

**EXHIBIT A**

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September 3, 2013

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*Via Email & U.S. Mail*

Yvonne West  
Senior Staff Counsel, Office of Enforcement  
State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000

Re: *AM:ENF00128*

Dear Ms. West:

As we have discussed by telephone, please consider this an analysis of Enforcement Action ENF000128 and the Administrative Civil Liability Complaint filed in this matter by your office. We have contested previously the improper identification of Mr. Dal Poggetto in the complaint, but now our analysis turns to the complaint itself. In this letter I refer generally to the property owner as "Stornetta".

The Administrative Civil Liability Complaint dated March 16, 2012, claims two violations of the Water Code. First, it claims unauthorized diversion or use of water in violation of Water Code section 1052(a). Second, it claims a violation of Water Code section 5101 that requires a water user to file a specific Statement of Diversion and Use with the Water Board. Both of these claims are unsupported as explained below.

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

The Water Board's claims are based on the reservoir built by the Soil Conservation District in or about 1964. Had Stornetta constructed the reservoir, a permit and license from the Water Board would have been required. The attached Declaration of Gary Kiser, however, demonstrates otherwise. As the dam and resulting reservoir were constructed by the Soil Conservation District, no permit was required pursuant to Water Code section 1252.1, which states,

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



Thus, Stornetta's riparian rights to use the water from the stream continued, though the State, essentially, had expanded the stream into a pond. Property owners' riparian rights do not require any permit from the Water Board and remain unregulated except as stated below.

Further, Stornetta's water use did not amount to a diversion or appropriation, as water was not being moved from its location (Water Code section 5100(c)). It remained in the channel created by the State and was only used as a stock watering pond.

2. Failure to File Statement of Diversion and Use; Water Code section 5101

California Water Code §5101 requires each person or organization that uses diverted surface water or pumped groundwater after December 31, 1965 to file with the State Water Board a Statement of Water Diversion and Use.

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

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

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

The Water Board's complaint states a violation of Section 5101, but we see that Stornetta's continuing use of the water as only a livestock stockpond is exempted from 5101, first because no water is diverted by Stornetta, and second, the use of water as a stockpond is specifically exempted.

Accordingly, the Water Board cannot support the violations alleged in the complaint.

3. Stockpond Registration Question

"Livestock stockpond" is defined in Water Code section 1228.1(b)(3) as, "a water impoundment structure *constructed for livestock watering* use not to exceed direct diversion of 4,500 gallons per day, or diversion to storage of 10 acre-feet per year," (*emphasis added*) including uses for aesthetic, recreational, or fish and wildlife purposes.

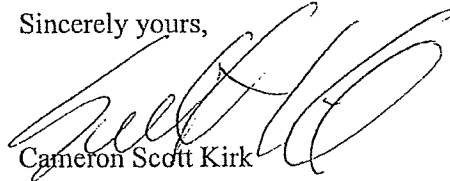
We have established that the structure was constructed for soil conservation purposes only, and as such Stornetta may not be required to take any action whatsoever. The stated purposes of the law, however, are to serve the public interest and knowledge base by registering stockpond water rights. Accordingly, while we may parse the language of section 1228.1(a) to show that it does not apply to Stornetta, my client will agree to register the stockpond.

Yvonne West  
Senior Staff Counsel, Office of Enforcement  
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I submit that the foregoing demonstrates that the complaint is not supported, and we ask that you dismiss the complaint. This will avoid the unnecessary time and expense of a site visit by your office as well as the expense associated with the hearing we have requested previously. If you have any questions or comments, please contact me at your first opportunity. Thank you.

Sincerely yours,



Cameron Scott Kirk

CSK:tr  
Enclosure