

1 March 26, 2012, and even this communication identified Mr. Dal Poggetto incorrectly.
2 Mr. Dal Poggetto attempted to correct the misinformation, and he promptly responded to
3 the BOE with the letter attached here as Exhibit B.

4 After significant delay, caused by the BOE's incorrect identification of the Property
5 Owner, and its unwillingness to resolve the matter reasonably, the Amended Complaint
6 was served on Mr. Dal Poggetto in May 2014.

7 The Amended Complaint claims violations of the Water Code. First, it claims
8 unauthorized diversion or use of water in violation of Water Code section 1052(a).
9 Second, it claims a violation of Water Code section 5101 that requires a water user to file
10 a specific Statement of Diversion and Use with the Water Board. Both of these claims are
11 unsupported.

12 1. Unauthorized Diversion and Use of Water; Water Code section 1052(a).

13 The BOE's claims are based on the reservoir built by the Soil Conservation District
14 in or about 1964. The Declaration of Gary Kiser attached as Exhibit C demonstrates, and
15 is the only permissible evidence, that the dam and resulting reservoir were constructed by
16 the Soil Conservation District. Accordingly, no permit was required pursuant to Water
17 Code section 1252.1, which states,

18 An appropriation of water of any stream or other source of water under this
19 part does not confer authority upon the appropriator to prevent or interfere
20 with soil conservation *practices* above the point of diversion in the
21 watershed in which such stream or other source originates, *which practices*
22 *do not themselves constitute an appropriation for which a permit is required*
23 *by this part. (Emphasis added.)*

24 The point of diversion is the dam constructed by the Soil Conservation District.
25 The property owner has not changed its practices or water use from the time the dam was
26 constructed. No irrigation has taken place, and no change in use has occurred. The
27 property owner's riparian rights to use the water from the stream continued, though the
28 State, essentially, acted of its own accord to expand whatever existed in 1964 into the

1 pond that exists today.

2 Further, the Property Owner's water use did not amount to a diversion or
3 appropriation, as water was not being moved from its location (Water Code section
4 5100(c)). It remained in the channel created by the State and was only used as a stock
5 watering pond. We do not know the precise extent of the riparian right or amount of water
6 on the property prior to 1964, but the use of the water has not changed since then.

7 The BOE's efforts to demonstrate malfeasance or ill-gotten gains by the Property
8 Owner are objectionable, hearsay, and completely speculative.

9 2. Failure to File Statement of Diversion and Use; Water Code section 5101
10 California Water Code §5101 requires each person or organization that uses
11 diverted surface water or pumped groundwater after December 31, 1965 to file with the
12 State Water Board a Statement of Water Diversion and Use.

13 However, there are four exemptions to this requirement, one of which, as stated in
14 Section 5101(b) includes:

15 Diversions covered by a registration for small domestic or *livestock stockpond*
16 uses, a stockpond certificate, or a permit or license to appropriate water on file with
17 the board, consistent with Water Code section 1226 et seq. referring to
18 appropriation of water, and section 1228, et seq., referring to and regulating the
19 appropriation of water for livestock stockpond use. (*Emphasis added.*)

20 This exemption is also confirmed in Section 5101(f), again referring to Water Code
21 section 1226 and 1228.

22 Again, the property owner's water use did not change, and the pond was created
23 by the State's own action. It is undisputed that the structure was constructed for soil
24 conservation purposes only, and not for agricultural irrigation or any other use other than
25 stockpond watering. The only use of water prior to 1964 was stockpond watering, and
26 again, this use has not changed.

27 Despite the Property Owner taking no action to create the pond, and the use of the
28 water being unchanged over 50 years, the BOE now seeks to penalize the Property

1 Owner at least \$22,800 for alleged malfeasance. While the stockpond will be registered
2 consistent with the stated purposes of the law and to serve the public interest, the
3 Property Owner vigorously contests the imposition of a fine.

4 The Water Board's complaint, claiming the violations as stated and claiming a fine
5 of \$22,800 are unsupported and unwarranted.

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By: 
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