

G. SCOTT FAHEY AND SUGAR PINE SPRING WATER LP – ADMINISTRATIVE CIVIL LIABILITY (ACL) CEASE AND DESIST ORDER (CDO) HEARING

JANUARY 25-26, 2016

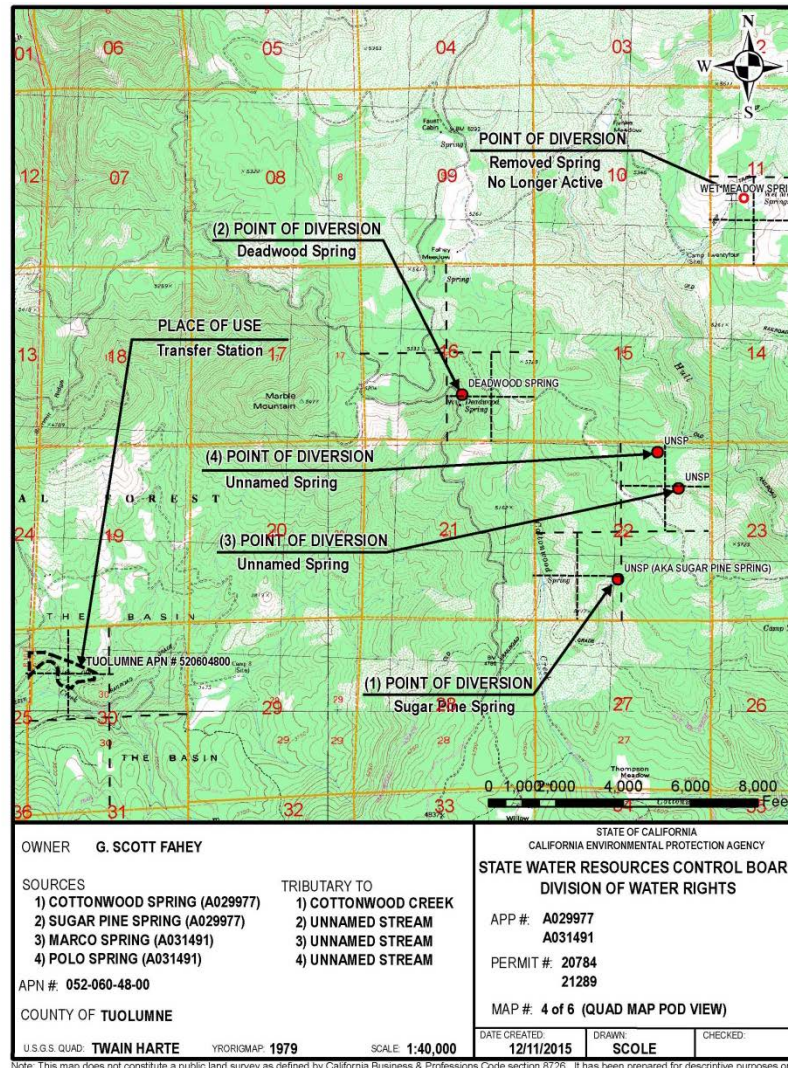
*Katherine Mrowka, P.E.
State Water Resources Control Board,
Division of Water Rights*

*Witness for the Prosecution Team
PT EXHIBIT WR-*

Fahey's Water Rights

- Two water rights - Permit 20784 (Application A029977) and Permit 21289 (Application A031491)
- Diverts water in the Tuolumne River watershed from four springs that are ultimately tributary to the Tuolumne River upstream of New Don Pedro Reservoir
- Permits together authorize diversion up to 109.32 acre-feet of water annually at up to 0.151 cfs, year-round
- Beneficial use – Industrial use at one or more bottled water plants
- No record of other water rights

Fahey's Diversions and Place of Use



Fahey's Diversions and Place of Use



Permit 20784

- Priority date July 12, 1991
- Divert from Cottonwood Spring and Deadwood Spring
- Season January 1-December 31
- Total combined rate 0.062 cfs
- Total combined amount up to 44.82 af/year
- Industrial Use for bottling

Term 19 – Fully Appropriated Stream Condition

- Term 19 included as a condition for accepting Fahey's application
- Sacramento-San Joaquin Delta watershed upstream of the Delta and the Tuolumne River upstream from New Don Pedro Reservoir fully appropriated: June 16-October 31
- SWRCB may accept applications on fully appropriated streams if applicant will make water available under exchange agreement

Exchange Agreements

- Essentially a water transfer from a source not hydraulically connected to senior water right holders
- Allows SWRCB to issue a permit despite unavailable water under FAS
- Water provided under transferor's right
- An exchange agreement does not change water right priority
- Does not bind SWRCB in administering water rights

Term 19 Compliance

- No water available under permits during FAS period
- Exchange Agreement with the Turlock Irrigation District and Modesto Irrigation District (Districts) in 1992
- Under Exchange Agreement Fahey shall purchase water to offset FAS diversion
- Applies every year

Term 20 – Protecting Senior Rights

- Fahey shall provide replacement water to New Don Pedro Reservoir for water diverted adverse to the prior rights of San Francisco and the Districts
- May provide in advance for future credit.
- Shall consider duties under Exchange Agreement
- Reflects junior priority

Water Purchase Agreement

- Fahey purchased replacement water from Tuolumne Utilities District (TUD)
- Agreements in 2003, 2009, and 2010
- Agreements each last until the end of their calendar year
- No agreements in 2014 or 2015

Permit 21289

- Priority date January 28, 2004
- Divert from Marco Spring and Polo Spring
- Season January 1-December 31
- Total combined rate 0.089 cfs
- Total combined amount up to 64.5 af/year
- Industrial Use for bottling

Permit 21289 Terms

- Cannot divert under this more junior right absent an ongoing showing there is water available under the priority of the right
- Therefore had to agree to obtain Exchange Agreement as a condition for submitting his application
- Term 34 similar to Term 20 in Permit 20789 and also requires consideration of Exchange Agreement

Other Permit Terms

Both permits -

- Subject to prior rights
- In some years water will not be available for diversion during parts or all of the authorized season
- Standard terms 80, 90, and 93 (Permit 20784 only has Term 90)

Water Code section 1055.3

Considerations

Complaint recommends ACL of \$224,875.

Under Water Code § 1055.3, the State Water Board must consider all relevant factors, including, but not limited to –

- The extent of harm caused by the violation;
- The nature and persistence of the violation;
- The length of time over which the violation occurs; and
- The corrective action, if any, taken by the violator