

## **WR-3**

### **TESTIMONY OF KEVIN L. PORZIO**

My name is Kevin Porzio. I am a Water Resource Control Engineer with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division). I have approximately four years of experience working in the Division's Enforcement Section. My experience with the Enforcement Section includes inspecting permitted and licensed water right projects for compliance with terms and conditions, investigation of water diversions without a known water right or claimed basis of right, and investigation of complaints. I have also prepared administrative civil liabilities and cease and desist orders for non-compliance with water right terms and conditions and for unauthorized diversions. A copy of my resume is attached as exhibit WR-4.

My testimony, herein provided, addresses my personal knowledge of the evidence, actions, and rationale for the Division's recommendation to issue an Administrative Civil Liability (ACL) Order and Cease and Desist Order (CDO) against the Stornetta Family Trust and Newton Dal Poggetto (Trustee) (referred to collectively hereafter as Dal Poggetto).

#### **Initial Investigation**

In June of 2011 Mr. Aaron Miller, Senior of Enforcement Unit 4, provided assignments to investigate reservoirs in the Napa River watershed identified as not having a water right. To begin the assignment an initial assessment of the identified reservoirs was conducted to identify any that may have been falsely listed by Stetson Engineers. The reservoirs were viewed in Arc GIS using United States Geological Survey quadrangle map of Sonoma and Napa counties and National Agriculture Imagery Program orthophoto images obtained from the United States Department of Agriculture. The reservoir located on Napa County Assessor's Parcel Number 047-070-018 showed clear signs of water storage behind a single axis earthen dam with defined downstream channel and upstream channels. The quadrangle map also showed a blue line stream above and below the reservoir. The reservoir was shown as a pinkish color, pink indicating a new feature as of the 1980 photo revision date on the quadrangle map. The online service Parcel Quest identified "Dalpoggetto Newton Suc" as the owner of the parcel fully surrounding the reservoir in question. The Notice of Potential Unauthorized Diversion and Use of Water, and Failure to File a Statement of Water Diversion and Use for Diversion of Water in Napa County (WR-5) (Notice letter) was mailed on August 18, 2011 to owners of reservoirs

identified as having an undocumented diversion of water. Newton Dal Poggetto was sent a copy of the Notice letter along with other identified diverters as shown in the Division's mailing list. (WR-6). Dal Poggetto did not respond to the Notice letter. Division staff conducted field inspections of the parcel owners who responded. Staff then attempted to find a phone number or email address of those who did not respond to the Notice letter. No contact information was found online for Dal Poggetto. In December 2011 after the Division was unable to contact Dal Poggetto an initial investigation was conducted based on aerial imagery, quadrangle map, and measurements made in Arc GIS.

### **Issuance of the ACL Complaint and Draft CDO**

After conducting the initial investigation discussed above, I recorded my findings in the initial reservoir investigation report dated February 16, 2012 (WR-8) (Initial Report). I determined that the reservoir on property owned by Dal Poggetto is storing water subject to the permitting authority of the State Water Board and recommended that the Division consider enforcement action for the unauthorized diversion of water and failure to file a Statement of Water Diversion and Use (Statement). Shortly after review of the Initial Report, Mr. Miller directed me to draft an Administrative Civil Liability (ACL) Complaint and proposed Cease and Desist Order (CDO), the ACL Complaint and proposed CDO were issued by the Division on March 16, 2012. (WR-11). The ACL Complaint explains the State Water Board's authority to issue such a complaint as defined by California Water Code then details the investigation in chronological order followed by the maximum and proposed civil liability, and concludes with details of Dal Poggetto's right to hearing. The amounts listed under the proposed civil liability section were determined by Mr. Miller based on his analysis as detailed in his testimony. (WR-1). The proposed CDO provides the State Water Board's authority as defined by California Water Code to issue such an order then details the investigation in chronological order. The proposed CDO provides Dal Poggetto with three corrective action plans that can be pursued to come into compliance with the proposed CDO and California Water Code. Lastly the proposed CDO explains the consequences of non-compliance and the State Water Board's reserved enforcement authority and discretion. The ACL Complaint, and proposed CDO were sent by certified mail on March 16, 2012 to Newton Dalpoggetto Successor Trust & Newton Dalpoggetto (trustee & individual). (WR-11). The March 16, 2012 certified enforcement documents were accepted by signature on March 27, 2012. (WR-12). Mr. Cameron Scott Kirk of Spaulding McCullough & Tansil LLP

provided written response by letter dated April 4, 2012 requesting a hearing on behalf of Mr. Dal Poggetto. (WR-13).

### **Reservoir Inspection and Field Findings**

Division staff was granted access to the reservoir on October 16, 2013 to make observations and collect field measurements to determine if the reservoir is onstream and collecting water subject to the jurisdiction of the State Water Board. Aaron Miller and I met with Mr. Newton Dal Poggetto at the gated entrance to the property along highway 12 west of the city of Napa. At the entrance Mr. Dal Poggetto told us the parcel is approximately 187 acres and that they had use to run about 400 head of cattle. He then noted that he started representing Stornetta in the 80's and at that time the land was leased to the Muller's who then put their dry dairy cows and calves on the property. Driving to the reservoir two large cattle feeding barns, many stockwatering troughs, and cow dung were observed. At the reservoir cattle hoof prints and dung were observed around the reservoir and along the hills to the east and west of the reservoir. As Mr. Dal Poggetto and Mr. Miller talked I walked north and found a defined channel coming from the eastern hillside. Walking downstream in the channel I then observed an unnamed stream running in a southerly direction towards the reservoir. I took photos and GPS measurements while walking the unnamed stream back to the reservoir. Cow dung was observed along the banks and in the channel of the main creek. At the reservoir cow prints and dung were identified at the inlet, below the high waterline. Mr. Dal Poggetto left the site indicating that we were welcome to continue our inspection and he would get back to us if we had any additional questions. Mr. Miller and I then followed the unnamed stream downstream of the reservoir past the two feed barns and to what appeared to be the property line. Cattle tracks and dung were observed in the downstream channel. Mr. Miller and I then measured the dam characteristics using a rod with reflector, Impulse LR laser range finder, and tape measure. The reservoir was drawn down 4.1 feet at the time of inspection and the high waterline was observed at the same elevation as the top of the spillway. Given the size of the watershed and erosion of the channel below the spillway the reservoir collects water during the winter months to replenish losses due to stockwatering, seepage and evaporation. I prepared a field inspection report detailing the findings, dam characteristics, a map with GPS points, and photos taken while onsite. The October 16, 2013 inspection report was reviewed and approved by Mr. Miller on November 6, 2013. (WR-14). Based on our observations and field measurements water is collected to storage on an annual basis and used for stockwatering. Defined channels

exist above the reservoir and below the dam. The results of the field inspection reaffirm the findings and recommendations of the initial inspection findings. On May 1, 2014 an amended ACL Complaint and proposed CDO (WR-15) were issued to reflect correct property owner information as provided during the investigation.

### **Staff Recommendations**

Based on the facts and findings discussed above, the State Water Board should issue an ACL as proposed in the ACL Complaint. Furthermore, the State Water Board should consider that additional staff costs were incurred to pursue compliance from Dal Doggett since the issuance of the ACL Complaint. As of July 7, 2014 Dal Poggetto has not submitted an application to appropriate water or an Initial Statement of Diversion and Use. The State Water Board should also issue the proposed CDO requiring Dal Poggetto to take immediate action to bring into compliance the collection, storage and use of water in the reservoir or render the reservoir incapable of storing water.

### **Timeline of Significant Events**

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| Notice of Potential Unauthorized Diversion and Use of Water in Napa County  | August 18, 2011   |
| Initial Inspection Report- North Coast Watershed Reservoir Investigation  | February 16, 2012 |
| Enforcement Action ENF00128 – Administrative Civil Liability Complaint and Notice of Proposed Cease and Desist Order Regarding Unauthorized Diversion of Water Within the Napa Watershed in Napa County         | March 16, 2012    |
| Signed Return Receipt of ACL and CDO  | March 27, 2012    |
| Request for Hearing - SMT Attorneys at Law  | April 4, 2012     |
| Field Inspection Date   | October 16, 2013  |
| Field Inspection Report - North Coast Watershed Reservoir Investigation   | November 6, 2012  |
| Enforcement Action ENF00128 – Amended Administrative Civil Liability Complaint and Notice of Proposed Cease and Desist Order Regarding Unauthorized Diversion of Water Within the Napa Watershed in Napa County | May 1, 2014       |
| Notice of Public Hearing  | May 22, 2014      |