)(3) of the Code;
- (2) to attempt to influence legislation within the meaning of Section 501(c)(3) of the Code or otherwise to support lobbying; or
- (3) to violate any United States law or other law applicable to the jurisdiction in which the Project is located, including (but not limited to) the United States Foreign Corrupt

Practices Act or applicable anti-bribery laws or regulations, as well as, any applicable anti-terrorism laws or regulations.

(4) for any other purpose than to implement and construct the Project.

5. Timeline for Designated Tasks. TNC shall begin work on the Designated Tasks promptly after receiving the Funds from Rhys, taking into account the needs for contracting for the work and weather conditions. TNC shall use its reasonable best efforts to expend all of the Funds on the Designated Tasks on or before December 31, 2021. If TNC cannot meet the December 31, 2021 deadline, TNC shall follow the process for "Major Delays" set forth in Paragraph 7 of this Agreement.

6. Progress Reports. TNC shall provide quarterly reports of progress on the Designated Tasks (in each case, a "Progress Report") to Rhys with copies also to be sent to the following persons at their respective addresses indicated below (as such contact persons/offices and/or their addresses may have subsequently been modified by the relevant person(s) or office(s), by means of written notice to TNC) commencing October 1, 2019 and continuing thereafter throughout the Funding Period. If no activity on the Designated Tasks occurs during a quarter, a quarterly Progress Report so stating shall be submitted to Rhys and the Regional Water Board Designated Representatives listed below, as well as, the other persons/offices which are specified below as "Other Interested Parties".

(a) For the Regional Water Board:

(i) Joshua Curtis
Assistant Executive Officer
North Coast Regional Water Quality Control Board,
5550 Skyline Boulevard, Suite A
Santa Rosa, California 95403
Joshua.Curtis@Waterboards.ca.gov
*Regional Water Board Designated Representative

and

(ii) Kenneth Petruzzelli
State Water Resources Control Board,
Office of Enforcement
801 K Street, 23rd Floor
Sacramento, California 95814
kenneth.petruzzelli@waterboards.ca.gov
*Regional Water Board Designated Representative

(b) For SWB:

- (i) State Water Resources Control Board,
Division of Water Rights,
Attn: Julé Rizzardo
P.O. Box 100
Sacramento, CA 95812-2000
Jule.Rizzardo@waterboards.ca.gov
*Other Interested Party

and

- (ii) State Water Resources Control Board
Division of Water Rights
Attn: Skyler Anderson
P.O. Box 100
Sacramento, CA 95812-2000
Skyler.anderson@waterboards.ca.gov
*Other Interested Party

(c) For CDFW:

- (i) Lisa Wolfe, Attorney III
Department of Fish and Wildlife
P.O. Box 944209
Sacramento, CA 94244-2090
lisa.wolfe@wildlife.ca.gov
*Other Interested Party

(d) For Rhys:

- (i) Rhys Vineyards
Attn: Javier Meza
11715 Skyline Blvd.
Los Gatos, CA 95033
javier@rhysvineyards.com

and

- (ii) Rhys Vineyards
Attn: Robert J. Guenley
2965 Woodside Rd.
Woodside, CA 94062
Bguenley@rhysvineyards.com

and

(iii) Rhys Vineyards
Attn.: Luciel Leis
2965 Woodside Rd.
Woodside, CA 94062
Lleis@rhysvineyards.com

7. **Major Delays.** Whenever there is a major delay not anticipated in the Plan, TNC shall notify Rhys, the Regional Water Board Designated Representative, and the Other Interested Parties in writing within thirty (30) days of the date on which it first knew of the event or circumstance that caused the delay. The notice shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by TNC to prevent or minimize the delay, the schedule by which the measures will be implemented, and the revised schedule for the work. TNC shall adopt all reasonable measures to avoid and minimize such delays.

8. **Audits and Certification of Project.**

(a) No later than February 21, 2022, TNC shall submit to the Regional Water Board Designated Representatives a certified statement by TNC documenting the expenditures by TNC on the Designated Tasks during the Funding Period. In making such certification, the signatories may rely upon normal organizational project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. TNC shall provide any additional information requested by the Regional Water Board staff which is reasonably necessary to verify TNC's expenditures on the Designated Tasks.

(b) On or before December 31, 2021, TNC shall submit a final Progress Report to the Regional Water Board Designated Representative and Rhys, with a copy to each of the Other Interested Parties, submitted under penalty of perjury, stating that all of the Funds have been expended on the Designated Tasks in accordance with the terms set forth in **Exhibit A** (or specifying, as applicable, any amount not so expended).

9. **Termination.** Rhys shall have the right to terminate this Agreement by written notice to TNC if, in the reasonable judgment of Rhys, TNC defaults materially in the performance of its obligations under this Agreement. Upon receipt of such a termination notice from Rhys, TNC shall take all necessary actions to cancel or avoid commitments which were to be funded under this Agreement, but TNC shall disburse Funds for those obligations reasonably incurred by TNC prior to the giving of the termination notice which could not reasonably be canceled or avoided after the termination notice was given. TNC shall return to the Regional Water Board and CDFW any portion of the Funds not expended or insured/owed for work already completed in accordance with the requirements of this Agreement at the end of the Funding Period or upon any such earlier termination of this Agreement, in proportion to the amounts originally provided by each of those agencies.

10. Failure to Proceed with the Designated Tasks. If TNC suspends the work on the Designated Tasks for any reason, TNC shall: (1) provide written notice to Rhys, the Regional Water Board Designated Representative, and each of the Other Interested Parties within twenty-four (24) hours of work stoppage; and (2) convey any Funds not expended or incurred/owed for work already completed to the Regional Water Board and CDFW as provided above, within ten (10) calendar days of stopping work. TNC shall also provide Rhys with evidence of the making of this conveyance.

11. Specific Performance. In consideration of the funds provided, the parties agree that in the event TNC suspends or abandons work on the designated tasks as set out in paragraph 10, TNC agrees that Rhys may pursue, and a court may order, specific performance of the parts of this agreement that require TNC to disperse any unused funds to the Regional Water Board or CDFW.

12. Third Party Beneficiaries. The Regional Water Board and CDFW are third party beneficiaries to this Agreement, and the Parties agree that each agency may enforce any provision of this Agreement as if it were a party to this Agreement.

13. No Assignment by TNC. The Funds are being made available for a specific purpose and neither the Funds nor any of the rights or obligations of TNC under this Agreement may be assigned or delegated by TNC to any extent or in any manner without the prior written approval of the Regional Water Board Designated Representative. However, TNC has explained the following to Rhys:

(a) The Designated Tasks are a continuation of work already undertaken by TNC in the same area, using **Prunuske Chatham, Inc. (PCI)**, for design, engineering, and construction oversight, and **Wylatti Resource Management, Inc. (WRI)**, for the construction work ; (ii) PCI and WRI were selected by TNC for those roles after formal solicitations of bids, in which TNC determined that their qualifications and rates were competitive with those of other bidders; (iii) TNC has established a good working relationship with PCI and WRI, and has evaluated their work thus far as meeting the necessary requirements; and (iv) TNC feels that it would be cost-effective and advantageous to have PCI and WRI continue such efforts by carrying out work on the Designated Tasks.

(b) TNC has been purchasing logs from the owner of the property where the work is being done, to use in constructing in-stream structures as part of the Project. The logs are purchased at a fair-market price, and it is very convenient to be able to access them on site.

Taking those considerations into account, Rhys understands and agrees to: (i) TNC's continued use of PCI and WRI for work on the Designated Tasks, as TNC may reasonably determine to be advisable from time to time, and agrees that no new solicitation of bids for such work need be carried out by TNC before using PCI and WRI for the Designated Tasks; and (ii) the continued purchase of logs from the property owner for use as mentioned above, provided that that is done at a fair-market price. The Parties agree that Rhys is not a party to the contracts with PCI or WRI, or any other contracts or agreements which may be entered into by TNC, and has no control over the work performed in those contracts or agreements. TNC shall indemnify, defend and hold harmless Rhys against any and all claims, liens, lawsuits, and liability alleged against Rhys in connection with TNC's performance of the Designated Tasks.

14. Agreement. The terms of this Agreement, which includes Exhibit A, and the sections of the multi-agency Settlement Agreement that pertain to the Project and its deadlines, budget, scope of work, required notifications, audits and certification of funds are intended by the Parties as a final expression of their agreement with respect to the subject matter hereof, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement, Exhibit A and those sections of the multi agency Settlement Agreement listed above, constitute the complete and exclusive statement of its terms, and that no extrinsic evidence of any kind which contradicts the terms of this Agreement may be introduced in any proceedings (judicial or otherwise) involving this Agreement, except for evidence of a subsequent written amendment to this Agreement. This Agreement may not be modified, amended or otherwise changed in any manner, except by a written amendment executed by all of the parties hereto, or their successors in interest. This Agreement may be executed in multiple counterparts, and each executed counterpart of this Agreement shall be deemed an original for all purposes, despite the fact that not all of the parties are signatories to the same counterpart. Electronic signatures, digital signatures, fax signatures, and scanned signatures are acceptable for this Agreement in compliance with the Uniform Electronic Transactions Act (UETA).

15. Interpretation. In this Agreement, personal pronouns shall be construed as though of the gender and number required by the context, the singular including the plural, the plural including the singular, and each gender including other genders, all as may be required by the context. Wherever in this Agreement the term "and/or" is used, it shall mean: "one or the other, both, any one or more, or all" of the things, events, persons, or parties in connection with which the term is used. Any and all recitals at the beginning of this Agreement are accurate and shall constitute an integral part of this Agreement, and this Agreement shall be construed in light of those recitals. Any and all exhibits, schedules, and addenda attached to and referred to in this Agreement are hereby incorporated into this Agreement as fully as if set out in their entirety herein. The headings of the various paragraphs of this Agreement are intended solely for reference purposes, and are not intended for any purpose whatsoever to modify, explain, or place any construction on any of the provisions of this Agreement.

16. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with, and interpreted under the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement, or for breach thereof, shall be brought and tried in the Mendocino County Superior Court.

17. Restitution Payment. Under the Settlement Agreement the funds paid by Rhys to TNC are considered restitution to remediate the Ten Mile River Habitat and for Rhys to come into compliance with various laws and regulations under the California Public Resources Code, Fish and Game Code, and Water Code.

18. Publicity. The parties acknowledge that under the State Water Board December 5, 2017 policy on Supplemental Environmental Projects, Section VIII(J), and under the Settlement Agreement, there is required language that shall be used when either TNC or Rhys publicizes the Project. Whenever TNC or Rhys publicizes the Project, or the results of this Project, the Parties shall state in a prominent manner that "the Project is being undertaken as part of an enforcement action by the Regional Water Board against Rhys Vineyards, LLC."

19. Notices. Except as otherwise provided in this Agreement, any notice, demand, request, consent, or approval of any kind that either Party desires or is required to give to or make on the other Party under or in connection with this Agreement (in each case, a "**Notice**") shall be in writing and shall be served upon the Party being addressed at the most recent address which the addressed Party has provided for such purposes under this Agreement, by any of the following means: (i) by delivery in person; (ii) by certified U.S. mail, return receipt requested, postage prepaid; or (iii) by a reputable "overnight" courier or delivery service, provided that next-business-day delivery is requested by the sender. If delivered in person, a Notice will be deemed given immediately upon delivery (or refusal of delivery or receipt). If sent by certified mail, a Notice will be deemed given on the earlier to occur of: (i) the date of first attempted delivery; or (ii) the third day after being deposited in the mail. If sent by reputable "overnight" courier or delivery service, a Notice will be deemed given on the next-business-day after being deposited with the delivery service. By a written Notice to the other Party which is given in the aforesaid manner, either Party may from time to time designate a replacement address for Notices to it, and the replacement address shall then be substituted for the one previously in effect, provided that in no case shall any such replacement increase the total number of addresses for Notices to such Party. Subject to such right to change their addresses for Notices, the Parties initially designate the addresses indicated below to be used for Notices sent to them:

If to Rhys:

- (i) Rhys Vineyards
Attn: Robert J. Guenley
2965 Woodside Rd.
Woodside, CA 94062
Phone: (650) 854-8180
(for courier deliveries)

- (ii) Rhys Vineyards
Attn: Javier Meza
11715 Skyline Blvd.
Los Gatos CA 95033
Phone: (866) 511-1520
(for courier deliveries)

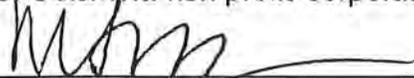
- (iii) Rhys Vineyards
Attn: Luciel Leis
2965 Woodside Rd.
Woodside, CA 94062
Phone: 650-234-3982
(for courier deliveries)

If to TNC:

The Nature Conservancy
Attn: David Wright
North Coast Restoration Project Manager
Fort Bragg Field Office
90 West Redwood Avenue
Fort Bragg, CA 95437
Phone (707) 357-4933
(for courier deliveries)

In witness whereof, the undersigned have executed this Agreement as of the date first above written.

The Nature Conservancy,
a District of Columbia non-profit corporation

By: 
(signature)

Name: Mike Sweeney

Title: CA Executive Director 6/24/19

Rhys Vineyards, LLC,
a California Limited Liability Company

By: 
(signature)

Name: ROBERT A. GUENLEY

Title: CEO

