
State Water Resources Control Board

December 9, 2015

Via electronic mail to: wrhearing@waterboards.ca.gov

Division of Water Rights
State Water Resources Control Board
Attention: Ernest Mona
PO Box 2000
Sacramento, CA 95814-2000

Re: Fahey ACL/CDO Hearing

Dear Mr. Mona,

The Prosecution Team for the Division of Water Rights (Division) requests that you broaden its motions for protective orders and motions to quash include the December 11, 2015 Notice of Deposition of Sam Cole and all prospective deposition notices and document requests submitted and served by G. Scott Fahey and Sugar Pine Spring Water, LP (Fahey) in connection with *In the Matter of G. Scott Fahey and Sugar Pine Spring Water LP*.

Over the course of the week of December 7, 2015, Fahey has flooded the Prosecution Team and the Division with document requests and deposition notices, each substantially similar to the last, if not exactly identical. In addition to those deposition notices and document requests referenced in the Prosecution Team's December 10 Motion for Protective Order and December 11 Motion to Quash, Fahey has filed two more requests –

1. Notice of Deposition of Sam Cole, a Division staff member, for December 23, 2015. The deposition requests that Mr. Cole bring all documents he possesses that relate to Fahey's water right permits. Fahey has previously asked for this information and these documents at least three times and the Prosecution Team has accommodated each request. (see attached)
2. A request for public records on December 11, 2015. This request is identical to a request submitted to the Division on December 8. The Prosecution Team responded to this request on December 9, 2015. (see attached)

Fahey is clearly using public record requests and the State Water Board's subpoena power for unreasonable, burdensome, and oppressive documents requests. Fahey has had over a month to depose witnesses and has had access to documents for even longer. Only now, a week before the December 16, 2015 deadline to submit evidence has Fahey aggressively sought discovery. The Prosecution Team has already made these documents available to the degree they are not privileged or attorney work product and it will disclose all other documents it intends to use to support its case-in-chief on December 16, 2015.

Fahey has also demanded to depose witnesses the week of Christmas and, so far, at least two prospective deponents have conflicts with planned holiday vacations. The Prosecution Team has met and conferred with Fahey's counsel and requested that Fahey reschedule the depositions, but Fahey has refused. Since the depositions will all occur after December 16, 2015, Fahey can use none of the discovery obtained to support a case-in-chief. At this point, Fahey's discovery requests serve no purpose other than harassment.

The Prosecution Team has thus far responded to each of Fahey's requests individually, but continuing to do so would only further repetition. The Prosecution Team therefore requests that the Hearing Officer quash Fahey's discovery requests, because they are repetitive, oppressive, unreasonable, burdensome, and clearly submitted for the purpose of harassment. In the alternative, the Prosecution Team requests that the Hearing Officer issue a protective order prohibiting further repetitive, irrelevant discovery requests and additionally order Fahey to consolidate further discovery requests and coordinate with the Prosecution Team.

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>	

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

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

NOTICE OF DEPOSITION OF SAMUEL
COLE AND REQUEST FOR
PRODUCTION OF DOCUMENTS

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

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

21 DATE: December 23, 2015
22 TIME: 1:00 p.m.
23 LOCATION: Abbott & Kindermann, LLP
2100 21st Street
24 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.
28

1 DOCUMENT REQUEST

2 NOTICE IS FURTHER GIVEN that the above-described Deponent shall bring and
3 produce at the deposition, at the time and place set out above, the following listed writings and
4 other things identified below.

5 DEFINITIONS

6 As used herein, the following terms have the meaning and significance set forth below,
7 unless otherwise specifically indicated:

8 1. **DOCUMENT.** The terms “**DOCUMENT**” or “**DOCUMENTS**” shall mean and
9 include all written, recorded, or graphic materials, however produced or reproduced, pertaining in
10 any way to the subject matter of this action, including, but not limited to, any and all originals,
11 copies or drafts or any and all of the following: records; written testimonies; drafts; notes;
12 summaries; schedules; drawings; sketches; diaries; reports; memoranda of telephone or in-person
13 conversations by or with any person, or other memoranda; letters; facsimiles, or cables received;
14 electronic mail and voicemail messages; drafts, originals or copies of letters, tapes, transcripts or
15 recordings; photographs, pictures or films; or other graphic, recorded written material of whatever
16 nature and other “writings” of any kind.

17 2. **POSSESSION, CUSTODY OR CONTROL.** Each request extends to any
18 documents in the **POSSESSION, CUSTODY OR CONTROL** of the Board; and/or the
19 Deponent. The document is deemed to be in Deponent’s and/or the Board’s **POSSESSION,**
20 **CUSTODY OR CONTROL**, if it is in the Board’s physical custody, or if it is in the physical
21 custody of any other person and the Board (a) owns such document in whole or in part; (b) has a
22 right by contract, statute, or otherwise to use, inspect, examine or copy such document on any
23 terms; (c) has an understanding, express or implied, that Deponent and/or the Board may use,
24 inspect, examine or copy such document on any terms; or (d) has, as a practical matter, been able
25 to use, inspect, examine or copy such document when Deponent and/or the Board has sought to
26 do so. Such document shall include, without limitation, documents that are in the custody of
27 Deponent and/or the Board’s agents, employees or representatives.

1 3. **YOU, YOUR.** The terms “**YOU**” and “**YOUR**” refer to the Board’s employee
2 Samuel Cole.

3 4. If any requested **DOCUMENT** or thing cannot be produced in full, it shall be
4 produced to the extent possible, indicating what **DOCUMENT** or portion of **DOCUMENTS** are
5 being withheld and the reason such **DOCUMENTS** are being withheld.

6 5. **DOCUMENTS** attached to each other should not be separated.

7 6. **DOCUMENTS** not otherwise responsive to this Request shall be produced if such
8 **DOCUMENTS** support, refer to, relate to, or explain the **DOCUMENTS** which are called for by
9 this Request, or if such **DOCUMENTS** are attached to **DOCUMENTS** called for by this
10 Request.

11 **DOCUMENTS TO BE PRODUCED**

12 1. All **DOCUMENTS** constituting or relating to correspondence (including, but not
13 limited to, letters and emails) from **YOU**, and to **YOU**, relating to Water Right Permit 20784
14 (Application A029977) and Water Right Permit 21289 (Application A031491).

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16 Dated: December 11, 2015

ABBOTT & KINDERMANN, LLP

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18 By: 

Glen C. Hansen
Attorneys for G. Scott Fahey and
Sugar Pine Spring Water, LP

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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 11, 2015, I served the foregoing document(s) described as:

NOTICE OF DEPOSITION OF SAMUEL COLE AND REQUEST FOR PRODUCTION FO 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 11, 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 11, 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

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Via email only

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Via email only

MODESTO IRRIGATION DISTRICT
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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

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

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.

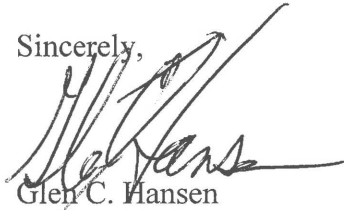
Pursuant to Government Code section 6253(b), the Board may charge the “direct costs” of making the copies. Please send an invoice to our office for any such expenses. In the event that the Board requires a deposit, please fax or email to me the Board’s adopted procedures for deposits and for charging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

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