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Attorneys for the Prosecution Team

BEFORE THE STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

**In the matter of Administrative Civil
Liability Complaint issued against G. Scott
Fahey and Sugar Pine Spring Water, LP**

**Prosecution Team's Motion for Protective
Order or, Alternatively, Motion to Quash**

INTRODUCTION

The Division of Water Rights Prosecution Team respectfully requests that the Hearing Officers issue a protective order against any deposition notices or document requests from G. Scott Fahey and Sugar Pine Spring Water, LP ("Fahey") or, alternatively, quash Fahey's December 10, 2015, deposition notices and document requests. Fahey's deposition notices and document requests would duplicate information otherwise already provided to Fahey, or which will be provided through the hearing procedures, and the December 10 notices are unreasonable and oppressive.

This Motion applies only to Fahey's December 10, 2015, deposition notices and document requests, and to any similar notices or document requests from Fahey. This Motion does not address or affect to the Prosecution Team's pending Motion to Compel, which the parties have separately briefed and submitted.

BACKGROUND

The October 16, 2015, Notice of Public Hearing in the Fahey matter provides that witnesses' proposed testimony, exhibits, lists of exhibits, qualifications and statements of service are due by 12:00 noon on Wednesday, December 16, 2015. (Hearing Notice,¹ at p. 4.)

On October 28, 2015, the Prosecution Team provided Fahey's counsel with a voluntary disclosure of the non-privileged portions of the Prosecution Team's investigative file in this matter, including inspection reports, curtailment notices, and correspondence. (Declaration of Andrew Tauriainen ("Tauriainen Decl.") filed concurrently herewith, at ¶ 2.) Fahey's counsel also

¹ Available at:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/fahey/docs/notice_fahey.pdf

Prosecution Team's Motion for Protective Order

obtained a copy of the Division of Water Rights Permit Files for Application A029977 and A031491. (Tauriainen Decl. at ¶ 3.) The Prosecution Team has supplemented the voluntary disclosure as additional records have been identified. (*Id.*; see also Declaration of Kenneth Petruzzelli ("Petruzzelli Decl.") filed concurrently herewith, at ¶ 14.) Fahey's counsel obtained copies of the digital surveillance video files, which were too big to deliver via electronic email, on or around November 20, 2015. (Tauriainen Decl., at ¶ 4.)

On December 1, 2015, Fahey's counsel submitted a letter seeking production of documents from several categories, including documents relating to the ACLC, curtailment forms, written correspondence relating to the Fahey water rights, documents relating to New Don Pedro Reservoir, and communications with Board staff. (Petruzzelli Decl., at ¶ 2.) On December 7, 2015, Fahey's counsel submitted a formal Public Records Act request for the documents requested in the December 1 letter. (Petruzzelli Decl. at ¶ 3.) Prosecution Team counsel spoke with Fahey's counsel regarding the request, and indicated that the bulk of the documents were either already in Fahey's possession through the voluntary disclosure, or would be made available at the December 16 submittal under the Hearing Notice. (*Id.* at ¶ 4.) Prosecution Team counsel indicated that the request for documents relating to New Don Pedro Reservoir and certain curtailment forms unrelated to the ACLC matter would be treated as a request under the Public Records Act (Gov. Code section 6250 et seq.). (*Id.*) The Prosecution Team submitted a response to the formal Public Records Act request on December 9, 2015. (*Id.* at ¶ 5.)

On December 10, 2015, Fahey's counsel served deposition notices and document requests for Prosecution Team members Katherine Mrowka and David LaBrie. (Petruzzelli Decl. at ¶ 6.) The notices call for deposition of Ms. Mrowka to commence on December 22, 2015, at 9:00am, and for deposition of Mr. LaBrie to commence on December 22, 2015, at 1:00pm. (*Id.* at ¶ 7.) Each deposition notice contains the following document request:

- (1) All **DOCUMENTS** utilized or relied on to create, formulate or prepare your written testimony, conclusions, reports and/or opinions in this matter.
- (2) All **DOCUMENTS** constituting or relating to correspondence between **YOU** and Fahey and/or between **YOU** and Fahey's agents, employees or representatives.
- (3) All **DOCUMENTS** constituting or relating correspondence (including, but not limited to, letters and emails) from **YOU**, and to **YOU**, relating to Water Right Permit 20784 (Application A029977) and Water Right Permit 21289 (Application A031491).

(Petruzzelli Decl. at ¶ 8.) The deposition notices define the term "DOCUMENTS" to include documents "whether or not privileged." (*Id.* at ¶ 9.)

The Prosecution Team attempted to meet and confer with Fahey's counsel regarding the deposition notices and document requests, but could not reach resolution. (Petruzzelli Decl. ¶¶ 11-13.)

LEGAL STANDARD

The Water Code incorporates elements of the Administrative Procedure Act and the Civil Discovery Act (Title 4 [commencing with Section 2016.010] of Part 4 of the Code of Civil Procedure). (See generally Wat. Code § 1100; Gov. Code § 11400 et seq.; Cal. Code Regs., tit.23, §§ 648, 648.4.) The Board or any party to proceedings before the Board may take depositions of witnesses in accordance with the Civil Discovery Act. (Wat. Code § 1100.) A party's attorney of record may issue a subpoena for attendance at a hearing or a subpoena

Prosecution Team's Motion for Protective Order

duces tecum for the production of documents. (Gov. Code §§ 11450.10, 11450.20; see also Cal. Code Regs., tit. 23, § 649.6.)

The scope of discovery shall be limited if the burden, expense, and intrusiveness of that discovery outweighs the likelihood of discovering admissible evidence. (Cal. Code Civ. Proc., § 2017.020, subd. (a).) The Hearing Officer may issue a protective order prohibiting or limiting depositions in order to protect a party or deponent from undue burden and expense. (*Id.*, § 2025.420, subd. (b).) The Hearing Officer may issue a protective order if the discovery sought would be “unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.” (*Id.*, § 2019.030, subds. (a) & (b).) The Hearing Officer may issue a protective order to protect a person served with a subpoena or subpoena *duces tecum* from unreasonable or oppressive demands. (Gov. Code § 11450.30.)

A party is not entitled to discovery of privileged matters. (Code Civ. Proc., § 2017.010.) The party seeking discovery also has the burden to provide evidence, setting forth specific facts, showing a matter is not privileged and relevant. (*Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 223-224 (as modified (Mar. 7, 1997)).)

State Water Board Hearing Officers have issued protective orders denying depositions in similar circumstances. In the *Water Right Hearing Regarding Proposed Cease and Desist Order Against Millview County Water District, Thomas P. Hill, and Steven L. Gomes*, the Hearing Officer denied Millview et al.'s request for pre-hearing discovery including depositions, special interrogatories, inspection demands, and requests for admissions. (Hearing Officer's Ruling dated December 3, 2009.²) The Hearing Officer found that a protective order was warranted because the discovery sought was obtainable from a more convenient, less burdensome, and less expensive source because the legal and factual basis for the proposed enforcement action was described in the charging document, the hearing procedures directed the Prosecution Team to submit written testimony and exhibits prior to the hearing, and other information could be obtained by reviewing the Division of Water Rights' files. (*Id.* at 2.) The Court of Appeal upheld the *Millview* Hearing Officer's ruling. (*Millview County Water Dist. v. SWRCB* (1st Dist. Ct. App., 2014) 229 Cal.App.4th 879, 906.)

ARGUMENT

Fahey cannot demonstrate a need for depositions or document requests. The ACLC and Draft CDO specify the legal and factual bases in this matter. The Prosecution Team has already voluntarily provided Fahey with the entire investigation file and all relevant correspondence. The Prosecution Team will submit witness statements and evidence on December 16, 2015, as directed by the Hearing Notice.

The depositions will place an undue burden on Prosecution Team staff should they have to sit for potentially lengthy depositions regarding matters already covered by witness statements and supporting evidence or through prior disclosures.

Document requests are unreasonably cumulative or duplicative in that they seek documents already disclosed to Fahey, or which will be disclosed on December 16. They also seek potentially privileged documents and attorney work product. Any information that that is not

² Available at

http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/millview/docs/hearofficerruling120309.pdf [last accessed October 15, 2015].)

Prosecution Team's Motion for Protective Order

privileged or attorney work product may be obtained through depositions or additional document requests is obtainable from more convenient, less burdensome, and less expensive sources, specifically the prior voluntary disclosures and the December 16 submittals.

Likewise, the December 10 deposition notices and document requests are duplicative, unreasonable and oppressive. Indeed, the scope of December 10 document requests appears to be exactly what Fahey already has through the Prosecution Team's voluntary disclosures, and what Fahey will receive through the December 16 submittals. In addition, the December 10 notices and document requests should be quashed to the extent that they seek privileged documents.

CONCLUSION

For the reasons described above, the Prosecution Team respectfully requests that the Hearing Officers issue a protective order prohibiting Fahey from conducting depositions and document requests in this matter or, alternatively, quash the December 10 deposition notices and document requests.

Sincerely,



Kenneth Petruzzelli
OFFICE OF ENFORCEMENT
Attorney for the Prosecution Team

Prosecution Team's Motion for Protective Order

Service List

(Revised 11/30/15)

<p>DIVISION OF WATER RIGHTS SWRCB Office of Enforcement Prosecution Team Kenneth P. Petruzzelli 1001 I Street, 16th Floor Sacramento, CA 95814 kenneth.petruzzelli@waterboards.ca.gov</p>	<p>G.SCOTT FAHEY AND SUGAR PINE SPRING WATER , LP Abbott & Kindermann, LLP Diane G. Kindermann Glen C. Hansen 2100 21ST Street Sacramento, CA 95818 dkindermann@aklandlaw.com ghansen@aklandlaw.com aw.com</p> <p>Bart Barringer Law Offices of Mayol & Barringer P.O. Box 3049 Modesto, CA 95353 bbarringer@mblaw.com</p>
<p>TURLOCK IRRIGATION DISTRICT Arthur F. Godwin Mason, Robbins, Browning & Godwin, LLP 700 Loughborough Drive, Suite D Merced, CA 95348 agodwin@mrgb.org</p>	<p>MODESTO IRRIGATION DISTRICT William C. Paris, III O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95816 bparis@olaughlinparis.com anna.brathwaite@mid.org lwood@olaughlinparis.com</p>
<p>CITY AND COUNTY OF SAN FRANCISCO Jonathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org</p>	

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Attorneys for the Prosecution Team

BEFORE THE STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

**In the matter of Administrative Civil
Liability Complaint issued against G. Scott
Fahey and Sugar Pine Spring Water, LP**

**Declaration of Kenneth Petruzzelli in
Support of Motion for Protective Order or,
Alternatively, Motion to Quash**

I, Kenneth Petruzzelli, declare as follows:

1. I am an Attorney III (Specialist) with the State Water Resources Control Board's Office of Enforcement. I have been a practicing attorney since 2003, California Bar No. 227192. I joined the Office of Enforcement in 2015. I have represented the Prosecution Team as lead counsel in the matter of the Administrative Civil Liability Complaint and Draft Cease and Desist Order issued against G. Scott Fahey and Sugar Pine Spring Water, LP (Fahey or Defendant) since about November 17, 2015, when I replaced Andrew Tauriainen. Mr. Tauriainen still serves as co-counsel in the matter.
2. On December 1, 2015, Fahey's counsel submitted a letter seeking production of documents from several categories, including documents relating to the ACLC, curtailment forms, written correspondence relating to the Fahey water rights, documents relating to New Don Pedro Reservoir, and communications with Board staff. A true and correct copy of the December 1, 2015, letter is attached to this declaration as Attachment 1.
3. On December 7, 2015, Fahey's counsel submitted a formal request under the Public Records Act (Gov. Code section 6250 et seq.) for the documents requested in the December 1 letter. A true and correct copy of the December 7 Public Records Act request is attached to this declaration as Attachment 2.
4. On December 8, 2015, I spoke with Fahey's counsel regarding the December 1 request, and indicated that the bulk of the documents were either already in Fahey's possession through the voluntary disclosure, or would be made available at the December 16 submittal under the Hearing Notice. I indicated that the request for documents relating

Declaration of Kenneth Petruzzelli
G. Scott Fahey and Sugar Pine Spring Water, LP
ACLC and Draft CDO

to New Don Pedro Reservoir and certain curtailment forms would be treated as a request under the Public Records Act (Gov. Code section 6250 et seq.). On the same day, I also sent an email to Fahey's counsel summarizing the conversation and the Prosecution Team's position regarding the documents. A true and correct copy of the December 8, 2015, email is attached to this declaration as Attachment 3.

5. On December 9, 2015, I prepared and submitted a formal response to Fahey's December 7, 2015, Public Records Act request. A true and correct copy of the December 9, 2015, response is attached to this declaration as Attachment 4.
6. On December 9, 2015, at approximately 5:15 p.m., Mr. Fahey's legal counsel served a Notice of Deposition of Katherine Mrowka and Request for Production of Documents and Notice of Deposition of David LaBrie and Request for Production of Documents (collectively Deposition Notices). A true and correct copy of the e-mail serving the deposition notices and each deposition notice is attached to this declaration as Attachment 5.
7. The Deposition Notices stated that Fahey's attorneys would orally depose Ms. Mrowka beginning at 9:00am on December 22, 2015 at the office of Abbott & Kindermann, LLP, in Sacramento, California, and Mr. LaBrie beginning at 1:00pm the same day.
8. The Deposition Notices stated that Mr. Mrowka and Mr. LaBrie would each produce the following documents: (1) "All DOCUMENTS utilized or relied on to create, formulate or prepare your written testimony, conclusions, reports and/or opinions in this matter; (2) "All DOCUMENTS constituting or relating to correspondence between YOU and Fahey and/or between YOU and Fahey's agents, employees or representatives; and (3) "All DOCUMENTS constituting or relating to correspondence (including, but not limited to, letters and emails) from YOU, and to YOU, relating to Water Right Permit 20784 (Application A029977) and Water Right Permit 21289 (Application A031491)."
9. The Deposition Notices each defined the terms "document" or documents" to include "all written, recorded, or graphic materials, however produced or reproduced, *whether or not privileged*, pertaining in any way to the subject matter of this action." (emphasis added)
10. The next morning, I informed Ms. Mrowka and Mr. LaBrie of the deposition notices, the nature of the requests, and the dates. Mr. LaBrie stated that he had a holiday vacation conflict. In addition, the Prosecution Team determined that the Deposition Notices requested documents that were privileged attorney-client communications and work product, that we had already disclosed or otherwise made available to Fahey's attorneys, or that we would disclose with all of our other exhibits on December 16, 2015.
11. I contacted Mr. Glen Hansen, Fahey's counsel of record and the undersigned attorney for the Deposition Notices to meet and confer regarding Mr. LaBrie's availability on December 22, 2015 and the Prosecution Team's intent to move to quash due to the Deposition Notices' breadth. I first contacted his office by phone and left a voicemail. I then contacted him by e-mail.
12. Mr. Hansen responded in substance that since the Code of Civil Procedure required 10 days of notice for a deposition and for the completion of all non-expert discovery 30 days

Declaration of Kenneth Petruzzelli
G. Scott Fahey and Sugar Pine Spring Water, LP
ACLIC and Draft CDO

before the hearing, that he would not move Mr. LaBrie's deposition date.

13. I responded to Mr. Hansen, informing him that the Notice of Intent had been submitted over a month ago and, consequently, that plenty of time had already been available to depose witnesses and request documents. I further explained that, since the Deposition Notices requested documents that were privileged attorney-client communications and work product, that the Prosecution Team had had already disclosed or otherwise made available to Fahey's attorneys, or that we would disclose with all of our other exhibits on December 16, 2015, that we would move to quash the Deposition Notices. A true and correct copy of the e-mail chain of communication with Mr. Hansen is attached to this declaration as Attachment 6.

14. On December 8, 2015, I provided additional documents to Mr. Hansen regarding Prosecution Team staff communications requested in the December 1 letter. The first email is Attachment 3 hereto. A true and correct copy of the second email is attached to this declaration as Attachment 7.

I declare under penalty of perjury to the laws of the State of California that the foregoing is true and correct. Executed this 10th day of December, 2015, at Sacramento, California.



Kenneth Petruzzelli



December 1, 2015

VIA ELECTRONIC MAIL & U.S. MAIL

Kenneth P. Petruzzelli
State Water Resources Control Board, Division of Water Rights Prosecution Team
1001 I Street, 16th Floor
Sacramento, CA 95814
kenneth.petruzzelli@waterboards.ca.gov

**RE: FAHEY ACL/CDO HEARING
APPLICATION ID: A029977 AND A031491**

Dear Mr. Petruzzelli:

Please immediately provide a formal response from the State Water Resources Control Board and its staff (collectively, the "Board") as to whether the Board will produce the following documents that are relevant to and necessary in the above-entitled matter:

1. Any and all documents that support the Administrative Civil Liability Complaint in the matter of Unauthorized Diversion by G. Scott Fahey and Sugar Pine Spring Water LP, dated September 1, 2015 ("ACL").
2. All Curtailment Certification Forms ("Forms") received by the Board from any and all primary owners between April 1, 2014, and July 1, 2015, where the box on the Form for "OTHER I have additional information explaining how much water I am diverting, the use of that water, the measure being undertaken to reduce use, and the basis on which I contend that the diversion and use is legally authorized notwithstanding the very limited amounts of water available during this drought emergency" was marked or checked off.
3. All written correspondence from April 1, 2014 and July 1, 2015, between the Board and the Primary Owners of the water right applications who signed the Forms described in item 2, above, which correspondence was made or sent following the submission by the Primary Owners of the Forms.

Mr. Kenneth P. Petruzzelli
December 1, 2015
Page 2 of 3

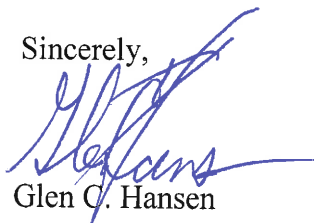
4. Any and all documents contained in the Permit Files for Water Right Permit 20784 (Application A029977) and Water Right Permit 21289 (Application A031491), for the time period of January 1, 2012 to the present, including, but not limited to, curtailment notices and all related documents, Board staff notes and correspondence, and water use and/or diversion reports.
5. Any and all documents that support the State of California's determination of the required discharge from New Don Pedro Reservoir during the 2014 and 2015 curtailment periods.
6. Any and all documents that support any and all violations of the required discharge from New Don Pedro Reservoir by its authorized discharge operator, owner, &/or authority during the 2014 and 2015 curtailment periods.
7. Any and all documents that support, sustain and/or justify "the graphical summations" described in Item 26, on pages 4 through 5, of the ACL, for any and all streams, rivers, and/or waterways between the Permittee's point of diversions and New Don Pedro Reservoir.
8. Any and all documents relating to any and all phone conversations and written communications between David LeBrie and Scott Fahey that occurred or were sent or received in the months of June, July and August 2015 regarding the following:
 - (a) Water Right Permit 20784 (Application A029977);
 - (b) Water Right Permit 21289 (Application A031491);
 - (c) Any and all curtailment notices regarding Water Right Permit 20784 and Water Right Permit 21289 (Application A031491).
9. Any and all documents relating to any and all correspondence and communications between Sam Cole and David LeBrie, between June 1, 2015, and September 30, 2015, regarding the following:
 - (a) Water Right Permit 20784 (Application A029977);
 - (b) Water Right Permit 21289 (Application A031491);
 - (c) Any and all curtailment notices regarding Water Right Permit 20784 and Water Right Permit 21289 (Application A031491);
 - (d) Cease and Desist Order in the matter of Unauthorized Diversion by G. Scott Fahey and Sugar Pine Spring Water LP;
 - (e) Order for Additional Information, Order WR 2015-0028-DWR, in the matter of Unauthorized Diversion by G. Scott Fahey and Sugar Pine Spring Water LP; and/or
 - (f) The ACL.

Mr. Kenneth P. Petruzzelli
December 1, 2015
Page 3 of 3

The Board's immediate response, requested above, is necessary in order for us to determine whether we need to seek a subpoena under California Code of Regulations, Title 23, Section 649.6, to demand that the Board and/or its staff produce such documents.

If you have any questions, please call me immediately.

Sincerely,

A handwritten signature in blue ink, appearing to read "Glen C. Hansen", is written over the word "Sincerely,".

Glen C. Hansen

GCH/sb

cc: Service List and Hearing Team (*via email only*)



December 7, 2015

Via U.S. Mail and email to: John.O'Hagan@waterboards.ca.gov

Mr. John O'Hagan, Asst. Division Chief
Public Records Act Coordinator – Water Rights
California State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Public Records Act Request

Mr. O'Hagan:

Pursuant to the California Public Records Act (Government Code section 6250 *et seq.*), I am requesting copies of the following public records:

1. Any and all documents that support the Administrative Civil Liability Complaint in the matter of Unauthorized Diversion by G. Scott Fahey and Sugar Pine Spring Water LP, dated September 1, 2015 (“ACL”).
2. All Curtailment Certification Forms (“Forms”) received by the Board from any and all primary owners between April 1, 2014, and July 1, 2015, where the box on the Form for “OTHER I have additional information explaining how much water I am diverting, the use of that water, the measure being undertaken to reduce use, and the basis on which I contend that the diversion and use is legally authorized notwithstanding the very limited amounts of water available during this drought emergency” was marked or checked off.
3. All written correspondence from April 1, 2014 and July 1, 2015, between the Board and the Primary Owners of the water right applications who signed the Forms described in item 2, above, which correspondence was made or sent following the submission by the Primary Owners of the Forms.
4. Any and all documents contained in the Permit Files for Water Right Permit 20784 (Application A029977) and Water Right Permit 21289 (Application A031491), for the time period of January 1, 2012 to the

Mr. John O'Hagan
Asst. Division Chief – Water Rights
State Water Resources Control Board
December 7, 2015
Page 2 of 3

present, including, but not limited to, curtailment notices and all related documents, Board staff notes and correspondence, and water use and/or diversion reports.

5. Any and all documents that support the State of California's determination of the required discharge from New Don Pedro Reservoir during the 2014 and 2015 curtailment periods.
6. Any and all documents that support, explain, and/or justify any and all violations of the State of California's required discharge from New Don Pedro Reservoir by its authorized discharge operator, owner, &/or authority during the 2014 and 2015 curtailment periods.
7. Any and all documents that support, explain, and/or justify "the graphical summations" described in Item 26, on pages 4 through 5, of the ACL, for any and all streams, rivers, and/or waterways between the Permittee's points of diversions and New Don Pedro Reservoir.
8. Any and all documents relating to any and all phone conversations and written communications between David LeBrie and Scott Fahey that occurred or were sent or received in the months of June, July, and August 2015 regarding the following:
 - (a) Water Right Permit 20784 (Application A029977);
 - (b) Water Right Permit 21289 (Application A031491);
 - (c) Any and all curtailment notices regarding Water Right Permit 20784 and Water Right Permit 21289 (Application A031491).
9. Any and all documents relating to any and all correspondence and communications between Sam Cole and David LeBrie, or between Sam Cole or David LeBrie and any third party, between June 1, 2015, and September 30, 2015, regarding the following:
 - (a) Water Right Permit 20784 (Application A029977);
 - (b) Water Right Permit 21289 (Application A031491);
 - (c) Any and all curtailment notices regarding Water Right Permit 20784 and Water Right Permit 21289 (Application A031491);
 - (d) Cease and Desist Order in the matter of Unauthorized Diversion by G. Scott Fahey and Sugar Pine Spring Water LP;
 - (e) Order for Additional Information, Order WR 2015-0028-DWR, in the matter of Unauthorized Diversion by G. Scott Fahey and Sugar Pine Spring Water LP; and/or
 - (f) The ACL.

Mr. John O'Hagan
Asst. Division Chief – Water Rights
State Water Resources Control Board
December 7, 2015
Page 3 of 3

Pursuant to Government Code section 6253(b), the copies are to be exact copies unless it is impractical to do so.

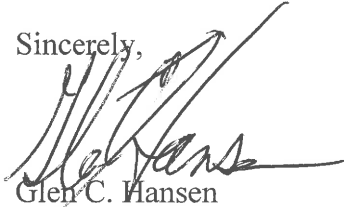
Pursuant to Government Code section 6253(b), the Board may charge the “direct costs” of making the copies. Please send an invoice to our office for any such expenses. In the event that the Board requires a deposit, please fax or email to me the Board’s adopted procedures for deposits and for charging for copies under the Public Records Act along with the requested deposit.

If the Board is unable to have all copies available within 10 calendar days of the date of the receipt of this request, please notify me immediately of the basis for non-compliance. (Government Code, § 6253(c).)

If the Board denies this request, or any portion thereof, please advise me in writing of the basis for the denial, and in conformance with Government Code section 6253(d), the name and title of the person making the denial.

Thank you in advance for your cooperation.

Sincerely,



Glen C. Hansen
ghansen@aklandlaw.com

GCH/lh
cc: See attached service list

SERVICE LIST

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DIVISION OF WATER RIGHTS

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CITY AND COUNTY OF SAN FRANCISCO

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G. Scott Fahey & Sugar Pine Spring Water, LP

Bart Barringer, Attorney
Mayol & Barringer, LLP
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Modesto, CA 95353
bbarringer@mblaw.com

Petruzzelli, Kenneth@Waterboards

From: Petruzzelli, Kenneth@Waterboards
Sent: Tuesday, December 08, 2015 10:26 AM
To: 'Glen Hansen'
Cc: Weaver, Nathan@Waterboards; Buckman, Michael@Waterboards; Tauriainen, Andrew@Waterboards; Mona, Ernie@Waterboards; Bill Paris; Diane Kindermann Henderson; Brathwaite, Anna; Linda Wood; jonathan.knapp@sfgov.org; Bart Barringer (bbarringer@mblaw.com); agodwin@MRGB.ORG; Prager, John@Waterboards
Subject: RE: G. Scott Fahey and Sugar Pine Spring Water, LP - ACL/CDO Hearing - Demand For Production of Documents
Attachments: Division of Water Rights Record Retention Policy.pdf; Dave LaBrie e-mail 9-22-15a.pdf; David LaBrie email 6.18.15.pdf; www.uniondemocrat.com_News_Business_Fresh-water-flows-fr (attachment to David LaBrie email 6.18.15).pdf; Dave LaBrie e-mail 9-22-15.pdf; RE Most Recent Fahey video surveillance.pdf; CDPH Email re Sugar Pine Spring Water Bottled Water Operation Records1.pdf

Mr. Hansen,

I am responding to your letter dated December 1, 2015. I am also following up on our telephone conversation from earlier today at approximately 11:20 a.m. Please treat this e-mail and our telephone conversation as an opportunity to meet and confer regarding your demand for production of documents.

1. Any and all documents that support the Administrative Civil Liability Complaint in the matter of Unauthorized Diversion by G. Scott Fahey and Sugar Pine Spring Water LP, dated September 1, 2015 ("ACL").

Any and all documents supporting the ACL will be made available as exhibits on or by December 16, 2015. We are in the process of consolidating these documents.

2. All Curtailment Certification Forms ("Forms") received by the Board from any and all primary owners between April 1, 2014, and July 1, 2015, where the box on the Form for "OTHER I have additional information explaining how much water I am diverting, the use of that water, the measure being undertaken to reduce use, and the basis on which I contend that the diversion and use is legally authorized notwithstanding the very limited amounts of water available during this drought emergency" was marked or checked off.
3. All written correspondence from April 1, 2014 and July 1, 2015, between the Board and the Primary Owners of the water right applications who signed the Forms described in item 2, above, which correspondence was made or sent following the submission by the Primary Owners of the Forms.

For Item 2 and 3, I anticipate including all Curtailment Forms that Fahey signed as exhibits. Beyond that, your request for these items is exceedingly broad and lacks relevance to this ACL proceeding. Furthermore, a preliminary evaluation by the Water Rights Division (Division) indicated that 340 primary owners checked the box on the Form in 2014 and 521 checked the box in 2015. As a result, responding to this request would also prove exceedingly burdensome. Item #3, which asks for correspondence, is even broader and more burdensome. Although you have not made your request a request for public records, the nature of your request, given its breadth and lack of relevance to the Fahey ACL proceeding, is typically one the Division would treat as a request for public records.

If you wish to make this a request for public records, consider this the required 10 day response pursuant to Government Code section 6253 subd. (c) and I will request that Division staff search for and collect records responsive to your request. The Division would then review the files to determine whether any public records responsive to your

request may be disclosable and to compile any disclosable records for your access and review. Given the scope of your request, this process will take some time. I estimate that searching for an consolidating the records could take a few weeks, but I will provide a more precise timeline if you choose to pursue this as a public records request. Certain documents otherwise response to your request may be withheld as exempt from disclosure pursuant to Government Code sections 6254 and 6255. At this time, it is unclear whether any records will need to be withheld or for what specific reason.

The Public Records Act provides for a requestor to pay for the costs of producing documents. Once we have identified and compiled all disclosable documents that are responsive to your request, I will contact you with an estimate of the costs for reproduction or scanning of the requested documents prior to sending any documents out for reproduction or scanning. Included with any documents sent in response to this request you will find an invoice for the costs of producing those documents. Please remit payment immediately for the amount specified. Any additional documents will necessitate an additional charge, and that charges will be invoiced as they accrue.

4. Any and all documents contained in the Permit Files for Water Right Permit 20784 (Application A029977) and Water Right Permit 21289 (Application A031491), for the time period of January 1, 2012 to the present, including, but not limited to, curtailment notices and all related documents, Board staff notes and correspondence, and water use and/or diversion reports.

The Permit Files for Fahey's water right permits have been made available. Progress reports and other information is now stored electronically and not reproduced for the physical file. Please verify with the Records Unit whether you have received the entire file and let me know if you have any issues.

5. Any and all documents that support the State of California's determination of the required discharge from New Don Pedro Reservoir during the 2014 and 2015 curtailment periods.
6. Any and all documents that support any and all violations of the required discharge from New Don Pedro Reservoir by its authorized discharge operator, owner, &/or authority during the 2014 and 2015 curtailment periods.

For Item 5 and 6, I do not anticipate producing such documents as exhibits for the ACL hearing. I also fail to see how this request is relevant. As above, if you wish to pursue this as a request for public records consider this the required 10 day response pursuant to Government Code section 6253 subd. (c) and I will request that Division staff search for and collect records responsive to your request. At this time, however, we do not know if we have documents responsive to this request. However, the water right files related to New Don Pedro Reservoir are on file with the Records Unit and available for review.

7. Any and all documents that support, sustain and/or justify "the graphical summations" described in Item 26, on pages 4 through 5, of the ACL, for any and all streams, rivers, and/or waterways between the Permittee's point of diversions and New Don Pedro Reservoir.

The "graphical summations" referenced in Item 26, pages 4 through 5, of the ACL complaint are available on the State Water Board's "Watershed Analysis" webpage at http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/analysis/, along with supporting datasets and analysis. Another water supply graph is available on the "Notices of Water Availability" webpage under "San Joaquin River Watershed" for April 23, 2015 at http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/water_availability/sjglobal_apr212015.pdf.

8. Any and all documents relating to any and all phone conversations and written communications between David LeBrie and Scott Fahey that occurred or were sent or received in the months of June, July and August 2015 regarding the following:
 - (a) Water Right Permit 20784 (Application A029977);

- (b) Water Right Permit 21289 (Application A031491);
- (c) Any and all curtailment notices regarding Water Right Permit 20784 and Water Right Permit 21289 (Application A031491).

9. Any and all documents relating to any and all correspondence and communications between Sam Cole and David LeBrie, between June 1, 2015, and September 30, 2015, regarding the following:
- (a) Water Right Permit 20784 (Application A029977);
 - (b) Water Right Permit 21289 (Application A031491);
 - (c) Any and all curtailment notices regarding Water Right Permit 20784 and Water Right Permit 21289 (Application A031491);
 - (d) Cease and Desist Order in the matter of Unauthorized Diversion by G. Scott Fahey and Sugar Pine Spring Water LP;
 - (e) Order for Additional Information, Order WR 2015-0028-DWR, in the matter of Unauthorized Diversion by G. Scott Fahey and Sugar Pine Spring Water LP; and/or
 - (f) The ACL.

For item 8 and 9, I anticipate including documents relating to phone conversations between David LaBrie and Scott Fahey as exhibits. However, to the degree those documents do not constitute work product or confidential communications, they are included in the investigation file that we have already made available to you. With respect to Item 9, in our telephone conversation, you amended your request to also include communications between Sam Cole, David LeBrie, and “third parties” about items (a) through (f). To the extent these communications are not privileged or work product, it is my understanding have already been made available. Nonetheless, I am working to collect and review those emails.

Under the document retention policy for the Division of Water Rights, e-mail for staff is automatically purged after 90 days. As a result, e-mail correspondence regarding this issue that would have occurred more than 90 days ago (September 3, 2015) has been deleted. The Division’s record retention policy is available at http://waternet.waterboards.ca.gov/das/files/busserv/records_retention/dwr.pdf (see page 6 for electronic mail). I also attached a copy. We normally do not set litigation holds, but in this case we have as of December 3, 2016. Since you also asked about e-mail between Sam Cole, David LaBrie, and third persons, I also checked with management – Kathy Mrowka and John O’Hagan. As “managerial staff,” they retain e-mail for five years.

Once investigations reach the point of drafting ACLs and attorneys from the Office of Enforcement get involved, e-mail is retained by the attorneys. Emails still retained by Sam Cole and David LaBrie that have not been deleted are, by and large, privileged attorney-client communications or attorney work product. We typically do not prepare privilege logs, because they are burdensome and oppressive. I am nonetheless examining their remaining e-mails for any e-mail communications that may not be privileged.

David LaBrie has three e-mails that are not privileged communications or work product that fall within the scope of your request. I have attached those e-mails, along with the attachment to one of those e-mails.

Sam Cole has two e-mails that are not privileged communications or work product and falls within the scope of your request. This e-mails do not have attachments.

I found no e-mail among managerial staff matching your inquiry that was not a privileged communication or work product.

Kenneth Petruzzelli, Senior Attorney
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814

tel: (916) 319-8577
fax: (916) 341-5896
kenneth.petruzzelli@waterboards.ca.gov

From: Glen Hansen [<mailto:GHansen@aklandlaw.com>]

Sent: Tuesday, December 01, 2015 4:52 PM

To: Petruzzelli, Kenneth@Waterboards

Cc: Weaver, Nathan@Waterboards; Buckman, Michael@Waterboards; Tauriainen, Andrew@Waterboards; Mona, Ernie@Waterboards; Bill Paris; Diane Kindermann Henderson; Brathwaite, Anna; Linda Wood; jonathan.knapp@sfgov.org; Bart Barringer (bbarringer@mblaw.com); agodwin@MRGB.ORG

Subject: RE: G. Scott Fahey and Sugar Pine Spring Water, LP - ACL/CDO Hearing - Demand For Production of Documents

Mr. Petruzzelli:

Attached is a letter with a demand for production of documents served by counsel for Scott Fahey/Sugar Pine Spring Water LP on the State Water Resources Control Board and its Staff. Your immediate response is appreciated.

Glen C. Hansen
Senior Counsel

Email: ghansen@aklandlaw.com



2100 21st Street | Sacramento, CA 95818

tel: (916) 456-9595 | fax: (916) 456-9599

[website](#) | [blog](#) | [email](#)

This electronic message transmission contains information from the law firm of Abbott& Kindermann, LLP which may be confidential or privileged. Recipients should not file copies of this e-mail with publicly accessible records. The information is intended to be for the use of the individual(s) named above. If you are not the intended recipient, please be aware that any disclosure, copying, distribution or use of the contents of this message is prohibited.

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State Water Resources Control Board

December 9, 2015

Via US Mail and e-mail to: ghansen@aklandlaw.com

Glen Hansen
Abbott & Kindermann LLP
2100 Twenty First Street
Sacramento, CA 95818

Dear Mr. Hansen,

This email serves as the State Water Resources Control Board's (State Water Board's) initial response to your December 7, 2015, California Public Records Act request. Your request seeks public records in nine (9) separate categories. Your request, including all of its categories, is identical to a letter dated December 1, 2015. That letter was not a request for public records, but an informal demand for disclosure of documents in connection with *In the matter of Administrative Civil Liability Complaint issued against G. Scott Fahey and Sugar Pine Spring Water, LP (Fahey)*. I met and conferred with you regarding your December 1, 2015 letter on December 2, 2015. I responded to your December 1, 2015 letter by e-mail on December 8, 2015. Of the nine categories, I determined that five (categories 1, 4, 7, 8, and 9) related to *Fahey* and that the remaining four (categories 2, 3, 5, and 6), since did not relate to *Fahey*, were more appropriately addressed through a request for public records. Since your request is identical to your December 1, 2015 letter, I incorporate my December 8, 2015 e-mails in responding to your request for public records. I have therefore attached your December 1, 2015 letter and my December 8, 2015 e-mails with their attachments.

In accordance with California Government Code section 6253, subdivision (c), the State Water Board has determined that your request seeks copies of public records the State Water Board possesses. The State Water Board is in the process of reviewing the files to determine whether any additional public records responsive to your request are disclosable and to compile any disclosable records for your access and review. I hope to provide an initial document disclosure responding to Category 2 in the next two weeks. Category 3, however, is exceedingly broad and will require additional time as we collect and review documents and, as a result, additional rounds of disclosure. At this time, we anticipate at least several weeks. I will provide you with a more precise time frame as soon as possible.

With regard to Category 5, "Any and all documents that support the State of California's determination of the required discharge from New Don Pedro Reservoir during the 2014 and 2015 curtailment periods," the State Water Board has determined it has no responsive records. The State Water Board has curtailed storage power rights and all other post-1914 rights. The curtailment prohibits direct diversion, but it does not require bypass flow. As a result, bypass

Mr. Glen Hansen

- 2 -

requirements for direct diversion power-only water rights are only what the underlying water rights require.

The water rights for New Don Pedro Reservoir that the State Water Board has determined are relevant to your request are all licensed and listed below. The water right files for New Don Pedro Reservoir's licenses are available in the Records Room for your inspection.

- A001233 for irrigation by collection to storage - no bypass required.
- A001232 for power by collection to storage - no bypass required.
- A001532 direct diversion for power - no bypass required.
- A014126 for power and recreation by collection to storage - no bypass required.

The curtailment does not impose any discharge requirements on New Don Pedro Reservoir. New Don Pedro Reservoir's water rights also lack bypass requirements. Inasmuch as New Don Pedro Reservoir has water rights for hydropower, it also has FERC license requirements. However, FERC licensing requirements are imposed through the FERC process, not though any "determination" by the State of California that relates to Category 5 of your request.

The State Water Board has similarly determined that it lacks responsive records for Category 6 – "Any and all documents that support, explain, and/or justify any and all violations of the State of California's required discharge from New Don Pedro Reservoir by its authorized discharge operator, owner, &/or authority during the 2014 and 2015 curtailment periods." New Don Pedro Reservoir has no State of California bypass requirements. As a result, it has not violated any State of California "required discharge."

The State Water Board will withhold documents responsive to your request if Government Code sections 6254 and 6255 exempt them from disclosure. At this time, we have yet to determine whether we will need to withhold any records or for what specific reason.

The Public Records Act provides for a requestor to pay for the costs of producing documents. Once we have identified and compiled all disclosable documents that are responsive to your request, I will contact you with an estimate of the costs for reproduction or scanning of the requested documents prior to sending any documents out for reproduction or scanning. Included with any documents sent in response to this request you will find an invoice for the costs of producing those documents. Please remit payment immediately for the amount specified. Any additional documents will necessitate additional charges, and we will invoice those charges as they accrue.

Sincerely,



Kenneth Petruzzelli
State Water Resources Control Board, Office of Enforcement
Attorney for Prosecution Team

Cc: Service List

Enclosures

Service List

<p>DIVISION OF WATER RIGHTS SWRCB Office of Enforcement Prosecution Team Kenneth P. Petruzzelli 1001 I Street, 16th Floor Sacramento, CA 95814 kenneth.petruzzelli@waterboards.ca.gov</p>	<p>G.SCOTT FAHEY AND SUGAR PINE SPRING WATER , LP Abbott & Kindermann, LLP Diane G. Kindermann Glen C. Hansen 2100 21ST Street Sacramento, CA 95818 dkindermann@aklandlaw.com ghansen@aklandlaw.com</p> <p>Bart Barringer Law Offices of Mayol & Barringer P.O. Box 3049 Modesto, CA 95353 bbarringer@mblaw.com</p>
<p>TURLOCK IRRIGATION DISTRICT Arthur F. Godwin Mason, Robbins, Browning & Godwin, LLP 700 Loughborough Driver, Suite D Merced, CA 95348 agodwin@mrgb.org</p>	<p>MODESTO IRRIGATION DISTRICT William C. Paris, III O'Laughlin & Paris LLP 2617 K Street, Suite 100 Sacramento, CA 95816 bparis@olaughlinparis.com anna.brathwaite@mid.org lwood@olaughlinparis.com</p>
<p>CITY AND COUNTY OF SAN FRANCISCO Jonathan Knapp Office of the City Attorney 1390 Market Street, Suite 418 San Francisco, CA 94102 jonathan.knapp@sfgov.org</p>	

Petruzzelli, Kenneth@Waterboards

From: Lisa Haddix <LHaddix@aklandlaw.com>
Sent: Wednesday, December 09, 2015 5:15 PM
To: Petruzzelli, Kenneth@Waterboards; Unit, Wr_Hearing@Waterboards
Cc: Mona, Ernie@Waterboards; Weaver, Nathan@Waterboards;
andrew.tauriainen@waterboards.com; Prager, John@Waterboards; Diane Kindermann
Henderson; bbarringer@mblaw.com; agodwin@MRGB.ORG; anna.brathwaite@mid.org;
bparis@olaughlinparis.com; lwood@olaughlinparis.com; jonathan.knapp@sfgov.org;
Sharon Buckenmeyer; Glen Hansen
Subject: Fahey ACL/CDO Hearing - Notices of Depositions
Attachments: 2015-12-09 Notice of Deposition of Katherine Mrowka.pdf; 2015-12-09 Notice of
Deposition of David LaBrie.pdf

[Attached please the following documents:](#)

Notice of Deposition of Katherine Mrowka and Request for Production of Documents
Notice of Deposition of David LaBrie and Request for Production of Documents

Thank you

Lisa Haddix
Litigation Assistant



2100 21st Street | Sacramento, CA 95818
tel: (916) 456-9595 | fax: (916) 456-9599
[website](#) | [blog](#) | [email](#)

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1 Diane G. Kindermann (SBN 144426)
Glen C. Hansen (SBN 166923)
2 ABBOTT & KINDERMANN, LLP
2100 21st Street
3 Sacramento, CA 95818
Telephone: (916) 456-9595
4 Facsimile: (916) 456-9599

5 Attorneys for
G. Scott Fahey and Sugar Pine Spring Water, LP
6
7

8 **BEFORE THE STATE OF CALIFORNIA**
9 **STATE WATER RESOURCES CONTROL BOARD**

10 **IN THE MATTER OF**
11 **ADMINISTRATIVE CIVIL**
12 **LIABILITY COMPLAINT ISSUED**
13 **AGAINST G. SCOTT FAHEY AND**
SUGAR PINE SPRING WATER, LP

NOTICE OF DEPOSITION OF
KATHERINE MROWKA AND REQUEST
FOR PRODUCTION OF DOCUMENTS

14 **TO STATE WATER RESOURCES CONTROL BOARD AND ITS ATTORNEY (S) OF**
15 **RECORD:**

16 PLEASE TAKE NOTICE that pursuant to Water Code section 1100, Government Code
17 sections 11450.10 and 11450.20, California Code of Civil Procedure section 2025.010 et seq., and
18 the procedures and practices of the State Water Resources Control Board (the "Board"), the
19 deposition of **KATHERINE MROWKA** will be taken by G. Scott Fahey and Sugar Pine Spring
20 Water, LP (collectively, "Fahey"), in the above entitled matter, upon oral examination before a
21 certified shorthand reporter of the State of California as follows:

22 DATE: December 22, 2015
23 TIME: 9:00 a.m.
24 LOCATION: Abbott & Kindermann, LLP
2100 21st Street
Sacramento, CA 95818
916-456-9595

25 Said deposition will commence at the above date and time, and continue from day to day
26 thereafter, Sundays and holidays excepted, until completed. Fahey reserves the right to record this
27 deposition by videotape.
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PROOF OF SERVICE

I, Lisa Haddix, declare as follows:

I am employed in the County of Sacramento, over the age of eighteen years and not a party to this action. My business address is 2100 21st Street, Sacramento, California 95818.

On December 9, 2015, I served the foregoing document(s) described as:


NOTICE OF DEPOSITION OF KATHERINE MROWKA AND REQUEST FOR PRODUCTION OF DOCUMENTS

On the parties stated below, by placing a true copy thereof in an envelope addressed as shown below by the following means of service:

SEE ATTACHED SERVICE LIST

- X BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.
- X BY ELECTRONIC SERVICE [EMAIL]:** Sending a true copy of the above-described document(s) via electronic transmission from email address lhaddix@aklandlaw.com to the persons listed above on December 9, 2015, before 5:00 p.m. The transmission was reported as complete and without error. [CRC 2.256 (a)(4), 2.260].

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct. Executed on December 9, 2015, at Sacramento, California.



Lisa Haddix

SERVICE LIST

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Division of Water Rights
State Water Resources Control Board
Attention: Ernest Mona
PO Box 2000
Sacramento, CA 95812-2000

Via email and U.S. Mail

Kenneth P. Petruzzelli
1001 I St., 16th Floor
Sacramento, CA 95814
Telephone: (916) 319-8577
Facsimile: (916) 341-5896
kenneth.petruzzelli@waterboards.ca.gov

Via email only

DIVISION OF WATER RIGHTS
Prosecution Team
Andrew Tauriainen, Attorney III
SWRCB Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
Andrew.Tauriainen@waterboards.ca.gov

Via email only

TURLOCK IRRIGATION DISTRICT
Arthur F. Godwin
Mason, Robbins, Browning & Godwin, LLP
700 Loughborough Drive, Suite D
Merced, CA 95348
agodwin@mrgb.org

Via email only

MODESTO IRRIGATION DISTRICT
William C. Paris, III
O'Laughlin & Paris LLP
2617 K Street, Suite 100
Sacramento, CA 95816
bparis@olaughlinparis.com
anna.brathwaite@mid.org
lwood@olaughlinparis.com

Via email only

CITY AND COUNTY OF SAN FRANCISCO
Jonathan Knapp
Office of the City Attorney
1390 Market Street, Suite 418
San Francisco, CA 94102
Jonathan.knapp@sfgov.org

Via email only

1 Diane G. Kindermann (SBN 144426)
2 Glen C. Hansen (SBN 166923)
3 ABBOTT & KINDERMANN, LLP
4 2100 21st Street
5 Sacramento, CA 95818
6 Telephone: (916) 456-9595
7 Facsimile: (916) 456-9599

8 Attorneys for
9 G. Scott Fahey and Sugar Pine Spring Water, LP

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BEFORE THE STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

**IN THE MATTER OF
ADMINISTRATIVE CIVIL
LIABILITY COMPLAINT ISSUED
AGAINST G. SCOTT FAHEY AND
SUGAR PINE SPRING WATER, LP**

**NOTICE OF DEPOSITION OF DAVID
LaBRIE AND REQUEST FOR
PRODUCTION OF DOCUMENTS**

**TO STATE WATER RESOURCES CONTROL BOARD AND ITS ATTORNEY (S) OF
RECORD:**

PLEASE TAKE NOTICE that pursuant to Water Code section 1100, Government Code sections 11450.10 and 11450.20, California Code of Civil Procedure section 2025.010 et seq., and the procedures and practices of the State Water Resources Control Board (the "Board"), the deposition of **DAVID LaBRIE** will be taken by G. Scott Fahey and Sugar Pine Spring Water, LP (collectively, "Fahey"), in the above entitled matter, upon oral examination before a certified shorthand reporter of the State of California as follows:

DATE: December 22, 2015
TIME: 1:00 p.m.
LOCATION: Abbott & Kindermann, LLP
2100 21st Street
Sacramento, CA 95818
916-456-9595

Said deposition will commence at the above date and time, and continue from day to day thereafter, Sundays and holidays excepted, until completed. Fahey reserves the right to record this deposition by videotape.

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PROOF OF SERVICE

I, Lisa Haddix, declare as follows:

I am employed in the County of Sacramento, over the age of eighteen years and not a party to this action. My business address is 2100 21st Street, Sacramento, California 95818.

On December 9, 2015, I served the foregoing document(s) described as:

NOTICE OF DEPOSITION OF DAVID LaBRIE AND REQUEST FOR PRODUCTION OF DOCUMENTS

On the parties stated below, by placing a true copy thereof in an envelope addressed as shown below by the following means of service:

SEE ATTACHED SERVICE LIST

- X BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.
- X BY ELECTRONIC SERVICE [EMAIL]:** Sending a true copy of the above-described document(s) via electronic transmission from email address lhaddix@aklandlaw.com to the persons listed above on December 9, 2015, before 5:00 p.m. The transmission was reported as complete and without error. [CRC 2.256 (a)(4), 2.260].

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct. Executed on December 9, 2015, at Sacramento, California.



Lisa Haddix

SERVICE LIST

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Division of Water Rights
State Water Resources Control Board
Attention: Ernest Mona
PO Box 2000
Sacramento, CA 95812-2000

Via email and U.S. Mail

Kenneth P. Petruzzelli
1001 I St., 16th Floor
Sacramento, CA 95814
Telephone: (916) 319-8577
Facsimile: (916) 341-5896
kenneth.petruzzelli@waterboards.ca.gov

Via email only

DIVISION OF WATER RIGHTS
Prosecution Team
Andrew Tauriainen, Attorney III
SWRCB Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
Andrew.Tauriainen@waterboards.ca.gov

Via email only

TURLOCK IRRIGATION DISTRICT
Arthur F. Godwin
Mason, Robbins, Browning & Godwin, LLP
700 Loughborough Drive, Suite D
Merced, CA 95348
agodwin@mrgb.org

Via email only

MODESTO IRRIGATION DISTRICT
William C. Paris, III
O'Laughlin & Paris LLP
2617 K Street, Suite 100
Sacramento, CA 95816
bparis@olaughlinparis.com
anna.brathwaite@mid.org
lwood@olaughlinparis.com

Via email only

CITY AND COUNTY OF SAN FRANCISCO
Jonathan Knapp
Office of the City Attorney
1390 Market Street, Suite 418
San Francisco, CA 94102
Jonathan.knapp@sfgov.org

Via email only

Petruzzelli, Kenneth@Waterboards

From: Petruzzelli, Kenneth@Waterboards
Sent: Thursday, December 10, 2015 10:01 AM
To: 'Glen Hansen'
Cc: Tauriainen, Andrew@Waterboards; Prager, John@Waterboards
Subject: RE: Notices of deposition for David LaBrie and Kathy Mrowka

Mr. Hansen,

The NOI designated witnesses over a month ago. You have had significant time to notice depositions. You are also asking for documents that have already been made available, that have already been disclosed, or that will be disclosed as exhibits on December 16. There is no need to depose Ms. Mrowka or Mr. LaBrie. Withdraw your notice or we will move to quash.

Kenneth Petruzzelli, Senior Attorney
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
tel: (916) 319-8577
fax: (916) 341-5896
kenneth.petruzzelli@waterboards.ca.gov

From: Glen Hansen [<mailto:GHansen@aklandlaw.com>]
Sent: Thursday, December 10, 2015 9:52 AM
To: Petruzzelli, Kenneth@Waterboards
Cc: Sharon Buckenmeyer; Lisa Haddix
Subject: RE: Notices of deposition for David LaBrie and Kathy Mrowka

Mr. Petruzeli:

Our experience has been that the Prosecution Team in other Board adjudications has brought motions to quash deposition notices on the basis that the rules of Civil Procedure apply to these proceedings, and therefore (1) there must be at least 10 days notice prior to a deposition of a party witness; and (2) all non-expert discovery must be completed 30 days prior to the hearing. Also, you are refusing to join in a request to continue the hearing date. Based on those positions taken by the Prosecution Team, we don't have any the choice in moving Mr. LaBrie's deposition date as you are requesting.

Glen C. Hansen
Senior Counsel
Email: ghansen@aklandlaw.com



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From: Petruzzelli, Kenneth@Waterboards [<mailto:Kenneth.Petruzzelli@Waterboards.ca.gov>]
Sent: Thursday, December 10, 2015 9:29 AM
To: Glen Hansen
Cc: Tauriainen, Andrew@Waterboards; Prager, John@Waterboards; LaBrie, Dave@Waterboards; Mrowka, Kathy@Waterboards
Subject: Notices of deposition for David LaBrie and Kathy Mrowka

Mr. Hansen,

We received the notices of deposition that you sent out last evening. David LaBrie has vacation planned from December 21 through December 29. Can we reschedule his deposition, at least, to after the 29th? If we do, it would be useful to meet and confer on prospective dates to avoid vacation/holiday conflicts. Thank you.

Kenneth Petruzzelli, Senior Attorney
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
tel: (916) 319-8577
fax: (916) 341-5896
kenneth.petruzzelli@waterboards.ca.gov

Petruzzelli, Kenneth@Waterboards

From: Petruzzelli, Kenneth@Waterboards
Sent: Tuesday, December 08, 2015 10:31 AM
To: 'Glen Hansen'
Cc: Weaver, Nathan@Waterboards; Buckman, Michael@Waterboards; Tauriainen, Andrew@Waterboards; Mona, Ernie@Waterboards; 'Bill Paris'; 'Diane Kindermann Henderson'; 'Brathwaite, Anna'; 'Linda Wood'; 'jonathan.knapp@sfgov.org'; 'Bart Barringer (bbarringer@mblaw.com)'; agodwin@MRGB.ORG; Prager, John@Waterboards
Subject: RE: G. Scott Fahey and Sugar Pine Spring Water, LP - ACL/CDO Hearing - Demand For Production of Documents
Attachments: email_6.18.2015_summary.pdf

Mr. Hansen,

There is one more e-mail from Sam Cole falling under Category 9. Please see attached.

Kenneth Petruzzelli, Senior Attorney
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Sent: Tuesday, December 08, 2015 10:26 AM
To: 'Glen Hansen'
Cc: Weaver, Nathan@Waterboards; Buckman, Michael@Waterboards; Tauriainen, Andrew@Waterboards; Mona, Ernie@Waterboards; Bill Paris; Diane Kindermann Henderson; Brathwaite, Anna; Linda Wood; jonathan.knapp@sfgov.org; Bart Barringer (bbarringer@mblaw.com); agodwin@MRGB.ORG; Prager, John@Waterboards
Subject: RE: G. Scott Fahey and Sugar Pine Spring Water, LP - ACL/CDO Hearing - Demand For Production of Documents

Mr. Hansen,

I am responding to your letter dated December 1, 2015. I am also following up on our telephone conversation from earlier today at approximately 11:20 a.m. Please treat this e-mail and our telephone conversation as an opportunity to meet and confer regarding your demand for production of documents.

1. Any and all documents that support the Administrative Civil Liability Complaint in the matter of Unauthorized Diversion by G. Scott Fahey and Sugar Pine Spring Water LP, dated September 1, 2015 ("ACL").

Any and all documents supporting the ACL will be made available as exhibits on or by December 16, 2015. We are in the process of consolidating these documents.

2. All Curtailment Certification Forms ("Forms") received by the Board from any and all primary owners between April 1, 2014, and July 1, 2015, where the box on the Form for "OTHER I have additional information explaining how much water I am diverting, the use of that water, the measure being undertaken to reduce use, and the

basis on which I contend that the diversion and use is legally authorized notwithstanding the very limited amounts of water available during this drought emergency" was marked or checked off.

3. All written correspondence from April 1, 2014 and July 1, 2015, between the Board and the Primary Owners of the water right applications who signed the Forms described in item 2, above, which correspondence was made or sent following the submission by the Primary Owners of the Forms.

For Item 2 and 3, I anticipate including all Curtailment Forms that Fahey signed as exhibits. Beyond that, your request for these items is exceedingly broad and lacks relevance to this ACL proceeding. Furthermore, a preliminary evaluation by the Water Rights Division (Division) indicated that 340 primary owners checked the box on the Form in 2014 and 521 checked the box in 2015. As a result, responding to this request would also prove exceedingly burdensome. Item #3, which asks for correspondence, is even broader and more burdensome. Although you have not made your request a request for public records, the nature of your request, given its breadth and lack of relevance to the Fahey ACL proceeding, is typically one the Division would treat as a request for public records.

If you wish to make this a request for public records, consider this the required 10 day response pursuant to Government Code section 6253 subd. (c) and I will request that Division staff search for and collect records responsive to your request. The Division would then review the files to determine whether any public records responsive to your request may be disclosable and to compile any disclosable records for your access and review. Given the scope of your request, this process will take some time. I estimate that searching for and consolidating the records could take a few weeks, but I will provide a more precise timeline if you choose to pursue this as a public records request. Certain documents otherwise responsive to your request may be withheld as exempt from disclosure pursuant to Government Code sections 6254 and 6255. At this time, it is unclear whether any records will need to be withheld or for what specific reason.

The Public Records Act provides for a requestor to pay for the costs of producing documents. Once we have identified and compiled all disclosable documents that are responsive to your request, I will contact you with an estimate of the costs for reproduction or scanning of the requested documents prior to sending any documents out for reproduction or scanning. Included with any documents sent in response to this request you will find an invoice for the costs of producing those documents. Please remit payment immediately for the amount specified. Any additional documents will necessitate an additional charge, and that charges will be invoiced as they accrue.

4. Any and all documents contained in the Permit Files for Water Right Permit 20784 (Application A029977) and Water Right Permit 21289 (Application A031491), for the time period of January 1, 2012 to the present, including, but not limited to, curtailment notices and all related documents, Board staff notes and correspondence, and water use and/or diversion reports.

The Permit Files for Fahey's water right permits have been made available. Progress reports and other information is now stored electronically and not reproduced for the physical file. Please verify with the Records Unit whether you have received the entire file and let me know if you have any issues.

5. Any and all documents that support the State of California's determination of the required discharge from New Don Pedro Reservoir during the 2014 and 2015 curtailment periods.
6. Any and all documents that support any and all violations of the required discharge from New Don Pedro Reservoir by its authorized discharge operator, owner, &/or authority during the 2014 and 2015 curtailment periods.

For Item 5 and 6, I do not anticipate producing such documents as exhibits for the ACL hearing. I also fail to see how this request is relevant. As above, if you wish to pursue this as a request for public records consider this the required 10 day response pursuant to Government Code section 6253 subd. (c) and I will request that Division staff search for and collect records responsive to your request. At this time, however, we do not know if we have documents responsive to this

request. However, the water right files related to New Don Pedro Reservoir are on file with the Records Unit and available for review.

7. Any and all documents that support, sustain and/or justify "the graphical summations" described in Item 26, on pages 4 through 5, of the ACL, for any and all streams, rivers, and/or waterways between the Permittee's point of diversions and New Don Pedro Reservoir.

The "graphical summations" referenced in Item 26, pages 4 through 5, of the ACL complaint are available on the State Water Board's "Watershed Analysis" webpage at http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/analysis/, along with supporting datasets and analysis. Another water supply graph is available on the "Notices of Water Availability" webpage under "San Joaquin River Watershed" for April 23, 2015 at http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/water_availability/siglobal_apr212015.pdf.

8. Any and all documents relating to any and all phone conversations and written communications between David LeBrie and Scott Fahey that occurred or were sent or received in the months of June, July and August 2015 regarding the following:
 - (a) Water Right Permit 20784 (Application A029977);
 - (b) Water Right Permit 21289 (Application A031491);
 - (c) Any and all curtailment notices regarding Water Right Permit 20784 and Water Right Permit 21289 (Application A031491).
9. Any and all documents relating to any and all correspondence and communications between Sam Cole and David LeBrie, between June 1, 2015, and September 30, 2015, regarding the following:
 - (a) Water Right Permit 20784 (Application A029977);
 - (b) Water Right Permit 21289 (Application A031491);
 - (c) Any and all curtailment notices regarding Water Right Permit 20784 and Water Right Permit 21289 (Application A031491);
 - (d) Cease and Desist Order in the matter of Unauthorized Diversion by G. Scott Fahey and Sugar Pine Spring Water LP;
 - (e) Order for Additional Information, Order WR 2015-0028-DWR, in the matter of Unauthorized Diversion by G. Scott Fahey and Sugar Pine Spring Water LP; and/or
 - (f) The ACL.

For item 8 and 9, I anticipate including documents relating to phone conversations between David LaBrie and Scott Fahey as exhibits. However, to the degree those documents do not constitute work product or confidential communications, they are included in the investigation file that we have already made available to you. With respect to Item 9, in our telephone conversation, you amended your request to also include communications between Sam Cole, David LeBrie, and "third parties" about items (a) through (f). To the extent these communications are not privileged or work product, it is my understanding have already been made available. Nonetheless, I am working to collect and review those emails.

Under the document retention policy for the Division of Water Rights, e-mail for staff is automatically purged after 90 days. As a result, e-mail correspondence regarding this issue that would have occurred more than 90 days ago (September 3, 2015) has been deleted. The Division's record retention policy is available at http://waternet.waterboards.ca.gov/das/files/busserv/records_retention/dwr.pdf (see page 6 for electronic mail). I also attached a copy. We normally do not set litigation holds, but in this case we have as of December 3, 2016. Since you also asked about e-mail between Sam Cole, David LaBrie, and third persons, I also checked with management – Kathy Mrowka and John O'Hagan. As "managerial staff," they retain e-mail for five years.

Once investigations reach the point of drafting ACLs and attorneys from the Office of Enforcement get involved, e-mail is retained by the attorneys. Emails still retained by Sam Cole and David LaBrie that have not been deleted are, by and large, privileged attorney-client communications or attorney work product. We typically do not prepare privilege logs, because they are burdensome and oppressive. I am nonetheless examining their remaining e-mails for any e-mail communications that may not be privileged.

David LaBrie has three e-mails that are not privileged communications or work product that fall within the scope of your request. I have attached those e-mails, along with the attachment to one of those e-mails.

Sam Cole has two e-mails that are not privileged communications or work product and falls within the scope of your request. This e-mails do not have attachments.

I found no e-mail among managerial staff matching your inquiry that was not a privileged communication or work product.

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fax: (916) 341-5896
kenneth.petruzzelli@waterboards.ca.gov

From: Glen Hansen [<mailto:GHansen@aklandlaw.com>]

Sent: Tuesday, December 01, 2015 4:52 PM

To: Petruzzelli, Kenneth@Waterboards

Cc: Weaver, Nathan@Waterboards; Buckman, Michael@Waterboards; Tauriainen, Andrew@Waterboards; Mona, Ernie@Waterboards; Bill Paris; Diane Kindermann Henderson; Brathwaite, Anna; Linda Wood; jonathan.knapp@sfgov.org; Bart Barringer (bbarringer@mblaw.com); agodwin@MRGB.ORG

Subject: RE: G. Scott Fahey and Sugar Pine Spring Water, LP - ACL/CDO Hearing - Demand For Production of Documents

Mr. Petruzzelli:

Attached is a letter with a demand for production of documents served by counsel for Scott Fahey/Sugar Pine Spring Water LP on the State Water Resources Control Board and its Staff. Your immediate response is appreciated.

Glen C. Hansen
Senior Counsel

Email: ghansen@aklandlaw.com



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ANDREW TAURIAINEN (SBN 214837)
KENNETH PETRUZZELLI (SBN 227192)
JOHN PRAGER (SBN 289610)
STATE WATER RESOURCES CONTROL BOARD
1001 I St., 16th Floor
Sacramento, California 95814
Telephone: (916) 319-8577
Facsimile: (916) 341-5896

Attorneys for the Prosecution Team

BEFORE THE STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

**In the matter of Administrative Civil
Liability Complaint issued against G. Scott
Fahey and Sugar Pine Spring Water, LP**

**Declaration of Andrew Tauriainen in
Support of Prosecution Team's Motion for
Protective Order or, Alternatively, Motion to
Quash**

I, Andrew Tauriainen, declare as follows:

1. I am an Attorney III (Specialist) with the State Water Resources Control Board's Office of Enforcement. I have been a practicing attorney since 2001, California State Bar No. 214837. I joined the Office of Enforcement in 2011. I am co-counsel for the Prosecution Team in the Administrative Civil Liability Complaint ("ACLC") and Draft Cease and Desist Order ("CDO") issued against G. Scott Fahey and Sugar Pine Spring Water, LP ("Fahey").
2. On October 28, 2015, I sent a series of emails to Sharon Buckenmeyer and Diane Kindermann, of the law firm Abbott & Kindermann, Fahey's counsel. The emails included pdf attachments of the non-privileged portions of the Prosecution Team's investigative files in the Fahey matter, including inspection reports, curtailment notices, and correspondence, and also provided instructions for obtaining copies of the digital surveillance video files, which were too large to email. True and correct copies of the October 28 emails are marked as Attachment 1 hereto.
3. On November 13, 2015, I received an email from Glen Hansen, of the Abbott & Kindermann law firm, indicating that Mr. Hansen had obtained and reviewed copies of the Permit Files for Fahey's Permits A02997 and A031491. On the same day, I responded to Mr. Hansen and included copies of three additional documents identified in the file following the October 28, 2015, voluntary disclosure. True and correct copies of the November 13, 2015, emails are marked as Attachment 2 hereto.
4. On November 20, 2015, I participated in and was copied on a series of emails from Dan Cucchi, of the Abbott & Kindermann law firm, regarding the process to obtain copies of the digital surveillance video footage from the State Water Board's Records Unit. From those

Declaration of Andrew Tauriainen
G. Scott Fahey and Sugar Pine Spring Water LP
ACLC and Draft CDO

emails, I am informed and on that basis believe that Mr. Cucchi travelled to the Records Unit and obtained copies of the digital surveillance video files on November 20, 2015. True and correct copies of the November 20, 2015, emails are marked as Attachment 3 hereto.

I declare under penalty of perjury to the laws of the State of California that the foregoing is true and correct. Executed this 10th day of December, 2015, at Sacramento, California.



Andrew Tauriainen

Tauriainen, Andrew@Waterboards

From: Tauriainen, Andrew@Waterboards
Sent: Wednesday, October 28, 2015 4:14 PM
To: Sharon Buckenmeyer (SBuckenmeyer@aklandlaw.com)
Cc: Diane Kindermann (dkindermann@aklandlaw.com); ghansen@aklandlaw.com
Subject: Fahey Investigation Docs
Attachments: ROI_7-12-2015 SGC.pdf; Sugar Pine Trucks Aug 5-Aug 27.pdf; 2015 observed loads w calcs 7_12--8_5.pdf; FR_7-23-2015 SGC.pdf; FR_8-5-2015 SGC.pdf; Reported Loads vs Observed Loads.pdf; 2014 max penalty calcs.pdf

Please see attached. You'll need to bring a large usb storage device (at least 110gb) to the Cal/EPA building (2nd floor, SWRCB Records Unit) for copies of the surveillance footage. Please let me know when you think you'll be there and I'll let the Records Unit staff know.

Andrew Tauriainen, Attorney III
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
tel: (916) 341-5445
fax: (916)341-5896
atauriainen@waterboards.ca.gov

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Tauriainen, Andrew@Waterboards

From: Tauriainen, Andrew@Waterboards
Sent: Wednesday, October 28, 2015 4:13 PM
To: Sharon Buckenmeyer (SBuckenmeyer@aklandlaw.com)
Cc: Diane Kindermann (dkindermann@aklandlaw.com); ghansen@aklandlaw.com
Subject: Fahey Unavailability Notice Docs
Attachments: May 27, 2014 Curtailment Notice.pdf; SF ltr 12_19_94.pdf; 4-23-15 San Joaquin Curtailment Letters.pdf; June 3, 2014 letter from Fahey.pdf; Links to Water April 23 2015 Unavailabilty Notice.pdf; Water Rights A029977 and A031491.msg.pdf

Please see attached.

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Tauriainen, Andrew@Waterboards

From: Tauriainen, Andrew@Waterboards
Sent: Wednesday, October 28, 2015 4:14 PM
To: Sharon Buckenmeyer (SBuckenmeyer@aklandlaw.com)
Cc: Diane Kindermann (dkindermann@aklandlaw.com); ghansen@aklandlaw.com
Subject: Fahey Annual Reporting Docs 20784
Attachments: 2012 PROGRESS REPORT BY PERMITTEE 20784.pdf; 2012 Water Rights Reporting-DW&SP.xls; 2013 PROGRESS REPORT BY PERMITTEE 20784.pdf; 2013 Water Rights Reporting-DW&SP.xls; 2014 PROGRESS REPORT BY PERMITTEE 20784.pdf; 2014 Water Rights Reporting-DW&SP.xls; A029977 Annual Reporting 2010-2014.xls; 2009 PROGRESS REPORT BY PERMITTEE 20784.pdf; 2010 PROGRESS REPORT BY PERMITTEE 20784.pdf; 2010 Water Rights Reporting.xls; 2011 PROGRESS REPORT BY PERMITTEE 20784.pdf; 2011 Water Rights Reporting.xls

Please see attached.

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To: Sharon Buckenmeyer (SBuckenmeyer@aklandlaw.com)
Cc: Diane Kindermann (dkindermann@aklandlaw.com); ghansen@aklandlaw.com
Subject: Fahey Permit Docs
Attachments: Exchange Agreement.pdf; P20784 & P21289 summary.pdf; Permit 20784.pdf; Permit 21289.pdf; A029977_Auth to accept app subj to WO91-07.pdf; A031491_Auth_Accept_App_Fully_Appr_Strm.pdf

Please see attached.

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Sent: Wednesday, October 28, 2015 4:14 PM
To: Sharon Buckenmeyer (SBuckenmeyer@aklandlaw.com)
Cc: Diane Kindermann (dkindermann@aklandlaw.com); ghansen@aklandlaw.com
Subject: Fahey Photos
Attachments: Full page photo.pdf; Curtailment Inspection Photos.pdf

Please see attached.

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From: Tauriainen, Andrew@Waterboards
Sent: Wednesday, October 28, 2015 4:14 PM
To: Sharon Buckenmeyer
Cc: Diane Kindermann (dkindermann@aklandlaw.com); ghansen@aklandlaw.com
Subject: Fahey Info Order Documents
Attachments: Fahey Info Order Response 2(B).pdf; Fahey Info Order Response 2(C) Sept 2015 Diversions.pdf; Fahey Info Order Response 2(C).pdf; 20151007152714982.pdf; Fahey Info Order Response 2(A) & 2(C) Excel.xlsx; Fahey Info Order Response 2(A).pdf

Attached please find the documents from Mr. Fahey (through Herum Crabtree) in response to the Order for Additional Information.

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To: Sharon Buckenmeyer (SBuckenmeyer@aklandlaw.com)
Cc: Diane Kindermann (dkindermann@aklandlaw.com); ghansen@aklandlaw.com
Subject: Fahey Reporting Docs 21289
Attachments: 2013 PROGRESS REPORT BY PERMITTEE 21289.pdf; 2013 Water Rights Reporting-M&P.xls; 2014 PROGRESS REPORT BY PERMITTEE 21289.pdf; 2014 Water Rights Reporting-M&P.xls; A031491 Annual Reporting 2012-2014.xls; 2011 PROGRESS REPORT BY PERMITTEE 21289.pdf; 2012 PROGRESS REPORT BY PERMITTEE 21289.pdf; 2012 Water Rights Reporting-M&P.xls

Please see attached.

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From: Tauriainen, Andrew@Waterboards
Sent: Friday, November 13, 2015 5:26 PM
To: Glen Hansen
Cc: Buckman, Michael@Waterboards; Diane Kindermann Henderson; Collins, Gabriel@Waterboards; Jay, Matthew@Waterboards; kharrigfeld@herumcrabtree.com; bbarringer (bbarringer@MBLAW.COM); agodwin@MRGB.ORG; bparis@olaughlinparis.com; anna.brathwaite@mid.org; Linda Wood (lwood@olaughlinparis.com); Jonathan Knapp (jonathan.knapp@sfgov.org); wrhearing@waterboards.ca.gov; Mona, Ernie@Waterboards
Subject: RE: Fahey ACL/CDO Hearing - Curtailment re Water Rights A029977 and A031491
Attachments: Contact Report 8-12-15 G Scott Fahey Facility Confirmation of Diversion1....pdf; www.uniondemocrat.com_News_Business_Fresh-water-flows-fr.pdf; CDPH Email re Sugar Pine Spring Water Bottled Water Operation Records.pdf

Mr. Hansen:

1. This is a contested hearing with a service list. You need to copy the service list on any correspondence with the Hearing Team, including to Mr. Mona. The Hearing Notice and today's correspondence from Mr. Buckman both describe the ex parte rules. I've copied the service list here.
2. The Prosecution Team is comprised of members of the Division of Water Rights Enforcement Unit, as well as counsel from the Office of Enforcement. Neither the Prosecution Team members specifically nor the Enforcement Unit generally maintain the Fahey Permit files (A029977 and A031491). With very limited exceptions, Enforcement Unit investigation files are not placed in the Permit files. With that said, it is my understanding that not much has happened with respect to Mr. Fahey's permits in the last few years, except for the drought issues, so it isn't unusual that the Permit file hasn't had a recent update. It would appear that the Permit Unit doesn't regularly include Mr. Fahey's electronic reporting submittals into the paper file, but I can't speak for that Unit. The Prosecution Team included Mr. Fahey's annual reports from 2009 to the present in the disclosure discussed in the next point.
3. On October 28, 2015, I emailed to you, Diane Kindermann and Sharon Buckenmeyer of your office electronic copies of the Enforcement Unit's investigation files, save for the surveillance videos which were too big for email (~106gb). I invited your office to bring a suitably-sized electronic storage device to the State Water Resources Control Board Records Unit, 2nd Floor, 1001 I Street, Sacramento, CA, and ask for a copy of the "Fahey Documents" electronic records folder. The "Fahey Documents" electronic folder also contains copies of the documents I emailed on October 28. By copy of this message, the Prosecution Team invites any of the other parties to this action to come copy the "Fahey Documents" folder. Please see Matthew Jay in the Records Unit with questions on how to obtain the copies.
4. The October 28 voluntary disclosure contains copies of the May 27, 2014, and April 23, 2015, notices sent to Mr. Fahey regarding unavailability of water to serve his permits. It also contains the June 3, 2014, letter from Mr. Fahey to the Division of Water Rights. It also contains a pdf document titled "Links to Water April 23 2015 Unavailability Notice" which contains links to the relevant water unavailability documents publicly available on the State Water Board's website. I am not sure what other documents might relate to "the critical notice of curtailment period at issue in this matter" to which you refer.
5. I've attached three additional documents identified in the file since the October 28 voluntary disclosure. I've placed copies of these documents in the "Fahey Documents" electronic file folder available at the Records Unit.

With these documents and the October 28 voluntary disclosure, the Prosecution Team has given you all records of which I am aware that aren't subject to the Attorney-Client or Attorney Work Product privileges.

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From: Glen Hansen [mailto:GHansen@aklandlaw.com]
Sent: Friday, November 13, 2015 4:04 PM
To: Mona, Ernie@Waterboards; Tauriainen, Andrew@Waterboards
Cc: Buckman, Michael@Waterboards; Diane Kindermann Henderson; WB-DWR; Collins, Gabriel@Waterboards; Jay, Matthew@Waterboards; kharrigfeld@herumcrabtree.com; bbarringer (bbarringer@MBLAW.COM)
Subject: RE: Fahey ACL/CDO Hearing - Curtailment re Water Rights A029977 and A031491

Ernie and Andrew:

Thank you for your efforts in making the Permit Files available to us today. After I saw the email from Ernie early this morning (below), rather than come in to review the files I discussed with Wagner& Bonsignore what they found in their review of the same files in early October (to avoid potential duplication). They confirmed that they reviewed the files that were made available, and that those files did **not** contain documents from 2012 through September 2015 (which includes the critical notice of curtailment period at issue in this matter). Those are the "missing files" that we have been referring to. What we seek to review are such "missing files." We are reasonably informed and believe that such "missing files" contain material facts and information regarding the matters before the Board in this case.

Do you know where such "missing files" are located so that we can review them as soon as practicable? Your assistance is greatly appreciated.

Glen C. Hansen
Senior Counsel
Email: ghansen@aklandlaw.com



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From: Mona, Ernie@Waterboards [<mailto:Ernie.Mona@waterboards.ca.gov>]
Sent: Friday, November 13, 2015 7:19 AM
To: WB-DWR; Collins, Gabriel@Waterboards; Jay, Matthew@Waterboards
Cc: Tauriainen, Andrew@Waterboards; Buckman, Michael@Waterboards; Diane Kindermann Henderson; Glen Hansen
Subject: RE: Fahey ACL/CDO Hearing - Curtailment re Water Rights A029977 and A031491

Gabriel and Matt

I am bringing down the Fahey files (A029977 and A031491) this morning for review by Abbott & Kindermann, LLC...The files are contained in a "Capitol Digital" box...apparently, these same files were recently sent out (10/07) for scanning for Wagner& Bonsignore....Please assist Mr. Hansen as indicated below...Thanks

Ernest Mona

[State Water Resources Control Board](#)
[Division of Water Rights](#)
[Hearings and Special Programs Section](#)
(916) 341-5359



From: Glen Hansen [<mailto:GHansen@aklandlaw.com>]
Sent: Thursday, November 12, 2015 9:12 PM
To: Mona, Ernie@Waterboards
Cc: Tauriainen, Andrew@Waterboards; Buckman, Michael@Waterboards; Diane Kindermann Henderson
Subject: Re: Fahey ACL/CDO Hearing - Curtailment re Water Rights A029977 and A031491

Thank you, Ernie. I will discuss that with Records Unit tomorrow.
Glen

Sent from my iPhone

On Nov 12, 2015, at 7:38 PM, Mona, Ernie@Waterboards <Ernie.Mona@waterboards.ca.gov> wrote:

Glen,
That probably can be done...but I think Records Unit sends out files to be scanned by Capitol Reprographics...You will have to confirm what the process is down there.....

From: Glen Hansen [GHansen@aklandlaw.com]
Sent: Thursday, November 12, 2015 6:01 PM
To: Mona, Ernie@Waterboards
Cc: Tauriainen, Andrew@Waterboards; Buckman, Michael@Waterboards; Diane Kindermann Henderson
Subject: RE: Fahey ACL/CDO Hearing - Curtailment re Water Rights A029977 and A031491

Ernie:

Would I be able to have a copy service come in and copy the files that are in that box in the Records Unit office?

Glen

From: Mona, Ernie@Waterboards [<mailto:Ernie.Mona@waterboards.ca.gov>]
Sent: Thursday, November 12, 2015 5:47 PM
To: Glen Hansen
Cc: Tauriainen, Andrew@Waterboards; Buckman, Michael@Waterboards
Subject: RE: Fahey ACL/CDO Hearing - Curtailment re Water Rights A029977 and A031491

Glen,
I will be in tomorrow early and I will take the files down to the Division's Records Unit located on the 2nd floor with instruction that you will be coming by to review the files...Just go directly to the Records Unit office any time...the files will be in one box...

Ernie

From: Glen Hansen [GHansen@aklandlaw.com]
Sent: Thursday, November 12, 2015 5:38 PM
To: Mona, Ernie@Waterboards
Cc: Sharon Buckenmeyer; Weaver, Nathan@Waterboards; agodwin@MRGB.ORG;
bparis@olaughlinparis.com; anna.brathwaite@mid.org; lwood@olaughlinparis.com;
jonathan.knapp@sfgov.org; Buckman, Michael@Waterboards; Diane Kindermann Henderson; Lisa Haddix; Tauriainen, Andrew@Waterboards
Subject: RE: Fahey ACL/CDO Hearing - Curtailment re Water Rights A029977 and A031491

Mr. Mona:

In preparation for the hearing in the above matter, we need to review the Permit files for Water Rights A029977 and A031491 (Scott Fahey/Sugar Pine Spring Water LP), dated 2012 to the present. I am informed by Andrew Tauriainen, an attorney with the Office of Enforcement, State Water Resources Control Board, that the Permit files are maintained by the Permitting Unit, and usually housed in the Records Unit at the State Board headquarters. However, according to Mr. Tauriainen, the files have been checked out by you. Please let me know a mutually convenient time when this office could review those files.

Thank you for your cooperation in this matter.

Glen C. Hansen
Senior Counsel
Email: ghansen@aklandlaw.com



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Tauriainen, Andrew@Waterboards

From: Dan Cucchi <DCucchi@aklandlaw.com>
Sent: Friday, November 20, 2015 8:11 AM
To: Jay, Matthew@Waterboards
Cc: Tauriainen, Andrew@Waterboards
Subject: Re: Fahey Investigation Docs
Attachments: image006.png; image007.jpg

Hi Matthew,

I'm here at the records room. The gentleman working here thinks you need to be here for access.

Please let me know.

Dan

Sent from my iPhone

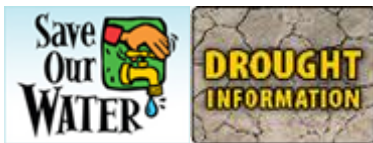
On Nov 19, 2015, at 4:46 PM, Jay, Matthew@Waterboards <matthew.jay@waterboards.ca.gov> wrote:

Dan,

I would recommend leaving about 1-2 hours open for this transfer to complete as upload speeds may vary. As a point of reference, we recently allowed the public to download a 16GB package of documents, and most transfers took about 20-30 minutes to complete with high speed devices. The file room is open tomorrow from 8am-4:30pm, so feel free to drop by with the hardware at your convenience and we can get it started for you.

I can be reached at (916) 341-5396 if you have any additional questions.

Matthew Jay
Staff Services Analyst/IT Liaison
Division of Water Rights
Records Unit
916-341-5396



From: Dan Cucchi [<mailto:DCucchi@aklandlaw.com>]
Sent: Thursday, November 19, 2015 2:11 PM
To: Tauriainen, Andrew@Waterboards
Cc: Sharon Buckenmeyer; Jay, Matthew@Waterboards; Petruzzelli, Kenneth@Waterboards
Subject: RE: Fahey Investigation Docs

Thanks Andrew.

Matthew,

Any thoughts? I know everything is an estimate here, but I just want to know if it's something I should consider blocking out a chunk of time for or if I could say pop over this afternoon and get it transferred in a reasonable amount of time.

Dan

Daniel S. Cucchi
Dcucchi@aklandlaw.com

<image001.jpg>

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From: Tauriainen, Andrew@Waterboards [<mailto:Andrew.Tauriainen@waterboards.ca.gov>]

Sent: Thursday, November 19, 2015 2:05 PM

To: Dan Cucchi

Cc: Sharon Buckenmeyer; Jay, Matthew@Waterboards; Petruzzelli, Kenneth@Waterboards

Subject: RE: Fahey Investigation Docs

Totals approximately 106gb. I don't know the computer equipment in the Records Unit, nor specifically the usb speeds there. You'll have to check with Matthew Jay about that. Also, please note that Ken Petruzzelli is now the Prosecution Team lead counsel on this matter. Mr. Jay and Mr. Petruzzelli are copied here.

Andrew Tauriainen, Attorney III
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
tel: (916) 341-5445
fax: (916)341-5896
atauriainen@waterboards.ca.gov

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From: Dan Cucchi [<mailto:DCucchi@aklandlaw.com>]
Sent: Thursday, November 19, 2015 1:41 PM
To: Tauriainen, Andrew@Waterboards
Cc: Sharon Buckenmeyer
Subject: RE: Fahey Investigation Docs

Hi Andrew,

I am trying to fit this in here shortly and was wondering if you have any thoughts on how long you would expect the transfer to take. We have a brand new USB 3.0 backup storage drive (200GB).

Any thoughts on how much time I may need to plan for would be appreciated.

Dan

Daniel S. Cucchi
Dcucchi@aklandlaw.com

<image001.jpg>

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From: Sharon Buckenmeyer
Sent: Thursday, November 19, 2015 1:35 PM
To: Dan Cucchi
Subject: FW: Fahey Investigation Docs

Sharon Buckenmeyer
Abbott & Kindermann, LLP

From: Tauriainen, Andrew@Waterboards [<mailto:Andrew.Tauriainen@waterboards.ca.gov>]
Sent: Wednesday, October 28, 2015 4:14 PM
To: Sharon Buckenmeyer
Cc: Diane Kindermann Henderson; Glen Hansen
Subject: Fahey Investigation Docs

Please see attached. You'll need to bring a large usb storage device (at least 110gb) to the Cal/EPA building (2nd floor, SWRCB Records Unit) for copies of the surveillance footage. Please let me know when you think you'll be there and I'll let the Records Unit staff know.

Andrew Tauriainen, Attorney III

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