

STATE OF CALIFORNIA
WATER RESOURCES CONTROL BOARD
PUBLIC HEARING

In the Matter of:

Draft Cease and Desist Order and
Administrative Civil Liability
against Stornetta Family Trust and
Newton Dal Poggetto (Trustee)

Unnamed Stream Tributary to
Napa River, Napa County
-----/

JOE SERNA, JR. BUILDING
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
COASTAL HEARING ROOM
1001 I STREET, SECOND FLOOR
SACRAMENTO, CALIFORNIA

TUESDAY, SEPTEMBER 2, 2014

9:58 A.M.

Reported by:
Jacqueline Toliver
CSR No. 4808

CALIFORNIA REPORTING, LLC
52 LONGWOOD DRIVE
SAN RAFAEL, CA 94901
(415) 457-4417

1 APPEARANCES

2 HEARING OFFICER

3 MR. STEVEN MOORE
4

5 CO-HEARING OFFICER

6 MS. FRANCES SPIVY-WEBER
7

8 WATER BOARD STAFF

9 Mr. Carlos Mejia, Esq., Board Counsel

10 Mr. Jane Farwell, Staff Environmental Scientist

11 Mr. Jean McCue, Staff Engineer

12 Mr. Michael Buckman, Senior Environmental Scientist

13 PROSECUTION TEAM:

14 Ms. Yvonne M. West
15 Senior Staff Counsel
16 SWRCB, Office of Enforcement
17 1001 I Street, 16th Floor
18 Sacramento, California 95814
19 Division of Water Rights

20 Mr. Aaron Miller, Senior Water Resources Control
21 Engineer

22 Mr. Kevin Porzio, Water Resources Control Engineer

23 STORNETTA FAMILY TRUST AND
24 NEWTON DAL POGGETTO (TRUSTEE)

25 Mr. Cameron Scott Kirk, Esq
290 B Street, Suite 200
Santa Rosa, California 95401

Mr. Newton Dal Poggetto

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

DIVISION OF WATER RIGHTS PROSECUTION TEAM

	DIRECT	CROSS	REDIRECT
Mr. Aaron Miller and Mr. Kevin Porzio	25	54	102

STORNETTA FAMILY TRUST AND
NEWTON DAL POGGETTO (TRUSTEE)

	DIRECT	CROSS
Mr. Newton Dal Poggetto	75	86

ADJOURNMENT 117

REPORTER'S CERTIFICATE 118

P R O C E E D I N G S

1
2 September 2, 2014

9:58 a.m.

3 HEARING OFFICER MOORE: Welcome again.

4 This is the time and place for the hearing
5 regarding Administrative Civil Liability Complaint and
6 Draft Cease and Desist Order against the Stornetta
7 Family Trust and Newton Dal Poggetto in his capacity as
8 trustee of the Stornetta Family Trust, hereinafter we'll
9 refer collectively to Dal Poggetto.

10 Are you having a hard time hearing, sir?
11 Could we get better audio for you?

12 MR. POGGETTO: I have seeing/hearing on a good
13 day; so if I cup my ears, I can hear you very well.

14 HEARING OFFICER MOORE: Okay. We also can try
15 to make it more comfortable.

16 (Inaudible comments.)

17 HEARING OFFICER MOORE: Are we okay?

18 MR. KIRK: Sure.

19 HEARING OFFICER MOORE: I'll make sure to
20 speak right into the microphone so you can hear.

21 So my name is Steven Moore. I'm a member of
22 the State Water Resources Control Board. And with me is
23 my fellow Board member and Co-Hearing Officer, Vice
24 Chair Frances Spivy-Weber.

25 We will be assisted by Staff Counsel Carlos

1 Mejia, Staff Environmental Scientist Jane Farwell on the
2 far left, and Staff Engineer Gene McCue in the center,
3 and Senior Environmental Scientist Michael Buckman, who
4 is sitting over there at the side table.

5 The original Administrative Civil Liability
6 Complaint and Draft Cease and Desist Order were issued
7 by the Assistant Deputy Director for Water Rights on
8 March 16, 2012, and amended on May 1st, 2014.

9 Before we get started, a few words about our
10 safety procedures. Please look around and identify the
11 exits closest to you. In the event of a fire alarm,
12 we're required to evacuate this room immediately.
13 Please take your valuables with you, go downstairs, and
14 we'll try to help you to the nearest exit; but you
15 should also know that you can find an exit door by
16 following the ceiling-mounted exit signs.

17 Our evacuation location is catty-corner across
18 the street at the Cesar Chavez Plaza.

19 Okay. Now, back to the hearing. The hearing
20 is being held in accordance with the Notice of Public
21 Hearing that was dated May 22nd, 2014.

22 Now, the purpose of this hearing is to afford
23 the parties to this proceeding an opportunity to present
24 relevant oral testimony and other evidence which address
25 the following key issues:

1 First, whether the State Water Board should
2 impose administrative civil liability upon Dal Poggetto
3 for trespass; and, if so, what amount and on what basis?

4 Number two, whether the State Water Board
5 should impose administrative civil liability upon Dal
6 Poggetto for failure to file a required Statement of
7 Diversion and Use; and, if so, what amount and on what
8 basis?

9 And three, whether the State Board should
10 adopt with or without revision the amended Draft CDO
11 against Dal Poggetto issued on May 1st, 2014.

12 Just a reminder of some things. We're
13 broadcasting this hearing on the Internet and recording
14 both audio and video. In addition, a court reporter is
15 present to prepare a transcript of this proceeding.

16 Anyone who would like an expedited copy of the
17 transcript must make separate arrangements with the
18 court reporter. I'm sure she'll give you her card
19 during the break.

20 To assist the court reporter, please provide
21 her with your business card. When you speak, please be
22 sure to use the microphone and speak right into it, like
23 I'm trying to do, so everyone can hear you, including
24 the folks on the Web that may be listening in.

25 Now, before we begin the evidentiary portion

1 of the hearing and hear from the Prosecution Team and
2 Dal Poggetto, we will hear from any speakers who did not
3 submit a Notice of Intent to Appear but wish to make a
4 non-evidentiary policy statement. Is there anyone here
5 who wishes to make a non-evidentiary policy statement?

6 Seeing no hands, it appears that -- we will
7 note at this point for the record that no one has
8 indicated they wish to make a non-evidentiary policy
9 statement, and we will move on to the evidentiary
10 portion of the hearing for presentation of evidence and
11 related cross-examination by the parties who have
12 submitted notices of intent to appear.

13 Now, the parties will present their cases in
14 chief and/or conduct cross-examination in the following
15 order: First, the Division of Water Rights Prosecution
16 Team; second, the Stornetta Family Trust and Newton
17 Poggetto, Trustee.

18 At the beginning of each case in chief, the
19 parties may make an opening statement briefly
20 summarizing the party's position and what the party's
21 evidence is intended to establish.

22 After any opening statement, we will hear
23 testimony from the parties' witnesses. Before
24 testifying, witnesses should identify their written
25 testimony as their own and affirm that it is true and

1 correct. Witnesses should summarize the key points in
2 the written testimony and should not read their written
3 testimony into the record.

4 Direct testimony will be followed by
5 cross-examination by the other party, Board staff,
6 Co-Hearing Officer Spivy-Weber, and myself. Redirect
7 testimony and recross-examination, limited to the scope
8 of the redirect testimony, may be permitted.

9 After both cases in chief are completed, the
10 parties may present rebuttal evidence.

11 Now, I will say the parties are encouraged to
12 be efficient in presenting their cases and the
13 cross-examination. Except where Co-Hearing Officer
14 Spivy-Weber or I approve a variation, we will follow
15 procedures set forth in the Board's regulations in the
16 hearing notice.

17 The parties presentations are subject to the
18 following time limits: Opening statements are limited
19 to 20 minutes. For oral presentations of direct
20 testimony, each party will be allowed up to one hour
21 total to present all its direct testimony. Any
22 cross-examination will be limited to no more than one
23 hour per witness or panel of witnesses. Additional time
24 may be allowed upon showing good cause.

25 Oral closing arguments will not be permitted.

1 An opportunity will be provided for submission of
2 written closing briefs. We will set the briefing
3 schedule at the close of the hearing.

4 So before we begin, are there any procedural
5 issues that need to be addressed?

6 MS. WEST: Board Member Moore, I have a few.
7 First, just procedurally, I have a corrected page 4 of
8 testimony by Mr. Porzio. We have a correction to the --
9 inadvertent correction. One of the dates was listed as
10 November 6, 2012, and it is November 6, 2013; so I just
11 wanted to get that into the record. I have a copy for
12 opposing counsel.

13 HEARING OFFICER MOORE: It appears this is
14 related to the field inspection report, North Coast
15 Watershed Reservoir Investigation.

16 MR. KIRK: That's fine, Mr. Moore. We knew
17 that was a mistake.

18 HEARING OFFICER MOORE: Okay. Thank you for
19 catching that.

20 MS. WEST: Sure. And I wanted to ask for
21 Mr. Buckman just -- as far as time limit, our two
22 witnesses will be doing their presentations jointly; so
23 I would ask for an hour be put on the clock instead of
24 the 20 minutes that you would get for one -- or 40
25 minutes is fine. Either one.

1 HEARING OFFICER MOORE: That sounds consistent
2 with the one hour we allow for direct testimony.

3 MS. WEST: Right.

4 HEARING OFFICER MOORE: That's acceptable.

5 MS. WEST: And then, finally, I do have an
6 objection. I do want to object to the late submission
7 of a pre-hearing brief and additional exhibits from
8 Mr. Dal Poggetto and his attorney, Mr. Kirk, as well as
9 I would like to object to the failure to file witness
10 testimony.

11 What Mr. Kirk has provided for Mr. Dal
12 Poggetto is a summary of testimony, not written
13 testimony and Mr. Kisler's declaration is also
14 insufficient in that it does not provide facts to
15 demonstrate why Mr. Kisler is qualified to speak to the
16 issue.

17 HEARING OFFICER MOORE: And that was Mr. Gary
18 Kiser?

19 MR. KIRK: I'm sorry. Mr. Gary Kiser.

20 HEARING OFFICER MOORE: Okay. So you object
21 to the late submittal of the summary comments from
22 Mr. Dal Poggetto and to the written declaration of
23 Mr. Gary Kiser?

24 MS. WEST: I do. Mr. Kirk actually submitted
25 two late submittals, including a pre-hearing brief and

1 additional exhibits.

2 HEARING OFFICER MOORE: Okay. I'm going to
3 note the objection, but I think I'm going to go ahead
4 and allow the discussion of these items. At this point
5 we haven't decided whether to enter them into evidence.

6 MS. WEST: I understand. I just ask for a
7 little leniency and patience with me when it comes to
8 cross-exam and rebuttal in light of the fact that this
9 is the first time I'll be hearing the testimony.

10 HEARING OFFICER MOORE: Any comments from the
11 staff?

12 Okay.

13 MR. KIRK: If I could just comment.

14 HEARING OFFICER MOORE: Yes.

15 MR. KIRK: All of the facts that will be
16 stated here today by Mr. Dal Poggetto, and the facts
17 that have been stated in Mr. Kiser's declaration, are
18 well known to the State. The State has been aware of
19 these facts. There is nothing new, nothing surprising.
20 There is no cause for prejudice to the State in any way
21 because they've been aware of these same facts for at
22 least a year.

23 HEARING OFFICER MOORE: Okay. It's noted. As
24 a hearing officer, I'm aware of the submitted
25 information. I think we can proceed.

1 MR. KIRK: Thank you.

2 HEARING OFFICER MOORE: Okay. Now I will
3 invite appearances by the parties who are participating
4 in the evidentiary portion of the hearing. Will those
5 making appearances please state your name, address, whom
6 you represent, so the court reporter can enter this
7 information into the record.

8 First, the Division of Water Rights
9 Prosecution Team.

10 MS. WEST: Good morning Vice Chair
11 Spivy-Weber, Board Member Moore, and members of the
12 hearing team. My name is Yvonne West. I am the Senior
13 Staff Counsel with the Office of Enforcement here today
14 representing the Division of Water Rights Enforcement
15 staff.

16 MR. MILLER: Good morning. My name is Aaron
17 Miller. I am a Registered Engineer in the State of
18 California. I'm a Senior Water Resource Control
19 Engineer for State Water Board Division of Water Rights.

20 MR. PORZIO: Good morning. My name is Kevin
21 Porzio. I am a Water Resource Control Engineer with the
22 Division of Water Rights, State Water Resources Control
23 Board.

24 HEARING OFFICER MOORE: Thank you.

25 And next, the Stornetta Family Trust and

1 Newton Dal Poggetto, Trustee.

2 MR. KIRK: My name is Cameron Scott Kirk. I'm
3 an attorney representing Newton Dal Poggetto, Trustee
4 for the Stornetta Family Trust.

5 MR. POGGETTO: Newton Dal Poggetto, Trustee of
6 the Stornetta Family Trust.

7 HEARING OFFICER MOORE: Thank you. And is
8 that all the parties that are planning to testify?

9 MR. KIRK: Yes. In these hearings before I've
10 referred to you as "your Honor," which I will try not to
11 do today. But yes, thank you.

12 Mr. Kiser was supposed to be here, but we will
13 present testimony from Mr. Dal Poggetto that he spoke to
14 Mr. Kiser's wife, and Mr. Kiser is unable to get out of
15 bed.

16 HEARING OFFICER MOORE: Okay. And nothing
17 provided in writing, or at least oral testimony?

18 MR. KIRK: From Mr. Dal Poggetto. We do have
19 the exhibits, of course, as well as the Declaration of
20 Mr. Kiser.

21 HEARING OFFICER MOORE: Okay. Thank you. I
22 will now administer the oath. Will those persons who
23 may testify during this proceeding please stand and
24 raise your right hand. Or you can do it sitting. It's
25 okay. Please raise your right hand.

1 (Whereupon all prospective witnesses were
2 sworn.)

3 HEARING OFFICER MOORE: Thank you.

4 We will begin. We will now hear the
5 Prosecution Team's opening statement and direct
6 testimony, followed by any cross-examination from
7 Cameron Scott Kirk.

8 MR. KIRK: Thank you.

9 HEARING OFFICER MOORE: Please proceed.

10 (Thereupon an overhead presentation was
11 presented as follows:)

12 MS. WEST: Just give me a few moments. We're
13 just getting the presentation to come up on the screen
14 for you.

15 Again, my name is Yvonne West. I'm the Senior
16 Staff Counsel with the Office of Enforcement
17 representing the Division of Enforcement staff here
18 today in this matter.

19 The matter before you is an Administrative
20 Civil Liability Complaint and proposed Cease and Desist
21 Order. They were initially issued to Newton Dal
22 Poggetto, successor trust, and Mr. Newton Dal Poggetto,
23 as Trustee and as an individual, on March 16, 2012.
24 Those original documents are included as our exhibit in
25 WR-11.

1 This original ACL was received by Mr. Dal
2 Poggetto on March 26, 2012, as demonstrated in Water
3 Rights -- in our Exhibit WR-13 and Dal Poggetto's own
4 Exhibit B.

5 The Enforcement staff was informed of the
6 mistake in naming the parties through the letter
7 requesting that the hearing on this matter from Mr. Kirk
8 dated April 4, 2012, and included as Exhibit WR-13.

9 Subsequently, Enforcement staff engaged in
10 good faith confidential settlement discussions with
11 Mr. Kirk and Mr. Dal Poggetto, with the understanding
12 that any mistake in how parties were named could and
13 would be resolved prior to any final order in this
14 matter. This intent was memorialized in my
15 September 26, 2013, letter to Mr. Kirk and submitted in
16 these proceedings by Dal Poggetto as Exhibit 3 of
17 Mr. Dal Poggetto's initial submittal.

18 After it became clear the settlement
19 discussions were no longer productive, an Amended ACL
20 Complaint and proposed Cease and Desist Order were
21 issued on May 1st, 2014, that corrected the names of the
22 parties to the Stornetta Family Trust and named Mr. Dal
23 Poggetto only in his capacity as the trustee of that
24 trust. These parties are referred collectively
25 hereafter in my presentation as "Dal Poggetto." And the

1 Amended ACL and Amended CDO are included as WR-15 to our
2 exhibits.

3 Outside of maybe changing the parties' names,
4 the substance of the Amended ACL and Cease and Desist
5 Order are identical to the initial ACL Complaint and
6 Cease and Desist Order issued on March 16, 2014.

7 --oOo--

8 MS. WEST: I believe Mr. Moore has already
9 been provided with the key issues in this matter, but
10 they're before you on slide number two. The key issues
11 to the State Board request the party to address at this
12 hearing and notices and provided in the hearing notice
13 on this matter are before you.

14 I would like to note that the proposed Cease
15 and Desist Order that the Enforcement staff is
16 recommending be adopted in the Amended Cease and Desist
17 Order dated May 1st, 2014, not the March 16, 2012,
18 version of that order. So just a correction to what is
19 stated in the hearing notice.

20 I would like -- the Division of Enforcement
21 and staff at this time has submitted for your
22 consideration a legal brief, written testimony, and
23 evidence in support of issuance of the Administrative
24 Civil Liability Order in the amount proposed, as well as
25 issuance of the proposed Cease and Desist Order to

1 require corrective action against Dal Poggetto.

2 The Division of Enforcement's staff
3 presentation will outline the case as already submitted
4 and emphasize the important legal and factual issues of
5 this case for your consideration and determination.

6 --oOo--

7 MS. WEST: To start, I feel it's important to
8 understand the regulatory context in which this
9 enforcement action was issued in 2012. Legislation
10 adopted in 2004 requires that the State Water Board
11 develop a policy for maintaining instream flows to
12 Northern California coastal streams for the purpose of
13 Water Rights administration. This Board, in response to
14 that, adopted the Policy for Maintaining Instream Flows
15 to Northern California Coastal Streams referred to
16 hereafter by me as "Policy" initially on May 4th, 2010.

17 This re-adoptive policy became effective on
18 February 4th, 2014. In the interim, as you are aware,
19 the policy was vacated for a period in response to legal
20 challenge on CEQA grounds and then readopted in
21 substantially the same form as initially adopted.

22 --oOo--

23 MS. WEST: The Administrative Civil Liability
24 Complaint issued to Dal Poggetto alleges that the
25 reservoir located on property owned by the Stornetta

1 Family Trust is a trespass under Water Code section
2 1052, subdivision (a), for which State Water Board can
3 impose ACL liability; that Dal Poggetto failed to file
4 the Statement of Water Diversion and Use as required in
5 Water Code section 5101 and is subject to additional
6 administrative civil liability for that violation; and
7 it proposes a penalty of \$22,800 in liability for the
8 violations alleged.

9 --oOo--

10 MS. WEST: The first allegation is for
11 trespass. Dal Poggetto was issued an ACL Complaint
12 alleging a violation of Water Code section 1052, the
13 diversion and use of water subject to division 2 of the
14 Water Code, which is our permit and licensing authority
15 other than as authorized in division 2 is a trespass.

16 The Water Board can administratively impose
17 civil liability in an amount not to exceed \$500 for each
18 day such trespass occurs.

19 Section 152 of the Water Code prohibits the
20 unauthorized diversion of water such as that which is
21 occurring at the reservoir on the Stornetta property.

22 --oOo--

23 MS. WEST: The diversion and storage of water
24 for use at a time when natural flow is not otherwise
25 available to a property is not allowed under a riparian

1 right. This was established in "People v. Shirokow."
2 Well, it was reasserted in "People v. Shirokow." It was
3 established much earlier in "Lux v. Haggin."

4 Since 1913, the only means of obtaining such
5 an appropriative right is through a permit or license
6 issued by the State Water Board.

7 Mr. Miller's and Mr. Porzio's testimony, along
8 with the other evidence submitted here today by the
9 Division Enforcement staff, will demonstrate that Dal
10 Poggetto is diverting water outside of a riparian right
11 and without the required State Water Board authorization
12 in violation of Water Code section 1052.

13 Specifically, testimony and evidence will
14 demonstrate that the reservoir on the Stornetta Family
15 Trust property is created by a single-axis span across a
16 jurisdictional surface stream. The stream feeding the
17 reservoir is seasonal, meaning it dries up every year,
18 and that every year there is a period of time for which
19 there is no natural flow available to the property under
20 riparian right.

21 Reservoirs which divert and store water for
22 use in a season where water would not be naturally
23 available to the property require an appropriative
24 right. Diverted and stored water is available and is
25 used on the property for stockwatering purposes.

1 And, finally, Dal Poggetto's application for a
2 stockpond registration was not filed until after the
3 deadline for submission of evidence in these
4 proceedings.

5 --oOo--

6 MS. WEST: The second violation of the ACL
7 Complaint alleges the failure to file the initial
8 Statement for Water Diversion and Use. Water Code
9 section 5101 requires that each person, after December
10 31st, 1965, diverting water, shall file with the Board
11 prior to July 1st of the succeeding year a statement of
12 his or her diversion use.

13 Failure to file for a diversion that occurs
14 after January 1st, 2009, is subject to the imposition of
15 administrative civil liability of up to \$1,000, plus
16 \$500 for each additional day on which the failure to
17 file continues past 30 days after the State Water Board
18 has called a violation to the attention of that person.

19 Today's testimony and evidence submitted prior
20 to this hearing demonstrates that the reservoir on the
21 Stornetta Family Trust property diverts and stores water
22 seasonally each year; that the Stornetta Family Trust
23 does not have a water right for that diversion and
24 storage; and that it does not qualify for any of the
25 limited exceptions to Water Code section 5101 statement

1 filing requirements.

2 Accordingly, an initial statement reporting
3 diversions made during 2009 was required to be filed by
4 Dal Poggetto prior to July 1st, 2010, and supplemental
5 statements are required in accordance with Water Code
6 section 5104.

7 The Napa Reservoir investigation letter
8 included as Exhibit WR-5, mailed to Dal Poggetto on
9 August 18, 2011, provided notice and information
10 concerning the need to file a Statement of Diversion and
11 Use for the reservoir.

12 Dal Poggetto was again informed of the need to
13 file a statement in the initial ACL Complaint and
14 proposed CDO received by him on March 16, 2014, and
15 included as Water Rights -- Exhibit DWR-11; and that Dal
16 Poggetto has not filed an initial Statement of Diversion
17 and Use for the reservoir.

18 All these facts will be demonstrated by our
19 evidence and testimony here today. Accordingly, the
20 State Water Board can impose its liability on Dal
21 Poggetto for failure to file a statement.

22 Here, the ACL Complaint seeks penalties for
23 the initial failure to file a statement violation of
24 \$1,000, and \$1,000 as a recommended liability amount is
25 associated with this failure to file a statement.

1 --oOo--

2 MS. WEST: The ACL Complaint proposes a total
3 liability of \$22,800. Water Code section 1055.3
4 requires that when determining the amount of liability
5 the State Water Board shall consider all relevant
6 circumstances, including but not limited to: The extent
7 of harm caused by the violation; the nature and
8 persistence of the violation; the length of time in
9 which the violation occurred, and the corrective action,
10 if any, taken by the violator.

11 --oOo--

12 MS. WEST: In addition, the Policy for
13 Maintaining Instream Flows in Northern California
14 Coastal Streams provides further guidance on how these
15 factors are to be evaluated when considering the
16 liability. Factors in the policy -- highlighted in the
17 policy include: Avoiding costs and economic benefit
18 amount; deterrent amount, including consideration of
19 culpability and the extent of harm; staff costs; ability
20 to pay, and any other appropriate factors when setting
21 the limit.

22 In addition to the liability factor, the
23 policy establishes a minimum liability that shall be
24 assessed at a level that recovers staff costs and
25 economic benefit associated with the acts which

1 constitute the violations.

2 The Division's Enforcement staff has
3 considered the above circumstances when determining
4 liability amount being proposed. The Enforcement
5 staff's consideration of the above circumstances is
6 discussed in detail in Mr. Miller's testimony and will
7 be discussed here today in his presentation.

8 The testimony and evidence submitted
9 established that the proposed liability is justified by
10 the facts of this case, and some of the specific
11 circumstances that justify the proposed liability
12 include: The gained economic benefit from the
13 unauthorized use of the diversion of water on the
14 property; the avoided cost of obtaining water from
15 another source; the avoided cost of complying with the
16 Water Rights permitting and licensing structure; the
17 extent of harm, nature, and persistence of this
18 violation, and the fact that Dal Poggetto was given
19 sufficient time and opportunity to commit to corrective
20 actions and failed to do so until just recently.

21 --oOo--

22 MS. WEST: The third and final key issue
23 identified for the hearing is whether the State Water
24 Board should adopt with or without revision the proposed
25 Cease and Desist Order. As noted earlier, the version

1 of the proposed Cease and Desist Order being recommended
2 for adoption here today is the revised Cease and Desist
3 Order issued on May 1st, 2014, with the corrected party
4 name.

5 --oOo--

6 MS. WEST: The proposed Cease and Desist Order
7 requires a Statement of Diversion Use for past diversion
8 and provides three options by which, Dal Poggetto can
9 come into compliance:

10 One, by filing and diligently pursuing the
11 livestock stockpond registration. Or if this is not
12 accepted by the Division, then filing for and diligently
13 pursuing an Appropriative Water Rights application,
14 while operating the reservoir in compliance with the
15 North Coast Instream Flow Policy. Four, ceasing the
16 diversion and storing the water subject to State Water
17 Board's permitting authority.

18 --oOo--

19 MS. WEST: Mr. Kirk, through the submission
20 of a pre-hearing brief, raised a number of legal
21 arguments. Most, if not all, of those arguments raised
22 are addressed in my September 26, 2013, letter to
23 Mr. Kirk included as Dal Poggetto's Exhibit 3. I will
24 also address those arguments and any additional
25 arguments raised during this proceeding in our rebuttal.

1 Continuing with our present focus on the
2 Division Enforcement staff's case in chief, Mr. Miller
3 will testify that the ACL Complaint and Draft CDO issued
4 to Dal Poggetto are part of a broader North Coast
5 unauthorized reservoir investigation that included
6 outreach, education, and enforcement efforts undertaken
7 by the Division to bring into compliance a significant
8 number of unauthorized reservoirs in Napa, Marin,
9 Sonoma, Mendocino, and Humboldt counties.

10 The actions issued against Dal Poggetto are
11 consistent with a number of other enforcement actions
12 issued by the Division at that time. Mr. Porzio will
13 then testify to his investigation of the Dal Poggetto
14 property and the findings reached by the Division as a
15 result of that investigation.

16 Mr. Miller will then provide additional
17 testimony concerning the issuance of the ACL Complaint,
18 the proposed civil liability amount, the proposed Cease
19 and Desist Order terms, and staff recommendation.

20 At this time I would like to turn to
21 Mr. Miller and Mr. Porzio. I would like that Mr. Miller
22 will please introduce himself and provide his
23 qualification as an expert.

24 MR. MILLER: Good morning. My name is Aaron
25 Miller. I am a Registered Engineer with the State of

1 California. I am a Senior Water Resource Control
2 Engineer at State Water Board Division of Water Rights.
3 I have 13 years of water rights experience working both
4 the enforcement and permitting sections of the Division.
5 I am currently the Senior Supervisor, Division
6 Enforcement, in No. 4.

7 MS. WEST: Mr. Miller, were you involved in
8 the preparation and submittal of your written testimony
9 and the Division of Enforcement staff evidence
10 submission for today's hearing?

11 MR. MILLER: Yes.

12 MS. WEST: Is your written testimony submitted
13 prior to this hearing and that you are about to provide
14 your own, and is it a true, correct, and accurate
15 account of your participation in this matter to the best
16 of your knowledge?

17 MR. MILLER: Yes.

18 MS. WEST: Thank you.

19 Mr. Porzio, if you could take a moment and
20 please introduce yourself and provide your
21 qualifications.

22 MR. PORZIO: Good morning, Board Member Moore
23 and Vice Chair Spivy-Weber.

24 My name is Kevin Porzio. I'm a Water Resource
25 Control Engineer with the Division of Water Rights

1 Enforcement Unit 4. I have four years of experience
2 with the Enforcement section, which includes inspecting
3 permitted and licensed water rights projects for
4 compliance with terms and conditions, investigation of
5 water diversion without a known water right or claimed
6 basis of right, and investigation of water rights
7 complaints.

8 MS. WEST: Mr. Porzio, were you involved in
9 the preparation and submittal of your written testimony
10 and the Division of Enforcement staff evidence
11 submission for today's hearing?

12 MR. PORZIO: Yes.

13 MS. WEST: Is your written testimony submitted
14 prior to hearing and that you are about to provide your
15 own, and is it a true, correct and accurate account of
16 your participation in this matter to the best of your
17 knowledge?

18 MR. PORZIO: Yes, it is.

19 MS. WEST: Thank you. And with that, I
20 believe we're going to go ahead and start with
21 Mr. Miller.

22 HEARING OFFICER MOORE: At this time I want to
23 make sure our clock is reset. And I might check on
24 Mr. Dal Poggetto. Are you hearing everything okay over
25 there?

1 MR. DAL POGGETTO: I can hear the man, but I
2 can't really hear the lady. She is about half
3 intelligible.

4 HEARING OFFICER MOORE: Okay.

5 MR. DAL POGGETTO: I understand what she's
6 getting at and the gist of what she's doing. I don't
7 know whether she's reading it or not, but it's...

8 HEARING OFFICER MOORE: Okay. And also --

9 MR. DAL POGGETTO: So far it's just rote.
10 I'm reading that. That's very good. I like that.

11 HEARING OFFICER MOORE: Yeah. It's pretty
12 close to what she read into the record. I just want to
13 make sure you're comfortable and feeling like you're
14 hearing everything.

15 MR. DAL POGGETTO: I'm pretty comfortable.

16 HEARING OFFICER MOORE: All right. Thank you.
17 Hold on a second.

18 MR. KIRK: I think we're all right. Thank
19 you.

20 HEARING OFFICER MOORE: Okay. With that, we
21 have direct testimony by the prosecution testimony. And
22 we're scheduling 40 minutes.

23 DIRECT TESTIMONY AND EXAMINATION BY PROSECUTION TEAM

24 (Thereupon an overhead presentation was
25 presented as follows:)

1 MR. MILLER: Good morning, Board Member Moore,
2 Vice Chair Spivy-Weber. Again, my name is Aaron Miller.
3 I'm a Senior Engineer with the State Water Board. This
4 morning Kevin Porzio and myself will go through our
5 presentation of our testimony and evidence, quick
6 overview of the presentation.

7 I will begin with a general overview of the
8 North Coast unauthorized reservoir investigation.
9 Mr. Porzio will go through the initial investigation and
10 site specific investigation. I will then continue the
11 presentation, going through the Administrative Civil
12 Liability, proposed penalty amount, the Draft Cease and
13 Desist Order, and our staff recommendations.

14 --oOo--

15 MR. MILLER: If water is flowing and the
16 surface stream is diverted to storage in a facility at a
17 time when flow is high for use in times when flow is low
18 or does not exist, then the diverter is appropriating
19 water to storage that is subject to the State Water
20 Board's permitting authority. Any water right must be
21 obtained.

22 The reservoir may be constructed for a variety
23 of reasons. The most common reasons are for some sort
24 of beneficial use to the landowner. These uses include
25 irrigation of crops or pasture, stockwatering, domestic

1 use at a residence, fire protection, and recreational
2 uses such as fishing, swimming or boating.

3 Water districts may build reservoirs for
4 municipal and industrial use.

5 In 2011, the Division of Water Rights began
6 investigating the basis of right for existing reservoirs
7 in Marin, Mendocino, Napa, Sonoma, and portions of
8 Humboldt County.

9 In December 2007, the State Water Board
10 produced a draft Substitute Environmental document,
11 hereon referred to as "SED," as part of its development
12 of the North Coast Instream Flow Policy.

13 Appendix E of that SED contains the report of
14 Potential Indirect Environmental Impacts of Modification
15 or Removal of Existing Unauthorized Dams produced by
16 Stetson Engineers in December 2007. This is Water
17 Rights Exhibit WR-25.

18 In order to complete this report, Stetson
19 Engineers produced a Geographic Information System, or
20 GIS layer, which identify the locations of existing
21 potential unauthorized dams.

22 In June and July of 2011, a review of this GIS
23 layer, aerial photographs, and the United States
24 geological survey topographic maps of the Napa County
25 was undertaken by Division staff.

--oOo--

1
2 MR. MILLER: The Policy identified 1,771
3 potential illegal reservoirs. Enforcement staff
4 undertook investigation beginning in 2011 and have
5 closed approximately 1200 cases. Over 1200 of these
6 alleged illegal reservoir cases were closed due to the
7 fact that the reservoirs are covered by existing water
8 rights or not subject to the State Water Board's
9 permitting authority.

10 Of the remaining alleged illegal reservoirs,
11 Division staff contacted many landowners either by phone
12 or by sending notice letters. Approximately 350 letters
13 were sent throughout the policy area.

14 The letters provided information about the
15 need for a water right, the State Water Board's
16 authority to impose a civil liability for an
17 unauthorized diversion, the Statement of Diversion Use
18 filing requirements, and gave property owners an
19 opportunity to provide information concerning the basis
20 of right for the reservoir or to submit a corrective
21 action plan.

22 Dal Poggetto was sent a copy of this letter on
23 August 18, 2011, identified as Water Rights Exhibit
24 WR-5.

25 Also, Exhibit WR-6 identifies the address this

1 notice letter was sent to. I would like to point out
2 that this address is the same address that the ACL and
3 CDO were sent to and where the Certified Mail was signed
4 for.

5 Through the course of this investigation, many
6 of the remaining alleged illegal reservoirs being
7 investigated have since been covered by applications to
8 appropriate water filed by the property owner, with 48
9 such applications being filed in 2012 alone.

10 --oOo--

11 MR. MILLER: The North Coast unauthorized
12 reservoir investigations is a significant
13 accomplishment. It further identifies users of water of
14 the State and brings them into the reporting process so
15 that there is a better understanding of where and how
16 much of the State's water is being used. This provides
17 benefits to the water availability analysis conducted
18 during processing of water rights applications and when
19 deciding whether or not to issue permits.

20 Additionally, bringing unauthorized diverters
21 into the water rights system in the North Coast helps to
22 mitigate against any significant impacts to public trust
23 resources by threatened or endangered salmon and
24 steelhead by regulating previously unregulated
25 facilities.

1 Regulatory matters such as specifying a season
2 of diversion and/or minimum bypass flow requirements
3 limit diversions to times when water is available and
4 helps eliminate impact to the environment and other
5 illegal users of water by keeping water instream that
6 would otherwise have been diverted for use.

7 --oOo--

8 MR. MILLER: The following table is a summary
9 of the Enforcement action issued in 2012 that resulted
10 from this reservoir investigation. Summarized here are
11 11 Administrative Civil Liability Complaints and
12 proposed Cease and Desist Orders to owners of property
13 where an unauthorized reservoir had been identified.
14 Nine of these Enforcement cases were issued to property
15 owners where no response to the Division's notice letter
16 was received. Dal Poggetto is one of these cases. The
17 other two Enforcement cases were issued due to the lack
18 of an adequate response to findings and letters issued
19 by the Division.

20 I'd like to point out that you could see
21 through these 11 different actions a wide range of
22 reservoirs that were investigated and Enforcement action
23 brought against, as reflected in the fourth column, all
24 the different proposed civil liability amounts.
25 Additionally, the last column also shows which cases

1 have since settled.

2 With that, I'd like to turn it over to Kevin
3 Porzio to go through the initial investigation letter.

4 MR. PORZIO: Good morning, again. My name is
5 Kevin Porzio. My testimony here today and my written
6 testimony submitted prior to this hearing is my own, and
7 it is a true, correct and accurate account of my
8 participation in this investigation to the best of my
9 knowledge.

10 I will now be discussing the initial
11 investigation and followed by the site specific
12 investigation.

13 (Thereupon an overhead presentation was
14 presented as follows:)

15 MR. PORZIO: Slide No. 9: Dal Poggetto's
16 reservoir is located just to the east of the Napa-Sonoma
17 County line between the cities of Napa and Sonoma along
18 Highway 121 and is within the Napa River watershed in
19 Napa County. Dal Poggetto's reservoir, along with many
20 other potentially unauthorized reservoirs within the
21 policy area, were investigated in 2011, at which point
22 we opened this investigation.

23 My initial investigation started by reviewing
24 the Division's record and verifying reservoirs in
25 question that did not have water rights associated with

1 them.

2 The Division did not have a water right on
3 record for Dal Poggetto's reservoir. My initial
4 investigation, also including reviewing USGS
5 topographical maps, hereon referred to as "topo maps,"
6 and aerial photos, one of which is shown on this slide,
7 Exhibit WR-8, which shows a 2010 United States
8 Department of Agriculture National Agricultural Imagery
9 Program, or referred to hereon out as NAIP aerial
10 imagery of the reservoir.

11 The NAIP image identifies the watershed
12 boundary above the reservoir in red, Dal Poggetto's
13 property boundary in black, and the point of diversion
14 is indicated by the red dot near the center of the
15 single-axis dam.

16 MS. WEST: I'm sorry to interrupt. Is there
17 any way we can get these lights turned down? It's
18 really hard for people out here to see. It's really
19 difficult to see the details of the slides.

20 That helps a little bit. Thank you.

21 --oOo--

22 MR. PORZIO: The watershed boundary was
23 digitized using GIS software to trace along the mountain
24 tops, as shown by the contours in the USGS topo map, as
25 will be more noticeable in the next slide.

1 --oOo--

2 MR. PORZIO: The digitized watershed
3 represents the approximate area that if it were to rain
4 sufficiently to cause runoff that runoff would flow
5 towards the unnamed stream and down towards the
6 reservoir.

7 The area of the watershed above the dam is
8 approximately 170 acres. The parcel boundary was
9 obtained from the Division Office of Information
10 Management and Analysis server. Using GIS software, I
11 added the Napa County Assessor parcel boundary layer,
12 which is shown in this image.

13 MS. WEST: Real quickly, Mr. Porzio, I just
14 want to clarify for everyone this imagery that was
15 created, it was created by a government entity, the
16 National -- would you repeat the name? And then was it
17 provided for purposes -- or for what purposes were these
18 aerial images documented by that state entity?

19 MR. PORZIO: These images were obtained as a
20 shape file from the State Department of Agriculture.
21 They were used to identify the reservoirs, and they were
22 used because it came from a State agency.

23 MS. WEST: And did the Department of
24 Agriculture use these for crop surveys?

25 MR. PORZIO: I believe that is correct.

1 MS. WEST: And are the features that we're
2 seeing this on this aerial, just to clarify, you placed
3 the red line and the black line on this image?

4 MR. PORZIO: Yes, that's correct.

5 MS. WEST: You digitized everything. And does
6 this image represent a fair representation as far as the
7 location of the stream of the reservoir, the
8 outbuildings, the other geographical features you
9 witnessed when you were on site?

10 MR. PORZIO: Yes. The final site inspection,
11 everything in this image, was correct in position, and
12 it was helpful before arriving knowing where and what to
13 look for.

14 MS. WEST: Okay. Thank you.

15 --oOo--

16 MR. PORZIO: Slide No. 10. This is the USGS
17 topo map of the reservoir shown in Exhibit WR-8. I know
18 it is hard to see on the slide, but there is a blue line
19 following the low area of the contour line above the
20 reservoir and another blue line on the downstream side
21 of the reservoir.

22 The blue lines represent intermittent drainage
23 features commonly associated with rivers, streams and
24 creeks. The topo map indicates the dam was constructed
25 on a stream channel, hereon out referred to as "Unnamed

1 Stream." The original date of this topo map is 1951,
2 with photo revisions applied to the map in 1980.

3 The pink markings indicate new features that
4 were constructed between the date of the original topo
5 map and the photo-revised map. This topo map indicates
6 the reservoir was filled between 1951 and 1980, and the
7 dam was constructed across a blue line stream from water
8 from the Unnamed Stream Tributary to Huichica Creek.

9 --oOo--

10 MR. PORZIO: Slide No. 11. This slide and the
11 next two slides are supplemental photos from the initial
12 Reservoir and Investigation Report, Exhibit WR-8. This
13 is figure 3. Shown here is a screen shot from Bing Maps
14 as viewed online on February 10, 2012. The image
15 clearly shows water being stored behind a single-axis
16 dam. The heavily wooded area running from the upper
17 portion of the reservoir to the upper left corner of the
18 photo coincides with the blue line stream as shown on
19 the top map on the previous slide. A channel appears to
20 be entering the tree line at a 90-degree angle.

21 So if we view the back end of the reservoir on
22 the north side of the slide, it goes up to the upper
23 left portion, this heavily wooded area, which is where
24 the stream was indicated on the topo map. And then here
25 there is also a channel visible from this aerial image,

1 which coincides with the contours of the topo map.

2 MS. WEST: And, again, Mr. Porzio, is this a
3 fair representation of what you witnessed when you were
4 on site when you visited, as far as the location of the
5 instream channel, the reservoir, and general topography
6 surrounding it?

7 MR. PORZIO: Yes, there is a very accurate
8 representation, other than the green grass.

9 MS. WEST: Thank you.

10 --oOo--

11 MR. PORZIO: Slide No. 12 is a supplemental
12 photo. Figure No. 2 is a screen shot from Bing Maps as
13 viewed online February 10, 2012. The image shows the
14 watershed above the reservoir as seen looking south.
15 When we look at the photo on the lower right-hand
16 corner, you can identify a channel that starts here and
17 hooks through the canyon and then starts working its way
18 to the reservoir in the upper left-hand corner of the
19 photo. This section coincides with the blue line stream
20 as shown on the topo map.

21 --oOo--

22 MR. PORZIO: Slide No. 13, figure 4, is a
23 screen shot from Google maps as viewed on February 10,
24 2012. The image shows the area downstream of the
25 reservoir. A channel is visible. In the middle of the

1 photo is kind of this dirt spotted area, and that
2 channel runs to the lower right portion of the photo,
3 then making a hook and running alongside the road. The
4 channel just described coincides with the blue line
5 stream as shown by the topo map previously viewed on
6 slide 10.

7 Based on a review of the Division's water
8 right records, NAIP aerial images, topo map, and
9 supplemental online photos, Dal Poggetto's reservoir
10 does not have a water right, is onstream, and stores
11 water, and is therefore subject to the permitting
12 authority of the State Water Board.

13 This photo accurately depicts what was
14 observed on site and in the subsequent site inspection.

15 MS. WEST: Mr. Porzio, once again, for the
16 last two photos that you showed on slide No. 12 and
17 slide No. 13, are they a fair and accurate depiction of
18 the topography and the location of the instream channel
19 you witnessed when you visited the site?

20 MR. PORZIO: In slide No. 12, figure No. 2,
21 it's a image of the watershed. I was not that far away
22 from the reservoir, but based on the image showing the
23 reservoir -- based on this image, the area around the
24 reservoir is an accurate representation of what was
25 viewed during the site inspection.

1 MS. WEST: Thank you.

2 --oOo--

3 MR. PORZIO: Slide No. 14. I will now be
4 discussing the site specific investigation of Dal
5 Poggetto's Napa County property that fully surrounds the
6 reservoir in question.

7 On October 16, 2013, my supervisor, Mr. Aaron
8 Miller, and I were granted access to the reservoir to
9 conduct a site inspection with Mr. Newton Dal Poggetto.

10 At the inspection, Mr. Newton Dal Poggetto
11 informed us that the land is leased by a third party for
12 their dry milk cows and calves.

13 I took photographs and GPS measurements of the
14 reservoir, the channel below and above the reservoir,
15 and other points of interest Mr. Miller and I took
16 measurements of the dam, spillway, and reservoir's water
17 level.

18 This image is from Exhibit WR-14, figure 30.
19 It was taken from the southwest side of the dam looking
20 north across the reservoir. As shown here, the
21 reservoir is covered by a rust-colored plant. This
22 plant material was observed in the spillway channel and
23 also downstream in the unnamed stream channel.

24 MS. WEST: Mr. Porzio, these photos on this
25 slide 14, and the subsequent photos that you have

1 labeled as site photos throughout the remainder of your
2 presentation, were those all photos taken by you on
3 site?

4 MR. PORZIO: Yes, that is correct.

5 MS. WEST: And they are a fair representation
6 of what you reviewed that day on site?

7 MR. PORZIO: Yes, they are.

8 MS. WEST: Thank you.

9 --oOo--

10 MR. PORZIO: Slide No. 15. This image is from
11 Exhibit WR-14, inspection photos, page 1. This image
12 was created using the USGS topographical map and over
13 laying the 2009 NAIP aerial imagery. The NAIP layer
14 transparency was then reduced to approximately 50
15 percent so that the contoured lines of the topo map can
16 be viewed in relation to the physical features as seen
17 from an overhead view. The layers showing the topo map
18 blue line streams was then placed on top of the two
19 lower layers described.

20 Lastly, I added the parcel boundary in black
21 and the GPS segments that I measured as collected on
22 site in red, and a description tag to identify the
23 unnamed stream's proximity to Huichica Creek and my GPS
24 measurements of the defined channel.

25 In this image you can see the GPS measurements

1 in red coincide with the topo map blue line stream both
2 above and below the reservoir.

3 The next eight slides are pictures I
4 personally took during the site inspection.

5 MS. WEST: Just momentarily, Mr. Porzio, the
6 red dots that you are showing on the map are
7 measurements that you took in the field with a handheld
8 GPS; is that correct?

9 MR. PORZIO: Yes, that is correct.

10 MS. WEST: And do those measurements identify
11 and confirm and line up accurately with the tip of the
12 topo map and NAIP aerial imagery?

13 MR. PORZIO: Yes, they do.

14 MS. WEST: Thank you.

15 --oOo--

16 MR. PORZIO: So, real quick, the next eight
17 slides. When we arrived on site, we drove across the
18 dam to the northern portion of the reservoir, and from
19 there I started walking north and began my measurements
20 on this channel that's 90 degrees to the Unnamed Stream.

21 So the photos are going to go in order of the
22 direction I walked, which was north into the channel and
23 then downstream to the reservoir. And then Aaron and
24 myself walked down to the property line in the lower
25 right-hand corner and then began GPSing the Unnamed

1 Stream as we walked north towards the reservoir.

2 --oOo--

3 MR. PORZIO: Slide No. 16. The photo in this
4 slide and the next seven slides are from Exhibit WR-14
5 inspection photos, and I will refer to them from hereon
6 out only by their figure number.

7 The top photo, figure 1, shows the draw
8 running from east to west. The photo was taken as I
9 walked north away from the vehicles.

10 Figure 2 is looking uphill towards the east
11 along the well-defined channel of bed and banks.

12 Figure 5 is looking west towards the Unnamed
13 Stream and the channel shown in figure 2.

14 --oOo--

15 MR. PORZIO: Slide No. 17, figure 15, was
16 taken from the most northerly portion of the GPS points
17 that I took, and it's in the Unnamed Stream looking
18 south as I began following the channel south towards the
19 reservoir.

20 Figure 16 is looking south along the Unnamed
21 Stream and the confluence of the east-west channel
22 previously walked is shown entering in from the right of
23 the photo.

24 The Unnamed Stream and waters from the
25 east-west channel then curve to the right of the photo

1 and continue south towards the reservoir.

2 --oOo--

3 MR. PORZIO: Slide 18. Figure 15, followed by
4 figure 16, were taken in the channel of the Unnamed
5 Stream looking south as I walked towards the reservoir.

6 --oOo--

7 MR. PORZIO: Slide 19. Figure 24, followed by
8 figure 16, were taken in the channel of the Unnamed
9 Stream looking south as I walked towards the reservoir.

10 --oOo--

11 MR. PORZIO: Slide No. 20. Figure 32 shows
12 the reservoir from the north bank looking south towards
13 the point of diversion, an onstream single-axis earthen
14 dam. In figure 32 you can see the dam running from left
15 to right across the top portion of the photo.

16 Figure 34 shows the western side of the
17 reservoir as I walked south towards the dam. Cow dung
18 was observed along the reservoir edge, as shown in
19 figure 34.

20 --oOo--

21 MR. PORZIO: Slide No. 21. Figure 64 and
22 figure 67 were taken at the southernmost part of the
23 Unnamed Stream.

24 The next series of photos are looking as I
25 walked the Unnamed Stream channel below the reservoir up

1 towards the toe of the dam.

2 --oOo--

3 MR. PORZIO: Slide 22. Figure 74, followed by
4 figure 76, were taken in the channel of the Unnamed
5 Stream looking north as I walked north towards the
6 onstream earthen dam.

7 Figure 76 shows the confluence of the spillway
8 channel in the shadows on the right. The main channel
9 of the Unnamed Stream curves to the left in figure 76
10 towards the dam.

11 The spillway channel was created to bypass the
12 center part of the dam, so this channel to the left
13 doesn't really receive any water per se, although the
14 overflow from the reservoir would be coming down the
15 spillway, the spill channel on the right.

16 --oOo--

17 MR. PORZIO: Slide No. 23. Figure 79 was
18 taken in the channel of the Unnamed Stream looking north
19 as it slightly curves to the right of the photo towards
20 the toe of the earthen dam.

21 Figure 86 shows the Unnamed Stream ending as
22 it is obstructed by the earthen dam. Since the dam was
23 built, it appears some channelization is formed on the
24 back side of the earthen dam.

25 --oOo--

1 MR. PORZIO: Slide No. 24. As documented
2 during the field inspection, the initial investigation
3 findings accurately describe the onstream storage
4 reservoir and the up and downstream channels of the
5 unnamed stream. The reservoir seasonally stores water
6 behind a single-axis earthen dam which was constructed
7 across an unnamed stream with well-defined bed and banks
8 and provides water for stockwatering when water would
9 not otherwise be available.

10 Based on the findings of the initial reservoir
11 investigation, Exhibit WR-8, and the field inspection as
12 described in Exhibit WR-14, the reservoir is subject to
13 the permitting authority of the State Water Resources
14 Control Board. Dal Poggetto must obtain a water rights
15 to legitimize the diversion and use from the Unnamed
16 Stream when water would otherwise not be available or
17 render the reservoir incapable of storing water.

18 That concludes my investigation. I'll hand it
19 back to Mr. Miller.

20 MR. MILLER: Okay. This is Aaron Miller
21 again. I'm now going to go through the administrative
22 civil liability and the proposed penalty amount.

23 --oOo--

24 MR. MILLER: The reservoir issue is clearly
25 within the permitting authority of the State Water Board

1 due to the fact the reservoir's dam sits on the stream
2 channel throughout the defined bed and banks and
3 collects water for storage on an annual basis.

4 Dal Poggetto is making unauthorized diversions
5 of water at said reservoir, which constitutes a trespass
6 against the State as defined by Water Code section 1052,
7 subdivision (a).

8 The Draft CDO is based on past violations of
9 the prohibition in Water Code section 1052 against the
10 diversion or use of water subject to the State Water
11 Board's jurisdiction and the threat of future
12 unauthorized diversion and use of water.

13 The ACL Complaint was issued based on the past
14 unauthorized diversion of water from an unnamed stream
15 tributary to Huichica Creek in the Napa Creek watershed,
16 and a failure to file a Statement of Water Diversion and
17 Use and reporting water diversion into the reservoir.

18 Enforcement staff referred to the North Coast
19 Policy appendix H when considering whether or not
20 Enforcement action was warranted and in developing the
21 Enforcement documents.

22 --oOo--

23 MR. MILLER: The maximum ACL amount authorized
24 by statute for an unauthorized diversion is \$500 for
25 each day in which a trespass occurred.

1 Enforcement staff have reason to believe the
2 trespass has been occurring since prior to 1980.
3 Considering only the last three years of unauthorized
4 diversion and use, the maximum liability could be based
5 on \$500 a day, times 1,095 days, or \$547,500.

6 The maximum ACL amount for failure to file a
7 statement is \$1,000, plus \$500 per day for each day
8 after being given notice by the Water Board to file.

9 Dal Poggetto was given notice of the
10 requirement to file a statement in the August 18th,
11 2011, reservoir investigation letter and with issuance
12 of the ACL and CDO.

13 A statement still has not been filed with the
14 Division, and the Board could consider additional days
15 of violation, depending on whether the Board determines
16 when adequate notice was given to Dal Poggetto.

17 The staff recommendation for this
18 administrative civil liability is \$22,800 based on the
19 last three years of use and consideration of many
20 factors.

21 --oOo--

22 MR. MILLER: In assessing the amount of civil
23 liability, Enforcement staff, pursuant to Water Code
24 section 1055.3, considered the relevant circumstances,
25 including but not limited to, the economic benefit

1 gained from the violation, including avoided costs, the
2 extent of harm, the nature and persistence of the
3 violation, the length of time over which the violation
4 occurs, and any corrective action taken.

5 --oOo--

6 MR. MILLER: As previously mentioned, we only
7 considered economic benefits during the last three years
8 of the violation.

9 To begin, we evaluated the reservoir for
10 losses that would be replaced on an annual basis because
11 the initial investigation of the reservoir occurred from
12 the office and Dal Poggetto was nonresponsive, use of
13 the reservoir was not readily known. Therefore, for
14 this case, reservoir losses were conservatively
15 estimated considering potential evaporation losses only.

16 These evaporation losses were based on the
17 surface area of the reservoir and estimated at 6
18 acre-feet. UC Cooperative Extension studies for the
19 North Coast indicate that pumping costs for a
20 120-foot-deep well with a 10-horsepower motor is
21 approximately \$198 an acre-foot. Using this \$198 per
22 acre foot amount and the 6 acre-feet of annual
23 evaporation loss, the going cost of water is
24 approximately \$1,188 annually, or \$3,564 over three
25 years.

1 --oOo--

2 MR. MILLER: Additional avoided costs of water
3 and fee for the last three years is \$351. Dal
4 Poggetto's unauthorized reservoir has provided an
5 economic advantage conservatively estimated at \$3,915 in
6 the last three years. This economic benefit estimate
7 does not include other economic benefits such as
8 increased property values associated with having the
9 reservoir.

10 --oOo--

11 MR. MILLER: After determining the avoided
12 costs, we then looked at the extent of harm, nature and
13 persistence of violations, length of time each violation
14 occurs, and any corrective action.

15 The factors considered for this case were the
16 Napa River watershed contains a threatened central
17 California Coastal steelhead trout fishery, and
18 unauthorized diversions of water have been shown to
19 contribute to the cumulative impact of reducing water
20 supplies and habitat from the fishery.

21 The reservoir has existed for many years and
22 water has been diverted to storage in each of those
23 years without a basis of right.

24 The Division provided prior notice that
25 Division records indicated an appropriative water right

1 authorizing storage and reservoir did not exist and
2 warned of the potential for an unauthorized diversion of
3 water to be occurring.

4 Dal Poggetto had over six months prior to the
5 issuance of the Enforcement action to respond to the
6 Division and provided none.

7 To quantify the other relevant circumstances
8 in this matter, the disincentive factor was applied to
9 the estimated avoided costs for this case. Considering
10 the above factors and the Division's goal in deterrence,
11 a factor of five times the estimated economic benefit
12 was deemed appropriate.

13 After using a disincentive factor, the
14 justified liability was calculated at approximately
15 \$19,006 before considering additional violations and
16 associated staff costs.

17 --oOo--

18 MR. MILLER: The other violation being
19 considered is the failure to file a statement.
20 California Water Code section 5107 provides that the
21 State Water Board may administratively impose civil
22 liability pursuant to section 1055 in an amount not to
23 exceed \$1,000, plus \$500 per day for each additional day
24 on which the violation continues if the person fails to
25 file a statement within 30 days after the State Water

1 Board has called the violation to the attention of the
2 person.

3 --oOo--

4 MR. MILLER: Dal Poggetto failed to file a
5 statement for the diversion and use of water for the
6 Unnamed Stream for either the 2009 or 2010 by the
7 deadline of July 1 in either year.

8 Dal Poggetto was provided notice for the
9 failure to file a statement; however, a statement has
10 yet to be filed with the Division.

11 Enforcement staff conservatively considered
12 issuance of a thousand dollars for this violation.

13 --oOo--

14 MR. MILLER: The staff costs incurred with
15 this investigation, which included the investigation
16 itself, reviewing the existing project and developing
17 the Enforcement documents, was estimated to be \$2,200.

18 Additional staff costs have been incurred
19 subsequently in pursuing compliance and enforcement, but
20 those costs were not considered as the basis for the
21 liability now proposed in the ACL Complaint.

22 --oOo--

23 MR. MILLER: Given all the factors mentioned,
24 the final recommendation for the ACL for this case is
25 \$22,800.

1 I'll now move into the Draft Cease and Desist
2 Order.

3 --oOo--

4 MR. MILLER: The reservoir is subject to the
5 permitting authority of the State Water Board and
6 collects water storage on an annual basis. The Draft
7 CDO was issued to bring Dal Poggetto into compliance and
8 eliminate the continued unauthorized diversion.

9 The Draft CDO outlines the various steps that
10 need to be taken to obtain an appropriative right for
11 the diversion of water and comply with the North Coast
12 Instream Flow Policy or to have the reservoir removed
13 and cease the unauthorized diversion.

14 --oOo--

15 MR. MILLER: Staff recommendations for this
16 case are to: Issue the ACL order as proposed with the
17 additional staff costs incurred; issue the proposed CDO
18 requiring Dal Poggetto to take immediate action to bring
19 this matter into compliance and to ensure diligent
20 pursuit of the application for other corrective measures
21 by Dal Poggetto or other future trustees.

22 --oOo--

23 MS. WEST: I had a quick question for
24 Mr. Miller before you conclude your presentation.

25 In the issuance of the CDO in this case, we

1 provided three options. Is there a reason why the first
2 option, the registration of the reservoir, may not be
3 sufficient?

4 MR. MILLER: It's possible that it may not --
5 livestock stockpond registration may not be the course
6 of action that can be pursued due to the size of the
7 reservoir. Typically, stockpond registrations are
8 limited to diversions of water of 10 acre-feet annually,
9 and this reservoir's capacity is estimated over 20-acre
10 feet.

11 MS. WEST: Are there conditions of permitting
12 you could place on it potentially and authorize it once
13 they find out more about this particular reservoir?

14 MR. MILLER: Yes. Permitting staff reviewed
15 the application and then considered whether to issue a
16 registration. They could put standard conditions on the
17 reservoir to require measuring requirements in order to
18 demonstrate no more than 10-acre fee a year is withdrawn
19 and collected into storage.

20 MS. WEST: Thank you.

21 HEARING OFFICER MOORE: Does that conclude
22 your presentation?

23 MR. MILLER: That concludes our presentation.

24 HEARING OFFICER MOORE: Very good.

25 Doing a time check, it's about ten after

1 10:00. I want to check on our court reporter.

2 Very good.

3 So at this time I would like to request that
4 the Prosecution Team offer exhibits into evidence, or
5 just clarify for the record.

6 MS. WEST: Sure. At this point the
7 Prosecution Team would move the Water Rights Exhibits
8 WR-1 through WR-26 be moved into evidence.

9 HEARING OFFICER MOORE: Okay. It looks like
10 the Hearing Officer will accept those into evidence.

11 Before we take a break, I'd like to offer Dal
12 Poggetto's team to --

13 MS. WEST: Can I just clarify? We also have a
14 Water Rights 27 and Water Rights 28, which are exhibits
15 by reference. We'd like to move them all into evidence.
16 WR-1 through WR-28.

17 HEARING OFFICER MOORE: Okay. I just wanted
18 to verify those were part of the record. Okay. Yes.
19 We'll accept that.

20 (Thereupon the above exhibits as described
21 were entered into evidence.)

22 HEARING OFFICER MOORE: Okay. At this time
23 we'd like to offer the opportunity to cross-examine the
24 Prosecution Team.

25 MR. KIRK: Thank you, Mr. Moore,

1 Ms. Spivy-Weber. Thanks for everyone's time here today.

2 CROSS-EXAMINATION

3 BY MR. KIRK:

4 Q. For Mr. Porzio, first of all. Several
5 references were made to the August 18th, 2011 letter.
6 Who was that addressed to?

7 A. (Mr. Porzio) One second, please. The
8 August 18 letter was addressed to Newton Dal Poggetto.

9 Q. Was it simply to Newton Dal Poggetto?

10 A. Yes. At 555 Crest Way, Sonoma County, 894576.

11 Q. Wasn't it addressed to the Dal Poggetto Trust?

12 A. No. Exhibit WR-6 is the mailing list that all
13 the initial reservoirs were sent to, and his name is
14 listed there as Newton Dal Poggetto. And it also
15 indicated the parcel No. 047-070-018.

16 Q. Does it indicate that he's an owner?

17 A. It's just addressed to him.

18 Q. Are you aware that when the original ACL was
19 served on Mr. Dal Poggetto there was significant
20 confusion as far as who Mr. Dal Poggetto was, what his
21 role as potential owner was, and what his role may have
22 been as far as any trust is concerned?

23 A. Yes.

24 Q. Okay. And that's the only reason, really,
25 that you had to amend the ACL, right, was because of

1 that confusion?

2 A. The ACL was amended after correspondence
3 between Yvonne and yourself.

4 Q. Wherein we identified Mr. Dal Poggetto as the
5 proper entity, Trustee of the Stornetta Family Trust;
6 right?

7 A. That is correct.

8 Q. Okay. Do you know for certain that Mr. Dal
9 Poggetto received the letter of August 18, 2011?

10 A. No. I pulled this information from
11 ParcelQuest, who listed this is the address for that
12 property, the owner of that property, and that's who the
13 August 18, 2000, letter was sent to, and additionally
14 the ACL and CDO.

15 Q. Is the dam itself illegal?

16 A. I would like to back up one second and just
17 state that the letter -- the August 18th letter sent to
18 this address previously stated was not returned to the
19 State Water Board.

20 Q. Okay.

21 A. Your next question, is the dam unauthorized?

22 Q. Yes.

23 A. Yes.

24 Q. Okay. Just because nothing has been filed
25 with the State Water Board?

1 A. Yes. The dam is onstream.

2 Q. Okay. And you're aware that the Soil
3 Conservation District constructed the dam; right?

4 A. It's alleged. Yes.

5 Q. Okay. Do you have any reason to think that it
6 wasn't the Soil Conservation District that constructed
7 the dam?

8 A. No.

9 Q. Okay. Do you have any information to indicate
10 that erosion control was not the purpose for
11 construction of the dam in 1964?

12 A. No.

13 Q. Would you agree that that was the purpose in
14 1964 that the Soil Conservation District constructed the
15 dam?

16 A. That's unknown.

17 Q. Okay. Have you seen Mr. Kiser's declaration?

18 A. Yes.

19 Q. Do you disagree with Mr. Kiser's declaration?

20 MS. WEST: At this point I'd like to object
21 and again point out that Mr. Kiser's declaration does
22 not provide sufficient information to demonstrate why
23 he can speak to the issue, and I do not have the
24 opportunity to cross-examine Mr. Kiser.

25 HEARING OFFICER MOORE: I'm inclined to accept

1 the objection, but I would like to -- you can restate
2 your question.

3 BY MR. KIRK:

4 Q. Mr. Kiser declares in his declaration that he
5 was employed by the Soil Conservation District in 1964.
6 Do you have any reason to disagree with that?

7 A. (Mr. Porzio) No.

8 Q. Mr. Kiser says that as part of his employment
9 with the Soil Conservation District he was personally
10 involved in the construction of reservoir No. 596, which
11 is the reservoir we're talking about here; right?

12 A. That's correct.

13 Q. Do you have any reason to disagree with the
14 fact that Mr. Kiser was employed by the Soil
15 Conservation District and was personally involved in the
16 construction of the dam?

17 A. No, I do not.

18 Q. Mr. Kiser says in his declaration that the
19 construction of the reservoir was the result of action
20 taken by the Soil Conservation District without
21 personal involvement of the property owner.

22 Do you have any reason to disagree with that?

23 A. No.

24 Q. Okay. When the Soil Conservation District
25 constructed the dam in 1964, was there anything illegal

1 about it?

2 A. Yes.

3 Q. What?

4 A. The fact that it was constructed on an unnamed
5 stream with defined bed and banks, and it does not have
6 a water right. It was built post-1914 and, therefore,
7 would need water rights to appropriate diversion and use
8 at the reservoir.

9 Q. Have you talked to the Soil Conservation
10 District about their liability in this case?

11 A. Yes.

12 MS. WEST: Again, it's a legal question,
13 supposing there is some liability on the part of the
14 Soil Conservation District.

15 MR. KIRK: It's not a legal question. It's
16 really just has he contacted the Soil Conservation
17 District?

18 HEARING OFFICER MOORE: At this point I want
19 to remind everyone that this is cross-examination of the
20 Prosecution Team's testimony, and so you're introducing
21 questions that relate to exhibits but are probably more
22 of a logical outgrowth of discussion, perhaps, in your
23 direct testimony.

24 Does legal counsel have any advice on that?

25 STAFF COUNSEL MEJIA: Would you indulge me in

1 asking a question?

2 HEARING OFFICER MOORE: Yes.

3 STAFF COUNSEL MEJIA: Thank you.

4 For the record, my name is Carlos Mejia. I'm
5 Staff Counsel for the Board, and I'm advising in the
6 hearing of this matter.

7 Mr. Kirk, are you seeking to elicit from
8 Mr. Porzio's testimony the truth of the matter asserted
9 in Mr. Kiser's declaration?

10 MR. KIRK: Actually, I'm trying to see whether
11 or not Mr. Porzio disagrees with any of the statements
12 made in Mr. Kiser's declaration.

13 STAFF COUNSEL MEJIA: So you're not seeking to
14 use Mr. Porzio's testimony to establish the truth of the
15 matter asserted in Mr. Kiser's declaration?

16 MR. KIRK: No. I am trying to seek
17 Mr. Porzio's belief that these matters are true.

18 MS. WEST: Again, Mr. Porzio has no expertise
19 in these matters, nor has he testified to them or claims
20 that they are true or not true.

21 MR. KIRK: Go ahead. If you want to confer,
22 go ahead.

23 (Discussion off the record.)

24 HEARING OFFICER MOORE: Now, I respect that
25 you're using the exhibit as substantive information, but

1 I would prefer that you not use the direct testimony,
2 you know, of the Prosecution Team for this line of
3 questioning and evidence. There will be opportunity to
4 question at a later time on this matter.

5 MR. KIRK: And I appreciate that, Mr. Moore.
6 Thank you very much.

7 I believe that the papers that have been
8 filed, the briefs, and the relatively succinct briefs,
9 indicate the real dispute that we're dealing with here.
10 And so the fact that the Soil Conservation District
11 built this dam without the involvement of the property
12 owner is key. And then after 1964, the water use did
13 not change, there was no --

14 MS. WEST: This sounds like his case in chief.

15 HEARING OFFICER MOORE: Objection upheld. We
16 will get to that matter under the procedure of the
17 hearing.

18 Is there any more cross-examination of the
19 Prosecution Team's presentation?

20 MR. KIRK: Yes.

21 HEARING OFFICER MOORE: Go ahead.

22 MR. KIRK: Thank you.

23 Let's switch to Miller if we can, please.

24 Q. Mr. Miller, has there been any use of the
25 water other than stockwatering?

1 A. (Mr. Miller) To our knowledge, no.

2 Q. There are no other diversions; correct?

3 A. The diversion we're aware of is the diversion
4 of water storage for stockwatering purposes.

5 Q. Okay. Do you know whether or not the
6 diversion was made for the purpose of stockwatering?
7 Or, rather, wasn't it done for the purpose of erosion
8 control?

9 A. The purpose of use that we've confirmed
10 through our site inspection is stockwatering. The
11 cattle are currently using the water.

12 Q. Do you have any knowledge regarding how and
13 when the Soil Conservation District constructed the dam?

14 A. Only through the documents we've seen.

15 Q. Anything other than Mr. Kiser's declaration?

16 A. No.

17 Q. Am I correct that no statement of diversion
18 and use is required if it's registered as a stockpond?

19 A. That is correct. But it has to be registered
20 first.

21 Q. I understand.

22 MR. KIRK: Those are all the questions I have.

23 Thank you.

24 HEARING OFFICER MOORE: Thank you, Mr. Kirk.

25 I'd like to offer the opportunity for staff or

1 counsel or, of course, my Co-Hearing Officer,
2 Spivy-Weber. Any questions of the Prosecution Team at
3 this time?

4 MS. FARWELL: I have questions.

5 HEARING OFFICER MOORE: Ms. Farwell.

6 MS. FARWELL: Thank you. Thank you,
7 Mr. Moore. Jane Farwell, Environmental Scientist. I
8 have a question for Mr. Miller.

9 Mr. Miller, your written testimony, starting
10 at the bottom of page 5 under the heading of "The Extent
11 of Harm, Nature and Persistence of Violation Length of
12 Time over which the Violation Occurs and Corrective
13 Action Being Taken," you state there is a cumulative
14 impact to reducing water supplies in habitat fishery.

15 Can you elaborate on the types of harm and
16 significance of harm you think has been caused by this
17 alleged violation?

18 MR. MILLER: This factor that we considered is
19 due to, you know, the knowledge that not just this
20 reservoir but many unauthorized reservoirs can
21 cumulatively reduce water supplies in a watershed.

22 With less water in a stream, there's less
23 water available for legal users to divert. There's also
24 less water available for the environment and the habitat
25 to use it.

1 MR. KIRK: I'll object, your Honor. To the
2 extent that Mr. Miller responds for this reservoir,
3 that's one thing; but he's responding for any number of
4 reservoirs.

5 HEARING OFFICER MOORE: I'm not going to
6 uphold the objection because the question was about
7 cumulative setting, you know, for a context. So I think
8 the discussion has been clear that it's incremental or
9 contributes to a cumulative concern; so I'm going to
10 allow this discussion.

11 MS. FARWELL: Thank you. That's it.

12 HEARING OFFICER MOORE: Any other questions?
13 Counsel?

14 STAFF COUNSEL MEJIA: Thank you, Mr. Hearing
15 Officer.

16 First, for Mr. Miller: Following up on that
17 same line of inquiry, on what do you base your assertion
18 for the potential of cumulative impacts to occur in the
19 watershed?

20 MR. MILLER: Primarily, work experience.
21 Also, many of the factors identified in the North Coast
22 Instream Flow Policy.

23 STAFF COUNSEL MEJIA: I also note in your
24 testimony, which has been offered into evidence as Water
25 Rights Exhibit 1, at pages 5 through 6 you also state

1 that the Napa River watershed contains the threatened
2 Central California Coastal steelhead trout fishery.

3 On what do you base that assertion?

4 MR. MILLER: I believe it's -- you know, it's
5 something that, I believe, has been published by NOA and
6 the Natural Marine Fishery Service. It's knowledge
7 that's readily available.

8 STAFF COUNSEL MEJIA: Something that's
9 generally known; is that right?

10 MR. MILLER: Generally known, yes.

11 STAFF COUNSEL MEJIA: I'd also like to turn
12 your attention to Exhibit 26, which you also referred to
13 when you testified.

14 How long have you been in your current
15 position, Mr. Miller?

16 MR. MILLER: I've been in my current position
17 as a Senior Water Resource Control Engineer for four
18 years.

19 STAFF COUNSEL MEJIA: And your
20 responsibilities during that time have predominantly
21 been Enforcement?

22 MR. MILLER: Yes. Supervision of Enforcement
23 Unit.

24 STAFF COUNSEL MEJIA: Have you previously
25 calculated the potential economic benefit of an

1 unauthorized diversion?

2 MR. MILLER: Yes.

3 STAFF COUNSEL MEJIA: And how many times would
4 you say you've calculated?

5 MR. MILLER: I believe every case on the
6 slide I -- the summary came up in my presentation. All
7 of those cases are -- were cases from my unit, and I
8 have calculated liability for those.

9 STAFF COUNSEL MEJIA: When you previously
10 calculated the economic benefit of an allegedly
11 unauthorized diversion, did you rely upon the types of
12 studies contained in Exhibit 26?

13 MR. MILLER: Yes.

14 STAFF COUNSEL MEJIA: To the best of your
15 knowledge, is that the type of information that another
16 similarly experienced person attempting to calculate the
17 economic benefit of an allegedly unauthorized diversion
18 could rely on?

19 MR. MILLER: I believe so. The purpose of the
20 document isn't for calculating economic benefit per se
21 from an unauthorized reservoir, but it contains
22 information that allowed us to have an idea of what it
23 would cost to pump groundwater, which would be a
24 replacement for the unauthorized water collected in
25 storage.

1 STAFF COUNSEL MEJIA: Thank you, Mr. Miller.

2 For Mr. Porzio, can I direct your attention to
3 Exhibit WR-9.

4 MR. PORZIO: Yes.

5 STAFF COUNSEL MEJIA: What is this document?

6 MR. PORZIO: This was a contact report with
7 Mary Gebing from the Napa County Assessor's Parcel
8 Office. This was after sending the August 18th letter,
9 at which point we hadn't heard anything from Mr. Newton
10 Dal Poggetto. We had tried to find information
11 available online such as phone numbers and e-mail
12 addresses, none of which was available; so I called the
13 County Assessor's Office to confirm that the address was
14 correct and that we were sending the notice to the right
15 liable party.

16 STAFF COUNSEL MEJIA: And I'd like to direct
17 your attention now to Exhibit 10.

18 MR. PORZIO: Yes.

19 STAFF COUNSEL MEJIA: What is this document?

20 MR. PORZIO: This was a follow-up call to
21 ensure the name was correct and to try to determine who
22 was liable for anything that occurs on that parcel.

23 STAFF COUNSEL MEJIA: Did you author this
24 document?

25 MR. PORZIO: Yes.

1 STAFF COUNSEL MEJIA: So you're saying it
2 memorializes the conversation you had?

3 MR. PORZIO: Yes. It is a contact report.

4 STAFF COUNSEL MEJIA: I'd also like to direct
5 your attention to Exhibit WR-18. What is Exhibit 18?

6 MR. PORZIO: This was an attempt to try to
7 find documentation from the Soil Conservation Service
8 that -- just anything we could find as to how -- what
9 type of policies they had implemented during the time
10 this reservoir was constructed to see if we could get
11 some of their policy documents to find out what
12 guidelines they were following when they were contacting
13 property owners to help economically or financially or
14 with actual physical work.

15 So it was just a follow-up. And some
16 information was made available, such as engineering
17 services not provided by NRCS. And this is similar to
18 the contact report. It's just to memorialize a
19 conversation and how we were trying to come up with some
20 of the information that was later submitted as exhibits.

21 STAFF COUNSEL MEJIA: Thank you, Mr. Porzio.

22 I have a question for Ms. West as to Exhibit
23 23.

24 MS. WEST: Certainly.

25 STAFF COUNSEL MEJIA: Can I ask for what

1 purpose you're seeking to admit this item?

2 MS. WEST: This is an historic document,
3 published historic document generally outlining some of
4 the history of the Soil Conservation District and type
5 of actions that they took in the communities.

6 It is obtained from the National Resources
7 Conservation's website. They have a collection of
8 historical published documents outlining the history of
9 the agency and the underlying Soil Conservation
10 Districts and why they came about and what type of
11 actions they were tasked with or authorized to do.

12 STAFF COUNSEL MEJIA: You say you retrieved
13 this document from what website?

14 MS. WEST: It's from the Federal National --
15 National Conservation Services website, USDA. It is a
16 published work. The entire compilation is a published
17 document of historical works. As you can tell, it was
18 previously presented at some conferences.

19 STAFF COUNSEL MEJIA: Thank you.

20 HEARING OFFICER MOORE: Any more questions?

21 MR. BUCKMAN: I have some more.

22 HEARING OFFICER MOORE: Yes, Mr. Buckman.

23 MR. BUCKMAN: Michael Buckman. I'm a member
24 of the Science Team and I'm also Senior Environmental
25 Engineering Unit.

1 Ms. West mentioned in her pre-brief, but I
2 didn't hear it followed up in the testimony of
3 Mr. Porzio or Mr. Miller. What type of stream? Ms.
4 West mentioned specifically that the stream dries up,
5 and I would like -- the question is for Mr. Miller or
6 Mr. Porzio as to the nature of the stream, because I did
7 not see that in your testimony. Maybe just a basic
8 characteristic of the stream.

9 MR. MILLER: Yeah. You know, maybe it didn't
10 come out in the presentation, but the USGS topographic
11 map, the blue line stream that Kevin was referring to is
12 not a solid line -- solid blue line but a dashed blue
13 line, which the USGS uses to indicate intermittent
14 streams or ephemeral streams that do not flow year
15 round.

16 MR. BUCKMAN: Thank you.

17 HEARING OFFICER MOORE: Okay. I had one
18 question about one of the exhibits, Exhibit No. WR-22.
19 And either Mr. Miller or Mr. Porzio can respond to this
20 question: What was the purpose of introducing these
21 past State Water Board decisions?

22 MS. WEST: I think I can speak to this. I'm
23 sorry.

24 HEARING OFFICER MOORE: Yes.

25 MS. WEST: Because these were cited in my

1 pre-hearing brief, and that's why they were included; so
2 I thought I would speak to this issue, if that's
3 acceptable.

4 HEARING OFFICER MOORE: Yes.

5 MS. WEST: These Water Rights decisions were
6 cited by me in my pre-hearing brief as examples of
7 decisions where the State Water Board had issued permits
8 to projects in which the Soil Conservation District,
9 local district, or Soil Conservation Service generally
10 had played a role in the projects, whether it be the --
11 and it also demonstrates that generally the role played
12 was a design or finance role.

13 And that these projects still obtained water
14 rights back at the time that they were constructed in
15 the early dates. I believe one of them is in 1959. And
16 just generally were cited for the general proposition
17 that these types of projects are still subject to water
18 rights permitting and authorization.

19 HEARING OFFICER MOORE: Is there anything in
20 these decisions that indicated the purpose or use of
21 stockwatering erosion control and other uses that have
22 been discussed today?

23 MS. WEST: Yes. All of these permits were for
24 some additional -- for some beneficial use such as
25 stockwatering or irrigation. Off of the top of my head,

1 I would have to look at each one to see what beneficial
2 use the appropriation was made for, but they each have
3 an associated beneficial use.

4 There is not, to my recollection, much
5 discussion about the additional soil conservation or
6 erosion benefits that these types of projects generally
7 have.

8 HEARING OFFICER MOORE: Okay. That answers my
9 question.

10 If there's any more questions on Prosecution
11 Team's direct testimony, I was going to suggest maybe
12 it's a good time to take a break. Everyone can stretch,
13 maybe go out look at the sunshine, and we can reconvene
14 at ten until 11:00 to keep this thing going. Does that
15 sound okay? And then we'll begin with Dal Poggetto's
16 opening statement and direct testimony at that time.

17 MR. KIRK: Thank you, Mr. Moore.

18 MS. WEST: Thank you.

19 (Whereupon a recess was taken.)

20 HEARING OFFICER MOORE: Welcome back. I know
21 I'm a little early. It appears to me that everyone has
22 reconvened, so we'll get the meeting back in session.
23 We're all eager to move this thing forward. Thanks for
24 reconvening.

25 And, with that, Mr. Kirk, you can start off

1 with your opening statement and direct testimony.

2 MR. KIRK: Thank you very much, Mr. Moore.
3 And thanks to everyone for being here and taking the
4 time, though we think it is a waste of time.

5 We will agree that all of the unauthorized
6 water diversion investigations in 2011, being a
7 significant accomplishment, is something that needs to
8 be done and more of it needs to be done. We agree with
9 that. However, this is a situation that went terribly
10 awry to the point where it is a terrible abuse of State
11 power.

12 The history of this indicates that a letter
13 was sent to Mr. Dal Poggetto August 18th, 2011. He
14 never saw it. He never got it. However, when the ACL
15 and CDO was sent and served Registered Mail, served on
16 Mr. Dal Poggetto the following March, he replied
17 immediately with a letter that is attached to our
18 documents as an exhibit. And he addresses this, and
19 "Let's do this."

20 And that's been consistent, frankly, with our
21 approach to this case. That is, this is a situation
22 where the Soil Conservation District constructed a dam;
23 the property owners didn't do anything different. From
24 1964 until the present day, there has been nothing
25 changed for the use of the water.

1 When Mr. Dal Poggetto received the ACL and the
2 CDO, he said, "We'll do what you want as long as you'll
3 take off the \$22,800 fine. That's just not fair. We
4 haven't been doing anything. We haven't been doing
5 anything other than keeping this property in nearly
6 natural condition."

7 There have been some stock on the property.
8 There have been some cattle, but for the most part --
9 and the pictures reflect this -- this property has been
10 kept in its natural condition.

11 The only objection we have here -- and, again,
12 I think this is reflected in briefs. The only problem
13 we have had throughout this case is an imposition of
14 \$22,800 against a property owner who didn't do anything.
15 They didn't appropriate water out to irrigate. They
16 didn't appropriate water out to sell to anybody. They
17 didn't do anything, other than not mess with the Soil
18 Conservation District's dam.

19 If you take the \$22,800 fine away, then, we
20 said, immediately we will do what we need to do; file
21 the appropriate papers. But that agreement was never
22 reached because the State would never take off the
23 \$22,800 fine.

24 There are lots of cases -- and, again, the
25 unauthorized diversion investigation has many, many,

1 many different situations where people have unauthorized
2 use of water. They've irrigated vineyards. They've
3 irrigated all kinds of agricultural products. And
4 that's unauthorized; that's not right, and we appreciate
5 the State Board's attempts to enforce those issues.
6 However, this is a situation where an innocent landowner
7 has been penalized.

8 As soon as he was aware of a problem that
9 existed, he said, "Let's deal with it, but take the fine
10 off. I'm not going to pay a fine." That's really the
11 only reason we're here, ladies and gentlemen.

12 And we have not filed the stockpond
13 registration application until just recently because we
14 were hoping that we'd be able to reach an agreement, but
15 that agreement was never made. And we knew that we
16 needed to file something, and so finally we did.

17 But it was really the power of the State, the
18 abuse of power of the State over us saying, "You haven't
19 done anything for the last -- what? -- 50 years, so now
20 we're going to fine you \$23,000, and you have to file
21 with us."

22 We said, "Fine. We'll file with you. But
23 we're not going to pay the \$23,800." And that's why
24 we're here today.

25 Mr. Dal Poggetto's testimony will go back and

1 talk about the fact that he never received any
2 August 18, 2011, letter. As soon as he did get the ACL,
3 he responded to it. As soon as no settlement or
4 discussion was productive, he hired me. I sent my
5 letter of -- it's also addressed September 3rd, 2013.
6 Again, we have tried to work with the State Board. The
7 power of a \$22,800 fine has prevented us from moving
8 forward and getting over this.

9 With that, I'd like to ask some questions with
10 Mr. Dal Poggetto. Fair enough?

11 HEARING OFFICER MOORE: All right.

12 MR. KIRK:

13 DIRECT EXAMINATION OF DAL POGGETTO

14 BY MR. KIRK:

15 Q. Attached as an exhibit to our brief is the
16 written testimony of Newton Dal Poggetto. I think it's
17 marked as Exhibit D. Did you help prepare this?

18 A. Yes.

19 Q. Is it true and correct?

20 A. Yes.

21 Q. Did you know Gary Kiser?

22 A. Yes, for about 60 years.

23 Q. Okay. When this issue arose, did you talk
24 with Mr. Kiser?

25 A. Yes.

1 Q. And what did you two discuss?

2 MS. WEST: Okay. I'm going to object that
3 this is a hearsay discussion. He's pointing out that
4 he's testifying what Mr. Kiser said, and Mr. Kiser is
5 not here for me to cross-examine.

6 MR. KIRK: And I appreciate that. Generally
7 speaking, in administrative hearings I think this type
8 of discussion is allowed. I think all of the evidence
9 thus far points to Mr. Kiser's reliability.

10 MS. WEST: It's allowed to support non-hearsay
11 evidence in the record, and I would ask for an offer of
12 proof of what that non-hearsay record is.

13 HEARING OFFICER MOORE: Counselor, I'm
14 interested because this is unusual. We don't have the
15 opportunity to actually question Mr. Kiser; but, you
16 know, this is substantive information for the hearing.

17 STAFF COUNSEL MEJIA: Mr. Hearing Officer and
18 Madam Vice Chair, for the benefit of counsel, I would
19 like to make clear what the standard is for the
20 acceptance of hearsay evidence during an administrative
21 proceeding as set forth in Government Code section
22 11513, subdivision (d). And it states as follows:

23 Hearsay evidence may be used for the purpose of
24 supplementing or explaining other evidence but over
25 timely objection shall not be sufficient in itself

1 to support a finding unless it would be admissible
2 over objection in civil actions. An objection is
3 timely if made before submission of the case or in
4 that consideration.

5 So, Mr. Hearing Officer, consistent with your
6 inquiry, my advice would be that certainly an offer of
7 proof might be appropriate, but that's the standard that
8 governs the potential admissibility of hearsay in a
9 proceeding such this.

10 HEARING OFFICER MOORE: Okay. I'm going to
11 allow the questioning to continue.

12 MR. KIRK: Thank you, Counsel.

13 HEARING OFFICER MOORE: This is qualified
14 appropriately.

15 BY MR. KIRK:

16 Q. What did you and Mr. Kiser discuss?

17 A. We met in my home office. And since I'd known
18 him since he was a teen-ager, I said, "Gary, what
19 happened?"

20 And he say, "Oh, yeah. I built the dam out
21 there."

22 And the Kiser's and the Stornettas, both Swiss
23 Italians, both have known each other for
24 multi-generations in the valley, and -- and Gary was
25 hired by the U.S. Soil Conservation Service. His office

1 was next to mine for my first few years of law practice.
2 And he said the Soil Conservation Service wanted to
3 build a dam because of the erosion in that little
4 stream/creek that's there.

5 And the farmers, like the Stornettas and all
6 farmers in the valley up to that time, about 14 years
7 that I was aware of it, were delighted to have a
8 government spend money on their property and improve
9 their property without any expense to them. They were
10 very highly regarded in the valley.

11 And so Gary was running his bulldozer and
12 other heavy equipment; that was his business, and he
13 built the dam. And he told me he built it. And he
14 built a good dam, and he was proud of it.

15 Q. Thank you, Mr. Dal Poggetto.

16 When you were first notified by the State
17 Water Board that an administrative liability complaint
18 had been filed against you and a Cease and Desist Order
19 had been requested against you, what was your response?

20 A. My response was to find some expert legal
21 representation because, as the trustee of the Stornetta
22 Trust, I had -- and in other matters prior to this --
23 employed counsel. And I asked the counsel that I
24 employed, "Who knows about water rights?" And that's
25 how I met Mr. Kirk, and I retained him shortly

1 thereafter.

2 Q. Did you first, however, write the letter dated
3 April 2nd, 2012, to the Department of Water Rights?

4 A. Yes.

5 Q. Okay. That's what we've marked as Exhibit B;
6 correct?

7 A. Yes. B, yes.

8 Q. So am I correct in understanding that you
9 received service of the ACL on March 26 and then on
10 April 2nd you responded?

11 A. Yes.

12 Q. Is there any reason why you wouldn't have
13 responded to the letter that allegedly was sent to you?

14 A. No. I would have been pleased to respond, and
15 I would have replied to them sooner.

16 Q. Okay. You have agreed to do what the Water
17 Board requests if they would reduce the fine; correct?

18 A. Yes.

19 Q. Okay. Were you involved with the property in
20 1964?

21 A. No.

22 Q. Why is Mr. Kiser not here today?

23 A. Because his wife, as of about last Wednesday,
24 she said, "Gary is dying." And I asked if I could see
25 him.

1 She said, "He will not get out of bed."

2 He retired about two years ago, and I knew
3 that because I've known him casually over the years.
4 And I know his wife, and she's very concerned because
5 she is living alone with him and he's given up on life.
6 He's 76 years old. And I had no idea he was not in good
7 health. I asked her what was the problem, and she
8 didn't really respond and was very sad. And that was
9 it. I'm very touched by it.

10 Q. The declaration of Mr. Kiser that we've
11 marked as an exhibit, you've read that; right?

12 A. Yes, I have.

13 Q. And is that consistent with what you and he
14 discussed?

15 A. Yes.

16 Q. Okay. You've reviewed what we've marked as
17 Exhibit A. That is my letter to Yvonne West dated
18 September 3, 2013, in which we state: "My client will
19 agree to register the stockpond."

20 Do you remember that?

21 A. Yes.

22 Q. Okay. And you gave me authority to make that
23 offer; correct?

24 A. Correct.

25 Q. Okay. How was the water on the property used

1 when you first became owner or trustee for the Stornetta
2 Family Trust, owners of the property?

3 A. Well, I don't know if it was used. The
4 property had been leased for dry cattle grazing by Alex
5 Stornetta, the owner, years before when after he sold
6 his dairy herd and went out of the dairy business. And
7 Mitchell Mulas and his family were leasing that land,
8 and I don't know that it was written or not. Later I
9 wrote a lease, a simple lease, a grazing lease.

10 But that land had been used for years for dry
11 cattle, heifers, and other dry cattle. And there was a
12 well on the property, I knew, and there was like an old
13 bathtub or a container next to the well. And there was
14 power to the property at that time.

15 So I, of my own knowledge, don't know how the
16 property was used or whether -- where the water came
17 from, except maybe the cows went down and drank at the
18 edge of the pond. Because I don't know whether they
19 used a well or not. PG&E has since removed the power,
20 so -- I don't know.

21 Q. How is the water on the property used today?

22 A. I don't think it is used, unless Mulas's cows
23 go down and drink a little, if they can get through the
24 weeds.

25 Q. Okay. You heard -- I think it was

1 Mr. Miller's testimony about the studies regarding the
2 cost of providing water for the production of wine
3 grapes and olive oil.

4 You haven't been producing any wine grapes or
5 olive oil, have you, on that property?

6 A. No. It's a beautiful thought.

7 Q. You have registered the pond as a stockpond,
8 correct, or at least applied to register?

9 A. Yes. Yes.

10 Q. And if there are limitations on the size of
11 the stockpond and your pond, the Stornetta pond is too
12 large, you will agree to reduce the size; correct?

13 A. Sure. Yes.

14 Q. Is it fair to say that you want to comply with
15 the Water Board directives --

16 A. Yes.

17 Q. -- except to the extent of paying a \$22,800
18 fine?

19 A. Yeah. That is an absolute bullying,
20 ridiculous decision taken by the State.

21 MR. KIRK: Those are all the questions I have.

22 HEARING OFFICER MOORE: Okay. With that, that
23 completes the direct testimony of Dal Poggetto.

24 MS. WEST: I would like to submit the exhibits
25 that we've presented as well.

1 MS. WEST: My objection stands as I've said
2 earlier.

3 HEARING OFFICER MOORE: Yes, with respect to
4 the hearsay.

5 You know, it's a very difficult circumstance,
6 Mr. Dal Poggetto, about your life-long friend. I think
7 I speak for all of us.

8 MR. DAL POGGETTO: If I might add, as a
9 fiduciary and trustee of the trust, which I don't
10 welcome, I have the obligation not to waste the estate's
11 money. And I felt it would be in violation of my
12 fiduciary duty to give in to this sort of demand.

13 HEARING OFFICER MOORE: Okay. Thank you for
14 that.

15 And so with that, it's time for the --

16 MS. McCUE: Excuse me.

17 HEARING OFFICER MOORE: Yes.

18 MS. McCUE: Could we just clarify your
19 exhibits that you're introducing? You had submitted
20 some in July that numbered 1, 2 and 3, and then the most
21 recent were A, B, C and D; so what exactly are you
22 submitting?

23 MR. KIRK: A, B, C and D. The only difference
24 is the 1, 2 and 3 were A, B and C and we added the D,
25 which was the written testimony of Mr. Dal Poggetto.

1 MS. McCUE: I think they're in a slightly
2 different order. Can we just clarify?

3 MR. KIRK: Certainly.

4 MS. McCUE: The Prosecution Team has referred
5 to them.

6 STAFF COUNSEL MEJIA: Perhaps for clarity of
7 the record if you could just go through each exhibit and
8 indicate what it is.

9 MR. KIRK: Absolutely.

10 Exhibit A is my letter to Yvonne West dated
11 September 13, 2013;

12 Exhibit B is Mr. Dal Poggetto's letter to the
13 Department of Water Rights dated April 2, 2012;

14 Exhibit C is Mr. Kiser's Declaration; and

15 Exhibit D is the summary of Mr. Dal Poggetto's
16 testimony.

17 MS. McCUE: Can I make just one clarifying
18 thing. So Exhibit A, I think, was your original Exhibit
19 2, is that correct, on July 10?

20 To tell you the truth, I don't know that.

21 MS. McCUE: All right. Thank you.

22 MS. WEST: I would also like to state that if
23 Mr. Kirk is not going to move Exhibit 3, which was part
24 of his original submittal into the record as evidence,
25 then I would move to move it in on behalf of the Water

1 Rights Enforcement staff. It is my letter in response
2 to Mr. Kirk's letter dated September 26, 2013.

3 HEARING OFFICER MOORE: And we'll call that
4 Exhibit E or --

5 MS. WEST: Mr. Kirk already submitted it. If
6 he's not planning on moving it into evidence, I will
7 make a motion to move it in.

8 STAFF COUNSEL MEJIA: I think for the clarity
9 of the record, Mr. Hearing Officer, I would advise that
10 moving it into evidence is one part of it, but then if
11 you're inclined to accept the last exhibit it could be
12 marked -- I believe the last exhibit of the Prosecution
13 Team was WR-27. I suggest, yes, that you mark it
14 whatever you want.

15 MR. KIRK: And I don't have any objection to
16 that.

17 STAFF COUNSEL MEJIA: I suggest that the
18 letter be marked as WR-29.

19 HEARING OFFICER MOORE: Okay. That sounds
20 good, and with my Co-Hearing Officer. We'll accept
21 Exhibits A through D by Dal Poggetto and the
22 September 26, 2013 letter by Ms. West as WR-29 as
23 Prosecution Team's exhibit.

24 (Whereupon the above-referenced exhibits were
25 admitted into evidence by the Hearing Officer.)

1 HEARING OFFICER MOORE: Thanks for that
2 clarification, Ms. McCue.

3 Okay. At this point I would like to offer,
4 first, the Prosecution Team any cross-examination of Dal
5 Poggetto.

6 MS. WEST: Thank you.

7 I'm going to walk over to Mr. Dal Poggetto and
8 provide him our staff Exhibit WR-6 for him to review.
9 I'll be right back.

10 CROSS-EXAMINATION OF MR. DAL POGGETTO

11 BY MS. WEST:

12 Q. Mr. Dal Poggetto, I am showing you the
13 Division Enforcement staff Exhibit WR-6. Mr. Miller has
14 testified to the fact that -- oh. Mr. Porzio and
15 Mr. Miller have testified to the fact this is an address
16 list to addresses to which the notice letter exhibit --
17 included as, I believe, Exhibit WR-5 was mailed by the
18 Division.

19 Can you please read the name and address that
20 I have circled into the record.

21 A. Yes.

22 Q. Do you want to go ahead and do that?

23 A. That is my home address. And I rarely receive
24 any mail at that address. My real address is 670 B,
25 West Napa Street, in Sonoma.

1 Q. But that is your home address?

2 A. Yeah, that's my home address.

3 Q. And how long have you lived there?

4 A. Sixty years.

5 Q. And you do receive mail at that address?

6 A. Pardon?

7 Q. Do you receive mail at that address?

8 A. I receive advertising flyers and some bills.

9 Yes.

10 Q. Okay. And we also have our exhibits from the
11 Napa County Recorder's Office, which has the same
12 address. I believe we included that in our ParcelQuest
13 that is the ownership information on file, or the
14 address information on file for Mr. Dal Poggetto.

15 Does anyone else at your house receive this
16 mail? Is there anyone else that can receive mail at
17 your address?

18 A. Yes, several people. And that's why I rarely
19 look at that mailbox.

20 Q. And it is the same address at which --

21 A. But it's still there.

22 Q. But did you receive the initial ACL and CDO at
23 that address as well?

24 A. What?

25 Q. The initial ACL and CDO that was mailed to you

1 was sent Certified Mail to that address as well. Did
2 you receive that?

3 A. Oh, I think I would. I don't think I -- I
4 don't know how I got your Certified Mail letter that
5 came there. But Certified Mail, we usually go down to
6 the post office to pick it up because the postman will
7 not deliver a Certified letter to a mailbox.

8 Q. Okay. I will go ahead and get that back from
9 you.

10 A. Sure. So chances are I didn't get it there.

11 Q. I would at this point draw your attention to
12 the letter that you did write to the State Water Board
13 that you have included, I believe, in your Exhibit B,
14 just acknowledging your receipt of that initial ACL and
15 CDO. I thought that you had made statements there to
16 the effect that your secretary received it at your
17 house, but I'm not seeing it now.

18 A. Yeah.

19 Q. Okay. Just moving along.

20 When you received -- what did you do when you
21 received the original ACL and CDO? I believe that you
22 discuss it in this letter as well.

23 A. What did I do?

24 Q. What was your reaction?

25 MR. KIRK: Can you clarify the question?

1 BY MS. WEST:

2 Q. When you received the original ACL and CDO,
3 did you respond with a letter to the State Water Board?

4 A. When I received this letter?

5 MR. KIRK: The ACL and CDO which you got by
6 Certified Mail.

7 THE WITNESS: Oh, yeah.

8 MR. KIRK: How did you respond?

9 THE WITNESS: I imagine that -- I don't have a
10 specific recollection, but I imagine the first thing I
11 did was pick up the telephone and call Mr. Kirk and tell
12 him about it.

13 BY MS. WEST:

14 Q. Would you have --

15 A. And I responded when I knew there was
16 something to respond to.

17 Q. You say you didn't delay or wait. Basically,
18 what I'm asking, would you have responded differently
19 had the party names been listed or shown as --
20 differently than they were? Would you have had a
21 different reaction or response?

22 A. I don't understand the question.

23 Q. Mr. Kirk alleges there was a great
24 misunderstanding and confusion upon receiving that ACL.

25 A. I have a very difficult time hearing you when

1 you are so close to the mic.

2 Q. I'm sorry. They've asked me to be close to
3 the mic because it doesn't pick it up.

4 Mr. Kirk stated in his argument that there was
5 a lot of confusion upon receipt of the ACL, and I'm
6 asking: Would you have responded differently had the
7 ACL and CDO contained the Stornetta Family Trust name
8 instead of your name? If it had named the trust
9 correctly, would you have responded differently?

10 A. I don't know because it didn't happen. I
11 doubt it. If I understood what it was, I would have
12 responded as I did, by promptly doing something about
13 it.

14 Q. But you did reply; you did do something about
15 it?

16 A. Yeah. As soon as I knew there was something
17 to respond to, I did.

18 Q. Thank you. You testified just now to not --
19 that you were not personally involved in the property in
20 1969; is that correct?

21 A. Yes, I was not involved with the property. I
22 was Mr. Stornetta's and Matula Stornetta's attorney from
23 about -- sometime in 1989 until their deaths, though I
24 had known them as a child.

25 Q. Great. So you don't have any personal

1 knowledge of whether or not Mr. Stornetta sought
2 financial assistance for the construction of the
3 reservoir or whether Mr. Stornetta consented to the
4 construction of the reservoir?

5 MR. KIRK: This is really calling for
6 speculation at this point in time. We've gone over
7 this, and there's isn't any basis for this question
8 other than pure conjecture.

9 HEARING OFFICER MOORE: Okay. I actually
10 think there is enough open-endedness to Mr. Kiser's
11 statement that -- there is an allegation in that
12 statement of no personal involvement; so there is a
13 question of what that means.

14 So can you rephrase your question?

15 BY MS. WEST:

16 Q. I'm asking Mr. Dal Poggetto if he has any
17 personal knowledge of whether or not the Stornettas
18 consented to the construction of that reservoir, if they
19 have any personal knowledge of what happened in 1964 in
20 reference to the reservoir period?

21 A. No. I really had no contact with the
22 Stornettas during the 60s, before that and after that.
23 I knew them, yeah. And I wasn't their attorney during
24 that time.

25 HEARING OFFICER MOORE: That's fine.

1 BY MS. WEST:

2 Q. Great. Thank you. You just testified that
3 you were familiar with the family and you were
4 acquainted with the family?

5 A. Yes.

6 Q. Had you ever been to the property prior to
7 your inspection with our staff?

8 A. Yes. I've been out there two and three times.

9 Q. Have you ever -- what was your purpose of
10 going to the property?

11 A. Well, basically it was the first time to look
12 about fishing for catfish.

13 Q. And did you fish for catfish that day?

14 A. And I found out that there was yellow catfish
15 planted there, which are mainly head and bone, and so I
16 didn't go out.

17 Q. Have you gone out for a picnic? Swimming?

18 A. Yeah, I've been out there. Not swimming.
19 I've been out there to a birthday party that -- Al
20 Stornetta had, I think, his 90th birthday, or
21 thereabouts, out there; and he invited my wife and me
22 out there.

23 Q. Was the party near the reservoir?

24 A. Yeah, it was close by. There was a picnic
25 table set up away under a tree. Not that close but --

1 in fact, I think I mentioned it to your assistants
2 there.

3 Q. Okay. You did previously just state that you,
4 as the trustee for the property, have written some lease
5 agreements for cattle grazing on the property. Is that
6 correct that you were involved in writing some lease
7 agreements for the property for grazing cattle?

8 A. Involved in what?

9 MR. KIRK: Writing lease agreements for the
10 cattle.

11 THE WITNESS: Yeah. I did a written simple
12 lease to the Mitchell Mulas family, oh, sometime in the
13 '90s, probably.

14 BY MS. WEST:

15 Q. Do you recall the term of that lease? Was it
16 a year-round lease?

17 A. Yeah. The original lease, I guess, between
18 the Mulases, who have been neighbors and long-time
19 friends, was oral, I assume. I never saw it. And I
20 think the first lease I did, I think they were getting
21 3,000 a year; and that was probably what I did. And
22 there still is a -- the same repeated lease. And the
23 lease this last year, I raised the rent to \$6,000.

24 Q. Mr. Dal Poggetto, you recently -- you
25 testified that you recently filed an application for

1 stockpond registration on the property. And I have a
2 copy of what you have filed, and in that registration
3 you make some statements to the effect that you recently
4 requested records from the U.S. Conservation Soil
5 Service concerning the property.

6 A. Yes. I tried diligently, and many telephone
7 conversations, and volunteered to go to Petaluma where
8 their office is now and help them search the records to
9 try to find out something about that pond. And I have a
10 concern about who owns that dam, whether they have any
11 claim or right on it.

12 Q. Were you successful in finding any records at
13 all?

14 A. No. I was told by a nice lady over there --
15 and had at least two conversations with her to see if
16 they could find any records about the dam and about what
17 they did, and she politely told me that she'd spent
18 quite a bit of time and couldn't find anything.

19 Q. Okay.

20 A. And for me not to bother to come over to see
21 them.

22 Q. Thank you, Mr. Dal Poggetto.

23 There's some confusion -- and I'm not sure
24 that you're going to be able to clear it up for us. You
25 had stated that Mr. Kisler said he was an employee of

1 the U.S. Conservation Service. Mr. Kisler's declaration
2 says he was an employee of the Soil Conservation Service
3 or District, and there's a significant kind of
4 difference.

5 A. Shaffer?

6 Q. Mr. Kisler?

7 MR. KIRK: Kiser.

8 MS. WEST: Mr. Kiser? Sorry.

9 THE WITNESS: Yeah.

10 BY MS. WEST:

11 Q. Mr. Kiser. Do you know whether he was an
12 employee of the U.S. Soil Conservation Service?

13 A. I never saw it in writing. No. I just know
14 he told me that he was hired to put in the dam. And it
15 was done by the -- what I assumed was still the U.S.
16 Soil Conservation Service, that I've known, been in the
17 valley since the 40s.

18 Q. Do you know what his position was as an
19 employee? Do you know any further information on what
20 his position was? If he was --

21 A. No. No. I don't know anything about that.

22 Q. And you don't have any familiarity with the
23 Soil Conservation District at that time in the 1950s?

24 A. No. No.

25 Q. Well, then, I have questions I can't ask you;

1 so I'm going to move along.

2 A. All right.

3 Q. One thing that you just testified to is you
4 had mentioned in your previous testimony that there is
5 no power available for a well located on the property.

6 A. That's correct. I received a notice from
7 PG&E, oh, eight or nine months ago that they were
8 discontinuing any service of the property. There was
9 nothing out there. I don't know when they stopped
10 providing service. In fact, I don't know if there ever
11 really was service out there.

12 Q. Right.

13 A. But I assumed there was because of the well,
14 but that's all that's there.

15 Q. So is there any other source of water for the
16 cattle?

17 A. Pardon?

18 Q. Is there any other source of water for the
19 cattle on the property other than the reservoir?

20 A. The well, it's right -- right -- maybe 50
21 yards or less from the pond.

22 Q. And you just testified that the well is not
23 operable and hasn't been but you're not sure how long?

24 A. I don't know that it is. There's an old tub
25 there, which I vaguely recall as being a bathtub, to put

1 water in.

2 Q. But your testimony today is that there is no
3 power to that well?

4 A. There is no power. I know that because --

5 Q. Thank you.

6 A. -- I received a notice from PG&E that they've
7 shut the power off.

8 Q. Thank you very much.

9 A. The availability. Not that there was power
10 but the availability, yeah.

11 MS. WEST: Okay. I believe that's all of my
12 questions for Mr. Dal Poggetto.

13 HEARING OFFICER MOORE: Okay. At this time
14 I'd like to open up for staff questions.

15 MS. FARWELL: Thank you, Mr. Moore. I have a
16 couple of questions.

17 MS. FARWELL: Jane Farwell, Environmental
18 Scientist. I have a couple of questions for you,
19 Mr. Dal Poggetto.

20 First of all, are you aware of any maintenance
21 that has been done to the reservoir?

22 MR. DAL POGGETTO: To my knowledge there has
23 never been any maintenance to the reservoir.

24 MS. FARWELL: Okay.

25 MR. DAL POGGETTO: But I don't really know too

1 much about it.

2 MS. FARWELL: Okay. My other question is --
3 and I think you responded to this as a result of
4 Mr. Kirk's questions, but just so I'm super clear: Do
5 the cattle use the stream pond year round?

6 MR. DAL POGGETTO: Well, I've never seen any
7 cattle drink in the pond. I haven't been out there that
8 often, but I'm assuming that at some time that if I were
9 a cow I would go down and drink the water if it were
10 there and if there weren't any water in the tub that was
11 there.

12 MS. FARWELL: Right. Right. Right. That's
13 their --

14 MR. DAL POGGETTO: But I've never seen it
15 happen.

16 MS. FARWELL: Okay. Real good. Thank you,
17 sir.

18 MR. DAL POGGETTO: It's a nice thought.

19 HEARING OFFICER MOORE: Okay. Any other
20 questions from staff?

21 MS. SPIVY-WEBER. I have a question.

22 When you became the trustee of the Stornetta
23 Trust, to your knowledge had the Stornettas owned the
24 property -- owned the property for -- I don't know for
25 how long, but had there ever been any other ownership of

1 the property?

2 MR. DAL POGGETTO: Well, as a practical
3 matter, no. The Stornettas only owned about 900 acres,
4 of which this 187-acre parcel was a latter purchase.
5 Charlie Stornetta Sr. started purchasing property in
6 1912. I have the deeds and records from there. He
7 bought three little broken-down dairy ranches and made
8 one out of it.

9 When they bought this Napa County property, I
10 don't know. And it was after, I think, his death,
11 probably purchased by his two sons, Alexander and
12 Charles Jr., and they owned it together.

13 And I know that because Al Stornetta --
14 Alexander, who owned it at the time of his death,
15 divided his partnership with his brother Charles, who
16 lived in Napa County; and they more or less divided this
17 parcel in half. And it was just done by them informally
18 and by a deed at the title company in about 1986 or '7,
19 before I started representing them.

20 And the only reason I knew about it was
21 because we were wondering who was going to pay for a
22 fence to divide off the property between them.

23 MR. KIRK: If I can clarify. Do you know when
24 the Stornettas purchased the property?

25 MR. DAL POGGETTO: No.

1 HEARING OFFICER MOORE: Good. If there's no
2 other questions from staff, I just had one question.
3 Because you've told us about not being aware of the
4 August letter and, you know, I understand, you know, the
5 issues here with the mail and everything. But I'm
6 looking at the timeline, and there was, according to
7 staff, a February 2012 visit to the site; so that was
8 before the ACL/CDO was mailed. So I was wondering if
9 you had a chance to visit with staff during that
10 February inspection?

11 MR. DAL POGGETTO: A chance to visit?

12 MR. MOORE: Yeah. When the staff inspected
13 your property, were you there in February of 2012 to
14 allow them on the property?

15 MR. DAL POGGETTO: No. I was there in
16 October. There were two nice gentlemen that took the
17 pictures. I saw them take the pictures, which were
18 pretty nice.

19 MS. WEST: Let me clarify.

20 HEARING OFFICER MOORE: Yes. Thank you.

21 MS. WEST: That February 16, 2012, initial
22 inspection report, that is when we produced the initial
23 -- that is after sending the letter, before sending the
24 ACL, we produced an initial inspection report. It was a
25 desktop investigation without a site visit based on the

1 topographical maps and the aerial photos viewed.

2 The visits that occurred with Mr. Dal Poggetto
3 did not occur until after the ACL/CDO was issued.

4 HEARING OFFICER MOORE: Okay. Good. That's
5 just for my clarification, because I see a timeline and
6 I see the word "inspection," so I just wanted to make
7 sure for the record that that was a desktop inspection
8 that preceded the correspondence of the Certified Mail.
9 Okay.

10 MS. WEST: That is correct.

11 HEARING OFFICER MOORE: Okay. And did you
12 receive any phone calls before receiving the CDO/ACL
13 package?

14 MR. DAL POGGETTO: No.

15 HEARING OFFICER MOORE: Okay. That's all for
16 my questions.

17 MS. WEST: Are we are ready to move on?

18 HEARING OFFICER MOORE: Yes. Let me get my
19 timeline back. So if there are no more questions or
20 cross-examination of Dal Poggetto, at this point we can
21 do rebuttal testimony from the Prosecution Team.

22 MS. WEST: Thank you. Before I move on -- I
23 have my rebuttal argument and some of them are supported
24 -- are illustrated through a PowerPoint; but before I
25 move on I'm going to ask a few clarifying questions of

1 staff, specifically of Mr. Porzio.

2 REDIRECT EXAMINATION BY PROSECUTION TEAM

3 BY MS. WEST:

4 Board Member Moore just asked some questions
5 about phone calls, and I wanted to know from you: Did
6 we have a phone number or other contact information of
7 Mr. Dal Poggetto besides his home residential address
8 that was used for both the letter and the ACL, the
9 initial ACL?

10 MR. PORZIO: There was no available
11 information that we could find, other than the address.

12 MS. WEST: Okay. Now I'm going to ask a
13 question of both Mr. Miller and Mr. Porzio. I'm going
14 to show them what I believe is Dal Poggetto's Exhibit B.
15 Specifically, I am referring to the April 2nd letter
16 from Mr. Dal Poggetto to the Water Board. I'm going to
17 show it to both of the witnesses.

18 And I would ask you both to respond whether or
19 not you have ever seen that letter prior to these
20 proceedings, or these submissions and these proceedings?

21 MR. MILLER: No, I have not. This is Aaron
22 Miller.

23 MR. PORZIO: Kevin Porzio. I have not seen
24 this document either.

25 MS. WEST: Thank you.

1 Michael Buckman. Mr. Buckman, this would be a
2 good time if you could pull up the slide presentation
3 that I provided to you labeled Rebuttal.

4 (Thereupon an overhead presentation was
5 presented as follows:)

6 MS. WEST: In Mr. Kirk's arguments today we've
7 heard a number of legal arguments that I'd like to take
8 some time to respond to. And I'd like to respond --
9 you've also -- we heard a lot of discussion about what
10 were confidential settlement discussions between the
11 Prosecution Team and Dal Poggetto. I am not going to go
12 into the details of those discussions because, as I say,
13 they were confidential settlement discussions.

14 I would like to bring to your attention,
15 however, that we did demonstrate earlier in the
16 testimony that we have settled a number of these types
17 of enforcement cases for reduced liability.

18 This is a situation where doing nothing can
19 get you in trouble in the eyes of the law.

20 MR. KIRK: I object. Is this argument or is
21 this testimony?

22 HEARING OFFICER MOORE: This is a rebuttal.
23 You'll have a chance to cross-examine.

24 MS. WEST: This is a rebuttal argument. And
25 some testimony, in addition, was provided by staff.

1 MR. KIRK: Okay.

2 MS. WEST: I would like to briefly address
3 legal arguments raised by Mr. Kirk through the late
4 submission of a pre-hearing brief and the argument made
5 here today. As I stated previously, many of the
6 arguments were addressed in my September 26, 2013,
7 letter submitted by Mr. Kirk and Dal Poggetto Exhibit 3,
8 which has been reidentified as Water Rights Exhibit 29,
9 I believe.

10 None of the issues raised by Mr. Kirk amount
11 to a legal defense or excuse for the violations alleged
12 in the ACL notice complaint and CDO. We heard testimony
13 that the initial reservoir letter was provided to
14 Mr. Dal Poggetto at his residence, the same address at
15 which he received the ACL and CDO. I would contend that
16 the misnaming of the parties did not cause confusion or
17 delay.

18 --oOo--

19 MS. WEST: The involvement of the Soil
20 Conservation District, or the U.S. Soil Conservation
21 Service, whichever one is being alleged, does not exempt
22 the reservoir from the need to obtain an appropriate
23 water right. It does not excuse the prior property
24 owner from the requirement to obtain the necessary water
25 right permit prior to the reservoir being constructed,

1 and it does not absolve the Stornetta Family Trust as
2 the current property owner for its responsibility for
3 coming into compliance with water rights regulations and
4 the ongoing diversion and use of water on the property.
5 Again, this was established in "People v. Shirokow,"
6 where the Supreme Court of California held a property
7 owner liable for a reservoir that was constructed by a
8 previous landowner in the 1960s.

9 --oOo--

10 MS. WEST: We heard testimony basically
11 claiming that at the time the reservoir was constructed
12 it was constructed by a Soil Conservation District, or
13 the U.S. Soil Conservation Service, but both the Soil
14 Conservation District and Service lack authority to act
15 without property owner consent. There was no taking of
16 property in this case. We can see no evidence
17 suggesting there has been any taking of property by the
18 U.S. Government or the local soil conservation service.

19 I'd like to put into the record Public
20 Resource Code section 9001 under the authorizing act of
21 Soil Conservation District. It specifically provides
22 that soil conservation districts may build projects for
23 soil conservation with the consent of the property
24 owner.

25 I would like to submit into evidence not only

1 the current Public Resource Code section, but I also
2 have statutes from 1951 and 1953 containing the same
3 language which provides authority to soil conservation
4 districts for such projects only with the consent of the
5 property owner. I believe that this would be designated
6 WR-30.

7 HEARING OFFICER MOORE: We'll accept that into
8 evidence as Exhibit WR-30.

9 (Whereupon the above-referenced exhibit
10 was admitted into evidence by the Hearing Officer.)

11 MR. KIRK: We'll stipulate to the Soil
12 Conservation District should get consent of the owner
13 before building a dam. Not a problem.

14 HEARING OFFICER MOORE: Reasonable people can
15 agree.

16 MR. KIRK: That's what you'd like to think.

17 MS. WEST: Mr. Kirk previously argued
18 erroneously that the dam and reservoir, because they
19 were constructed with the involvement of the Soil
20 Conservation District, were not required to file a
21 Statement of Diversion and Use. He made this argument
22 in his legal brief under Water Code section 1252.1.
23 However, the plain meaning of the language of this
24 statute does not exempt soil conservation practices from
25 permit and license requirements but simply establishes

1 the granting of a water rights permitting water license
2 does not convey with it the ability to interfere with
3 upstream soil conservation practices, for those
4 practices themselves would not be appropriate -- an
5 appropriation of water for which a water rights permit
6 and license is required.

7 I could go into more detail on this provision,
8 but I think that it's clear to the Board that the plain
9 meaning of the statute's intent was not to absolve
10 water erosion or soil conservation projects from the
11 need to obtain a water right permit and license.

12 --oOo--

13 MS. WEST: I've included in my brief examples
14 of Division water rights permits and licenses filed --
15 past ones -- the State Water Board has issued where
16 reservoirs were constructed from funds or with the
17 technical assistance of the Soil Conservation Service
18 and local conservation districts.

19 Furthermore, even if a reservoir were
20 constructed solely for soil conservation purposes, that
21 does not convey a right to continue to impound water and
22 to use it for stockwatering purposes without an
23 appropriative right to do so. This was established in
24 "Meridian Ltd v. City and County of San Francisco," 13
25 Cal.2d 424.

1 --oOo--

2 MS. WEST: The impoundment of water. Another
3 argument that Mr. Kirk asserts is that the impoundment
4 of water in a reservoir is not a diversion. Again,
5 this argument is briefly discussed in my letter to
6 Mr. Kirk. Water Code section 5100, division (c),
7 specifically includes the impoundment of water in a
8 reservoir within this definition of "diversion."

9 The impoundment of water is an appropriation
10 because water is being captured in a reservoir, and by
11 so capturing that water it is no longer available for
12 downstream users and water rights holders and is an
13 appropriation.

14 Furthermore, there is a change of use here,
15 something that Mr. Kirk has asserted repeatedly that
16 there has been no change of use and we have no changed
17 conditions and the property owner has taken no action.
18 Again, here there is a change.

19 While the type of beneficial use of the water
20 before and after the construction of the reservoir is
21 still stockwatering, the uses change. And it has
22 changed in character because after the construction of
23 the reservoir water is now available year round to this
24 property for stockwatering and other beneficial uses, as
25 we've heard Mr. Dal Poggetto discuss. He's used the

1 reservoir for recreation, esthetics. Simply put, this
2 property would not have water year round. You could not
3 lease cattle year round on the property without the
4 presence of this reservoir.

5 Lastly, to address some of the -- well, one of
6 the other issues I'd like to address is the contention
7 that the actions of a local soil conservation district
8 is attributable to the State and it therefore exempts
9 the Stornetta Family Trust from obtaining the
10 appropriative water rights authority at the time of
11 construction and now in present day.

12 Local, state, and even federal agencies, with
13 very limited exception, are all subject to the State
14 Water Board's permit and licensing regulations. And
15 even if the Soil Conservation District were to have
16 taken ownership of the property and then constructed the
17 dam and the reservoir for soil conservation, water
18 storage and subsequent beneficial use such as
19 stockwatering, they still would have been required to
20 obtain an appropriative water right from the State Water
21 Board.

22 Moreover, Mr. Kirk's assertion that the
23 reservoir built by the Soil Conservation District had
24 made some sort of riparian right to the property owner
25 to continue the stockwatering purposes from that

1 reservoir without obtaining a permit and license, as he
2 has asserted in his brief, is not a tenable argument.

3 Soil conservation districts are local special
4 districts established through grass roots efforts of
5 landowners that petition county governments for special
6 district status similar to the water districts and
7 irrigation districts. The authorizing statute for soil
8 conservation districts is set out in Public Resource
9 Code section 9161 and forward.

10 If the State Water Board were to accept
11 Mr. Kirk's assertion, it would result in a significant
12 number of local entities being able to construct
13 diversion and storage facilities and obtain riparian
14 rights to water bodies created by such projects without
15 regard to the existing appropriative rights system.

16 --oOo--

17 MS. WEST: Another argument alluded to by
18 Mr. Kirk in his brief is that -- and alluded to a little
19 bit in his testimony here today is that reservoirs
20 covered by a stockpond registration do not have to file
21 a Statement of Water Diversion Use. That's a true
22 statement, but it is limited -- that exception is
23 limited to reservoirs that are registered.

24 We've provided evidence and testimony to
25 demonstrate that this reservoir was not registered as a

1 factor in the past. The Soil Conservation Service was
2 encouraging property owners to build facilities.
3 Historically, that assistance has been limited to
4 finance and technical assistance for construction. They
5 don't go in and take over a property.

6 But, regardless, the Legislature has
7 acknowledged that encouragement, and they've provided a
8 significant period of time by which property owners
9 could come into compliance for stockponds that were
10 constructed and such. That period -- in 1998 under the
11 Water Code, and then the Board reacted with additional
12 leniency in providing an expedited registration process
13 for these types of facilities.

14 Dal Poggetto, as attorney for the trust, has
15 failed to comply with either one of those. This
16 violation has been ongoing and occurring for a long
17 period of time. There was opportunity to come into
18 compliance. I understand that nobody in this room was
19 responsible for that property at this time and nobody
20 can speak to what was done or not done, either at the
21 point of construction of the dam, during the grace
22 period where these types of stockponds could have
23 registered with the State Board and gotten their
24 priority date, the previous priority date; but what we
25 can speak to is that it has been an ongoing and existing

1 violation since the 1960s that Dal Poggetto -- the
2 Division took efforts and provided notice to Dal
3 Poggetto of violations. And those efforts took time,
4 money and staff effort.

5 There is an expedited process to come into
6 compliance, but no steps were taken until just recently
7 to avail themselves of that process and to register the
8 stockpond. So we find ourselves in the unenviable
9 position of exerting a lot of time and effort to bring a
10 property into compliance. And that effort is justified
11 by the State Water Board policy on North Coast streams.

12 We've established it as a priority; we've
13 identified that there are important cumulative impacts
14 for these types of facilities, and there's important
15 regulatory need to bring them into compliance with our
16 reporting structure and our registration structure so
17 that the State Board can regulate intelligently.

18 And that's where we are today. Thank you.

19 HEARING OFFICER MOORE: Thank you, Ms. West.

20 Would Dal Poggetto like to cross-examine the
21 rebuttal testimony?

22 MR. KIRK: That's all right, your Honor.

23 Really, all we want to do is close. Everybody has spent
24 a whole lot of time on this.

25 HEARING OFFICER MOORE: Okay. I hear you. I

1 just want to afford you an opportunity to do rebuttal
2 testimony at this time.

3 MR. KIRK: What I can do is state that our
4 arguments have been that the Soil Conservation District
5 built this dam. There was no evidence other than that.
6 An appropriation of water behind that dam does not
7 require a permit.

8 Water Code section 1252.1 says:

9 The appropriator cannot take any action to prevent
10 or interfere with soil conservation practices above
11 the point of diversion in the watershed in which
12 such stream or other sources originate which
13 practices do not themselves constitute an
14 appropriation for which a permit is required by
15 this party.

16 Okay. That's fairly simple, but it's also
17 preliminary. As soon as you have a stockpond, then a
18 stockpond registration would be appropriate.

19 Our second argument is that we don't need to
20 file a Diversion and Use Statement because the stockpond
21 registration suffices for that purpose. And that,
22 again, is in Water Code section 5101(b), again exempting
23 livestock stockpond use.

24 We originally said we will register for a
25 stockpond. The reason we did not was because even if we

1 agreed to do that they would still slap us with the
2 \$22,800 fine. And that was never reduced. That kind of
3 leverage put on a citizen by the State is unfair; it's
4 inappropriate.

5 If in fact there was proof that we had
6 conversations, if we had notice, if we had any
7 communications prior to the levying of the \$22,800 fine,
8 then the State's case would be better taken. But at
9 this point in time all we have is two or three
10 negotiations where we said we'll do the stockpond
11 registration; not a problem, but reduce your fine, and
12 we could never reach that agreement.

13 The State's enforcement powers have to be
14 intelligent; they have to be informed, and in this case
15 they were not.

16 HEARING OFFICER MOORE: That's your closing
17 statement. And you have the opportunity to
18 cross-examine the rebuttal statement.

19 Do you have any questions for Dal Poggetto?

20 MS. WEST: No. I believe that I addressed
21 both of those arguments earlier. The registration of a
22 stockpond does not exempt a statement of filing until
23 there is actual registration, and that prior diversions
24 would not be subject to an exemption.

25 And, in addition, the provision concerning

1 soil conservation practices is, again, not binding on
2 any relevancy actions here. The intent behind that
3 provision is simply to put the appropriators on notice
4 that they don't have a right to interfere with upstream
5 soil conservation projects that aren't an appropriation
6 of water. Again, it's not a situation here that's
7 relevant here.

8 HEARING OFFICER MOORE: Okay. Any questions
9 from staff or our Co-Hearing Officer?

10 Okay. So, as I mentioned before, we're not
11 going to have closing statements today. Closing briefs
12 are due 30 days following the date the transcripts are
13 released. Ms. Toliver, I'm not sure what time frame you
14 would be -- or if you're at liberty to predict.

15 THE REPORTER: I can't tell you right now.

16 HEARING OFFICER MOORE: Probably on the order
17 of weeks; right?

18 THE REPORTER: Yes.

19 HEARING OFFICER MOORE: So we'll encourage --
20 oh. Make sure we have each other's contact information
21 so we can get them in a timely manner.

22 So closing briefs are due 30 days following
23 the date the transcripts are released and are limited to
24 a maximum of ten pages of double-spaced, 12-point Arial
25 font. That's the standardization.

1 The court reporter estimates -- or will, you
2 know, provide an estimate of the amount of time after
3 this hearing; and at this point the State Water Board
4 will take this matter under submission. Board staff
5 will prepare a proposed order for consideration by the
6 full Board. The participants in this hearing will be
7 sent notice of the Board's proposed order in this matter
8 and the date of the Board meeting at which the proposed
9 order will be considered.

10 After State Board adopts an order, at that
11 point any interested person has 30 days within which to
12 submit a written petition for reconsideration by the
13 State Board.

14 I want to thank you all for your interest and
15 cooperation and participation in this hearing and for
16 traveling to attend and submitting your true and
17 affirmed testimony.

18 And, you know, at this point I declare the
19 hearing adjourned. And have a nice day.

20 MR. KIRK: Thanks everybody.

21 (Whereupon the hearing adjourned at 12:01 p.m.)

22 --oOo--

23

24

25

1 REPORTER'S CERTIFICATE

2
3 I, Jacqueline Toliver, a Certified Shorthand
4 Reporter for the State of California, do hereby certify:

5 That I am disinterested person herein; that
6 the foregoing State Water Resources Control Board
7 Hearing was reported in shorthand by me, a duly
8 qualified Certified Shorthand Reporter, and thereafter
9 transcribed into typewritten form by means of
10 computer-aided transcription.

11 I further certify that I am not of counsel
12 or attorney for any of the parties to said hearing or in
13 any way interested in the outcome of said hearing.

14 IN WITNESS WHEREOF, I have hereunto set my
15 hand this 22nd day of September 2014.

16
17
18
19
20 _____
21 JACQUELINE TOLIVER
22 Certified Shorthand Reporter
23 License No. 4808
24
25