

Weaver, Nathan@Waterboards

From: Howard, Tom@Waterboards </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=HOWARD, TOM@WATERBO97BB8206-7061-4BF7-B503-158A6481C1EA139>
Sent: Monday, August 31, 2015 11:11 AM
To: WB-EXEC-BoardMembers
Subject: Fwd: Delegated Authority Action
Attachments: image003.png; ATT00001.htm; ATT00002.htm; Fahey ACL.pdf; ATT00003.htm; Fahey draft CDO.pdf; ATT00004.htm; Fahey IO.pdf; ATT00005.htm

FYI

Sent from my iPhone

Begin forwarded message:

From: "O'Hagan, John@Waterboards" <John.O'Hagan@waterboards.ca.gov>
Date: August 31, 2015 at 10:41:51 AM PDT
To: "Howard, Tom@Waterboards" <Tom.Howard@waterboards.ca.gov>, "Trgovcich, Caren@Waterboards" <Caren.Trgovcich@waterboards.ca.gov>, "Evoy, Barbara@Waterboards" <Barbara.Evoy@waterboards.ca.gov>
Cc: "Tauriainen, Andrew@Waterboards" <Andrew.Tauriainen@waterboards.ca.gov>, "Mrowka, Kathy@Waterboards" <Kathy.Mrowka@waterboards.ca.gov>
Subject: Delegated Authority Action

Tom, Caren and Barbara,

Pursuant to obligations under my delegated authority, I am informing you that I intend to issue the attached enforcement actions on Tuesday, September 1 to G. Scott Fahey and Sugar Pine Spring Water, LP, (collectively Fahey). The actions are for alleged unauthorized diversions of water from several springs in the Tuolumne River watershed above New Don Pedro Reservoir. Fahey holds two water right permits that authorizes year-round diversion of water from the springs for industrial uses at bottling water plants located off the property. In 2014 and in 2015, Fahey was notified that there was insufficient water available to continue diversion under the permits. Prior to permitting, Fahey entered in exchange agreement with Turlock and Modesto Irrigation Districts and a letter agreement with the City and County of San Francisco to resolve these agencies protests. The enforcement actions allege that these agreements do not amend or enhance the seniority of Fahey's permits, or preclude the State Water Board from finding that there is insufficient water as related to all other downstream rights. The enforcement actions also allege that Fahey has not submitted annual reports documenting the replacement water provided to New Don Pedro Reservoir, as required.

Based on evidence collected by surveillance of water trucks entering and leaving Fahey's property and Fahey's own reported diversions of water in 2014, I am issuing an ACL complaint and a draft CDO. The ACL alleges 340 days of violation (170 days x 2 permits) in 2014 and 2015 and approximately 22 af of water diverted. A penalty of \$224,875 is proposed based on 170 days of violation. The draft CDO proposed to require immediate cessation of diversions until Fahey is informed otherwise.

I am also recommending that the Deputy Director issue an Informational Order to require Fahey to report diversions and any basis of right that authorizes the diversion of water in 2014 and 2015, confirm compliance with bypass conditions of the permits, document any purchase of replacement water and of all sales of water to bottling water companies in 2014 and 2015.

A press release is also being prepared.

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