

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**

**Opposition to G. Scott Fahey and Sugar
Pine Spring Water, LP Revised Notice of
Intent to Appear**

The Prosecution Team, through its undersigned counsel, respectfully requests that the State Water Resources Control Board (Board) Hearing Officer deny the Revised Notice of Intent to Appear submitted by G. Scott Fahey and Sugar Pine Spring Water, LP (collectively “Fahey”) on December 7, 2015.¹

In accordance with Title 23, California Code of Regulations, section 648.4, subdivision (b)², the Hearing Notice required receipt of Notice of Intent to Appear (NOI) by 12:00 noon on Monday, November 9, 2015. (Hearing Notice³, p. 4.) In addition, the Hearing Notice states:

All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral

¹ A true and correct copy of Fahey’s NOI Hearing Notice is available at the State Water Board’s website for the Fahey hearing at http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/fahey/docs/faheyacldo_noi_faheyrevised120715.pdf

² Section 648.4, subdivision (b), states: “The hearing notice may require that all parties intending to present evidence at a hearing shall submit the following information to the Board prior to the hearing: the name of each witness whom the party intends to call at the hearing, the subject of each witness’ proposed testimony, the estimated time required by the witness to present direct testimony, and the qualifications of each expert witness. The required information shall be submitted in accordance with the procedure specified in the hearing notice.” [underlining added].

³ A true and correct copy of the Hearing Notice is available at the State Water Board’s website for the Fahey hearing at http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/fahey/docs/notice_fahey.pdf.

testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed up to **(20) minutes** to summarize or emphasize their written testimony on direct examination. Each party will be allowed up to **one (1) hour total** to present all of its direct testimony.

(Hearing Notice, p. 15.)

The Hearing Notice recognizes no right to submit subsequent, revised NOI's after the November 9, 2015 deadline.

Fahey initially submitted an NOI on November 9, 2015.⁴ The witness list included G. Scott Fahey, Kathy Mrowka, David LaBrie, "Board Staff", possibly Sam Cole, and "others to be determined from pending discovery." It allocated two hours to Mr. Fahey, one hour to Ms. Mrowka, and 30 minutes to Mr. LaBrie.

Fahey submitted the Revised NOI a month after the deadline. At this late date he added two additional witnesses not identified in the initial NOI – Ross Greenwald and Gary Player. In total, the Revised NOI estimates a total of six and a half hours of direct testimony, far in excess of the one hour limit set forth in the Hearing Notice. With witness statements due December 16, 2015, Fahey's Revised NOI comes extremely late and without explanation or justification. The Revised NOI, as with Fahey's first NOI, also estimates time far in excess of that permitted by the Hearing Notice for a Case-in-Chief. The Hearing Notice provides that "The hearing officers may, for good cause, approve a party's request for additional time to present direct testimony during the party's case-in-chief." However, as with submitting the Revised NOI over a month after the deadline, Fahey similarly provides no reason or justification. This is extremely prejudicial to the Prosecution Team, as well as other parties appearing.

For the foregoing reasons, the Prosecution Team requests that the Hearing Officer deny Fahey's Revised NOI.

⁴ A true and correct copy of Fahey's NOI Hearing Notice is available at the State Water Board's website for the Fahey hearing at http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/fahey/docs/faheyaclcdo_noi_fahey10615.pdf.

Dated: December 8, 2015

STATE WATER RESOURCES CONTROL BOARD



By:

Kenneth Petruzzelli
OFFICE OF ENFORCEMENT
Attorney for the Prosecution Team

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>	