



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

DIVISION OF WATER RIGHTS

RIGHT TO DIVERT AND USE WATER

APPLICATION 31059

PERMIT **XXXXX**

Right Holder: Linholme Properties
c/o Janis Huggins
PO Box 810
Redwood Valley, CA 95470

The State Water Resources Control Board (State Water Board) authorizes the diversion and use of water by the right holder in accordance with the limitations and conditions herein SUBJECT TO PRIOR RIGHTS. The priority of this right dates from **September 1, 1999**. This right is issued in accordance with the State Water Board delegation of authority to the Deputy Director for Water Rights (Resolution 2012-0029) and the Deputy Director for Water Rights redelegation of authority dated July 6, 2012.

The Deputy Director for Water Rights finds that the State Water Board and/or the Applicant have met the following requirements for permit issuance: (a) demonstrated the availability of unappropriated water; (b) resolved protests in compliance with Water Code section 1330 et seq. and included appropriate permit conditions; (c) demonstrated that the water will be diverted and used without injury to any lawful user of water; (d) demonstrated that the intended use is beneficial; and (e) demonstrated that the requirements of the California Environmental Quality Act (CEQA) have been met or that the project is exempt from CEQA.

The State Water Board has complied with its independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346, 658 P.2d 709].)

Right holder is hereby granted a right to divert and use water as follows:

- Source of water: **Unnamed Stream**
tributary to: **Mill Creek thence Forsythe Creek thence the Russian River thence the Pacific Ocean**
within the County of **Mendocino**

2. Location of point of diversion

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
North 2,232,973 feet and East 6,190,077 feet	SW ¼ of NW ¼	33	17N	13W	MD

3. Purpose of use	4. Place of use					
	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian	Acres
Frost Protection	NW ¼ of NW ¼	33	17N	13W	MD	11
	SW ¼ of NW ¼	33	17N	13W	MD	4
	SE ¼ of NW ¼	33	17N	13W	MD	7
					Total	22

The place of use is shown on map on file with the State Water Board.

5. The water appropriated under this right shall be limited to the quantity which can be beneficially used and shall not exceed **2.04 cubic feet per second** by direct diversion to be diverted from March 15 to March 31 of each year. The maximum amount diverted under this right shall not exceed **5.6 acre-feet per year**.
(000005A)
6. The total quantity of water diverted under this right and the right pursuant to Application 31060 shall not exceed **20.5 acre-feet per year**.
(000005Q)
7. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2028.
(000009)
8. The State Water Board reserves jurisdiction to impose conditions to conform this water right to State Water Board policy on use of water for frost protection. Action by the State Water Board will be taken only after notice to interested parties and opportunity for hearing.
(000020)
9. Based on the information in the Division of Water Rights files, water has not been used under a claimed existing right on the place of use. If right holder exercises a claimed existing right on the place of use authorized by this right without prior approval from the State Water Board, right holder shall forfeit this water right.
(000021C)
10. The State Water Board intends to develop and implement a basin-wide program for real-time electronic monitoring and reporting of diversions, withdrawals, releases and streamflow in a standardized format if and when resources become available. Such real-time reporting will be required upon a showing by the State Water Board that the program and the infrastructure are in place to accept real-time electronic reports. Implementation of the reporting requirements shall not necessitate amendment to this right.
(0090031)
11. No water shall be diverted under this right unless the flow in the Unnamed Stream is at or above 0.71 cubic feet per second, as determined at Point of Diversion 1.
(0140060)

12. No water shall be diverted under this water right unless right holder is bypassing the flow required by this water right by use of passive bypass devices.

Right holder shall provide the Division of Water Rights with evidence that the device have been installed with the first annual report submitted after device installation. Right holder shall provide the Division of Water Rights with evidence that substantiates that the devices are functioning properly every year after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights. Evidence required by this condition shall include current photographs of the system in place and a statement, signed by the right holder, certifying that the system is still operating as designed.

(0050062C)

13. The State Water Resources Control Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the State Water Board concerning availability of water and the protection of beneficial uses of water in the Russian River . Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing.

(0000080)

14. This permit is subject to prior rights. Right holder is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Russian River Watershed are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the State Water Board, made after notice to interested parties and opportunity for hearing.

(0000090A)

15. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars and pestles) and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; and structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails. The Deputy Director for Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the right holder to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Deputy Director for Water Rights for approval. Project-related activities shall not resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of the Deputy Director for Water Rights.

(0000215)

16. No water shall be directly diverted under this right unless right holder is monitoring and reporting said diversion of water. This monitoring shall be conducted using a device and methods satisfactory to the Deputy Director for Water Rights. The device shall be capable of continuous monitoring of the rate and quantity of water diverted and shall be properly maintained.

Right holder shall provide the Division of Water Rights with evidence that the device has been installed with the first annual report submitted after device installation. Right holder shall provide the Division of Water Rights with evidence that substantiates that the device is functioning properly every five years after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.

Right holder shall maintain a record of all diversions under this right that includes the date, time, rate of diversion at time intervals of one hour or less, and the amount of water diverted. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights.

(000000R)

17. This right is specifically subject to the prior rights of: (1) Beringer Blass Wine Estates under Permits 20484, 20485, and 20486 (Applications 29418, 29419, and 29437) to the extent water is being diverted under these permits from the Russian River and (2) Beringer Blass Wine Estates under Statement of Water Diversion and Use 8430, to the extent they exist.

(000000T)

18. Right holder shall establish setbacks for the protection of riparian corridors along the streams in the vicinity of the place of use, as shown in **Figure 7** of the Linholme Properties Initial Study/Mitigated Negative Declaration; the setback shall be measured from the Watercourse Transition Line as defined the 2012 California Forest Practice Rules (Cal. Code Regs., tit. 14, § 895.1.) and shall extend a minimum of 75 feet or to the outer edge of the drip line of the existing riparian trees, whichever is greater from Class I streams. Right holder shall also establish setbacks for the protection of riparian corridors along the Class II streams in the vicinity of the place of use; the setback shall be measured from the Watercourse Transition Line as defined the 2012 California Forest Practice Rules (Cal. Code Regs., tit. 14, § 895.1.) and shall extend a minimum of 50 feet or to the outer edge of the drip line of the existing riparian trees, whichever is greater.

Prior to ground disturbing activities adjacent to setback areas, the right holder shall stake the setback and notify the California Department of Fish and Wildlife. Except for the exclusions stated herein, no ground disturbing activities shall occur within the setback area, including, but not limited to, grading, herbicide spraying, roads, fencing, and use or construction of storage areas. There is excluded from the setback areas established herein all existing vineyards (0.26 acres) and planted landscape areas, roads and roadways, bridges, equipment and material storage areas, buildings, structures, fences, wells, pipes, drainage facilities, utility lines and poles, pumps, sumps, water diversion and storage facilities, and access to all of the foregoing existing features for purposes of operation, maintenance, and replacement, as such facilities and access exists now or may from time to time be modified. Equipment access through the setback area shall incorporate best management practices to minimize disturbance to water, soils, and vegetation. Planting and irrigation of native riparian vegetation within the setback area are allowed. Right holder shall restrict cattle or other domestic stock access to the setback area. These requirements shall remain in effect as long as water is being diverted under this right.

(0000206)

19. No water shall be diverted under this right unless right holder is operating in accordance with an oak tree mitigation plan. Right holder shall submit a report on oak tree mitigation plan activities in accordance with the time schedule contained in the mitigation plan, and whenever requested by the Division of Water Rights. The Deputy Director for Water Rights may require modification of the oak tree mitigation plan upon a determination that the plan is ineffective, or provide relief from this term upon a determination that the oak tree mitigation plan is no longer required.

(0400058)

20. The prehistoric archaeological site identified as CA-MEN-620/621 by Tom Origer & Associates in the report titled "A Cultural Resources Survey for the Linholme Property Water Right Applications (#31059 & #31060), Mendocino County, California" dated April 7, 2010, shall not be impacted by any subsurface disturbances (e.g., ripping, trenching, grading, or installation of buried pipelines). Routine maintenance of existing vineyard, including shallow discing and weed mowing will continue to be allowed. When vine replacement is necessary, vine removal shall be done as non-invasively as possible, by pulling the vines vertically with a chain attached to the hydraulic system on a tractor. Vine removal shall occur only while

the soil is moist down to six inches, and new vines shall be replanted in the same location as the vines which were removed. The right holder shall mark the location of CA-MEN-620/621 with permanent fence posts. The delineation of the site area shall be determined by a professional archeologist in consultation with the State Water Board. GPS coordinates shall be used to identify the boundary of the sensitive area and be submitted to the State Water Board. Right holder shall be responsible for all costs associated with the cultural resource related work.

(0380504)

21. If human remains are encountered, the right holder shall comply with Section 15064.5 (e) (1) of the California Environmental Quality Act Guidelines and the Health and Safety Code Section 7050.5. All project-related ground disturbances within 100 feet of the find shall be halted until the Mendocino County Coroner has been notified. If the Coroner determines that the remains are Native American, the Coroner will notify the Native American Heritage Commission to identify the most-likely descendants of the deceased Native Americans. Project-related ground disturbance, in the vicinity of the find, shall not resume until the process detailed under Section 15064.5 (e) has been completed and evidence of completion has been submitted to the Deputy Director for Water Rights.

(0380500)

22. If vertebrate fossils are discovered during project activities, all work shall cease within 100 feet of the find until a qualified professional paleontologist as defined by the Society of Vertebrate Paleontology's Conformable Impact Mitigation Guidelines Committee (2011) can assess the nature and importance of the find and recommend appropriate treatment. The Division of Water Rights will also be notified of the discovery and the qualified professional paleontologist's opinion within 48 hours of the initial finding. Treatment may include preparation and recovery of fossil materials, so that they can be housed in an appropriate museum or university collection, and also may include preparation of a report for publication describing the finds. Project activities shall not resume until after the qualified professional paleontologist has given clearance and evidence of such clearance has been submitted to the Division of Water Rights.

(0380505)

THIS RIGHT IS ALSO SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- A. Right holder is on notice that: (1) failure to timely commence or complete construction work or beneficial use of water with due diligence, (2) cessation or partial cessation of beneficial use of water, or (3) failure to observe any of the terms or conditions of this right, may be cause for the State Water Board to consider revocation (including partial revocation) of this right. (Cal. Code Regs., tit. 23, § 850.) (0000016)
- B. Right holder is on notice that when the State Water Board determines that any person is violating, or threatening to violate, any term or condition of a right, the State Water Board may issue an order to that person to cease and desist from that violation. (Wat. Code, § 1831.) (0000017)
- C. Right holder is not authorized to make any modifications to the location of diversion facilities, place of use or purposes of use, or make other changes to the project that do not conform with the terms and conditions of this right, prior to submitting a change petition and obtaining approval of the State Water Board. (0000018)
- D. Once the time to develop beneficial use of water ends under this permit, right holder is not authorized to increase diversions beyond the maximum annual amount diverted or used during the authorized development schedule prior to submitting a time extension petition and obtaining approval of the State Water Board. (0000019)
- E. Only the amount of water applied to beneficial use during the authorized diversion season, as determined by the State Water Board, shall be considered when issuing a license. (Wat. Code, § 1610.) (0000006)
- F. Right holder shall maintain records of the amount of water diverted and used under this right to enable the State Water Board to determine the amount of water that has been applied to beneficial use. (0000015)
- G. Right holder shall promptly submit any reports, data, or other information that may reasonably be required by the State Water Board, including but not limited to documentation of water diversion and use under this right and documentation of compliance with the terms and conditions of this right. (0000010)
- H. No water shall be diverted under this right unless right holder is operating in accordance with a compliance plan, satisfactory to the Deputy Director for Water Rights. Said compliance plan shall specify how right holder will comply with the terms and conditions of this right. Right holder shall comply with all reporting requirements in accordance with the schedule contained in the compliance plan. (0000070)
- I. Right holder shall grant, or secure authorization through right holder's right of access to property owned by another party, the staff of the State Water Board, and any other authorized representatives of the State Water Board the following:
 - 1. Entry upon property where water is being diverted, stored or used under a right issued by the State Water Board or where monitoring, samples and/or records must be collected under the conditions of this right;

2. Access to copy any records at reasonable times that are kept under the terms and conditions of a right or other order issued by State Water Board;
3. Access to inspect at reasonable times any project covered by a right issued by the State Water Board, equipment (including monitoring and control equipment), practices, or operations regulated by or required under this right; and,
4. Access to photograph, sample, measure, and monitor at reasonable times for the purpose of ensuring compliance with a right or other order issued by State Water Board, or as otherwise authorized by the Water Code.

(0000011)

J. This right shall not be construed as conferring right of access to any lands or facilities not owned by right holder.

(0000022)

K. All rights are issued subject to available flows. Inasmuch as the source contains treated wastewater, imported water from another stream system, or return flow from other projects, there is no guarantee that such supply will continue.

(0000025)

L. This right does not authorize diversion of water dedicated by other right holders under a senior right for purposes of preserving or enhancing wetlands, habitat, fish and wildlife resources, or recreation in, or on, the water. (Wat. Code, § 1707.) The Division of Water Rights maintains information about these dedications. It is right holders' responsibility to be aware of any dedications that may preclude diversion under this right.

(0000212)

M. No water shall be diverted or used under this right, and no construction related to such diversion shall commence, unless right holder has obtained and is in compliance with all necessary permits or other approvals required by other agencies. If an amended right is issued, no new facilities shall be utilized, nor shall the amount of water diverted or used increase beyond the maximum amount diverted or used during the previously authorized development schedule, unless right holder has obtained and is in compliance with all necessary requirements, including but not limited to the permits and approvals listed in this term.

Within 90 days of the issuance of this right or any subsequent amendment, right holder shall prepare and submit to the Division of Water Rights a list of, or provide information that shows proof of attempts to solicit information regarding the need for, permits or approvals that may be required for the project. At a minimum, right holder shall provide a list or other information pertaining to whether any of the following permits or approvals are required: (1) lake or streambed alteration agreement with the Department of Fish and Wildlife (Fish & G. Code, § 1600 et seq.); (2) Department of Water Resources, Division of Safety of Dams approval (Wat. Code, § 6002); (3) Regional Water Quality Control Board Waste Discharge Requirements (Wat. Code, § 13260 et seq.); (4) U.S. Army Corps of Engineers Clean Water Act section 404 permit (33 U.S.C. § 1344); and (5) local grading permits.

Right holder shall, within 30 days of issuance of any permits, approvals or waivers, transmit copies to the Division of Water Rights.

(0000203)

N. Urban water suppliers must comply with the Urban Water Management Planning Act (Wat. Code, § 10610 et seq.). An "urban water supplier" means a supplier, either publicly or privately owned, providing water for municipal purposes either directly or indirectly to more than 3,000 customers or supplying more than 3,000 acre-feet of water annually.

Agricultural water users and suppliers must comply with the Agricultural Water Management Planning Act (Act) (Water Code, § 10800 et seq.). Agricultural water users applying for a permit from the State Water Board are required to develop and implement water conservation plans in accordance with the Act. An "agricultural water supplier" means a supplier, either publicly or privately owned, supplying more than 50,000 acre-feet of water annually for agricultural purposes. An agricultural water supplier includes a supplier or contractor for water, regardless of the basis of right, which distributes or sells for ultimate resale to customers.

(000029D)

- O. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this right, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this right with a view to eliminating waste of water and to meeting the reasonable water requirements of right holder without unreasonable draft on the source. Right holder may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this right and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by right holder in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution, article X, section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

- P. The quantity of water diverted under this right is subject to modification by the State Water Board if, after notice to right holder and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

- Q. This right does not authorize any act which results in the taking of a candidate, threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C. § 1531 et seq.). If a "take" will result from any act authorized under this right, right holder shall

obtain any required authorization for an incidental take prior to construction or operation of the project. Right holder shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this right.

(000014)

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This right is issued and right holder takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer .

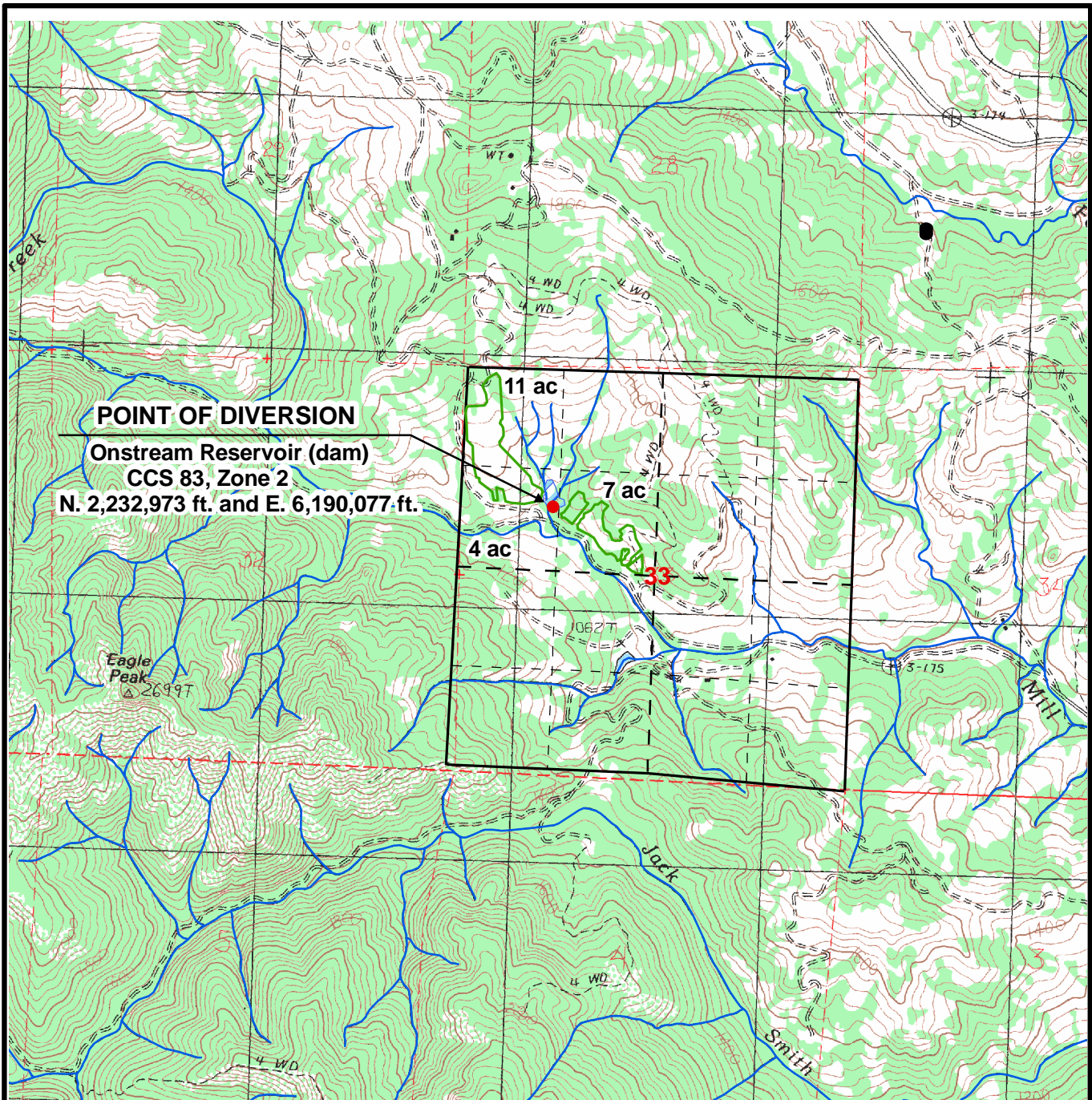
Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD

*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated:

DRAFT



OWNER LINHOLME PROPERTIES

SOURCE UNNAMED STREAM

POINT OF DIVERSION

WITHIN SW 1/4 OF NW 1/4 OF PROJECTED

SECTION 33, T17N, R13W, MDB&M

COUNTY OF MENDOCINO

U.S.G.S. QUAD: LAUGHLIN RANGE DATE: PH. RE. 1981 SCALE: 1:24,000

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

APPLICATION NO. 31059 AND 31060

PERMIT NO.

PERMIT

DATE: 11/12/2013	DRAWN: JDM	CHECKED: DTT
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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.