

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

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

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