

January 18, 2017

VIA EMAIL AND U.S. MAIL

Division of Water Rights
State Water Resources Control Board
Attention: Ernest Mona
P.O. Box 2000
Sacramento, CA 95812-2000
wrhearing@waterboards.ca.gov

**Re: Fahey ACL/CDO Hearing
Application ID: A029977 and A031491**

Dear Mr. Mona:

The purpose of this correspondence from Scott Fahey and Sugar Pine Spring Water LP (collectively, "Fahey") is to inquire as to the status of the Water Resources Control Board's ("Board") issuance of a decision on the ACL/CDO in this proceeding. Fahey's inquiry is warranted by recent attempts by Intervenor Modesto Irrigation District and Turlock Irrigation District (collectively, "Districts") to interfere with Fahey's performance of the rights and obligations in *Permits For Diversion And Use Of Water Nos. 20784 and 21289* ("Permits") pending the Board's decision in this case.

Fahey is attempting and prepared to perform his 2017 replacement water rights and obligations under those Permits. As shown in the testimony in this administrative proceeding, Fahey "shall provide replacement water to New Don Pedro Reservoir for all water diverted under this permit during the period from June 16 to October 31 of each year," and replacement water may be provided by Fahey "in advance and credited to future replacement water requirements." (R.T., Jan. 26, 2016, 106:13-108:10; F-20, ¶¶19, 20; F-16, p. 252; F-55, ¶34.)

However, the Districts are wrongfully denying Fahey the ability to perform those water replacement rights and duties on the specious grounds that (1) the parties must enter a *new* water replacement agreement (and replace the 1992 Water Replacement Agreement referenced in the permits) before any water replacement is allowed under the Permits in 2017 and into the future; and (2) the Districts will not enter into any such new agreement until the Board issues a ruling on the ACL/CDO in this proceeding. In a letter to Fahey, dated December 29, 2016 (a copy of which is enclosed), the Districts stated:

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On two previous occasions the Districts have stated to you that no water will be credited in Don Pedro Reservoir for 2017 and beyond until you have executed a new agreement that restates and supersedes the 1992 Agreement. Without a credit in Don Pedro Reservoir, approved by the Districts, you will not be permitted to divert water during the FASS period.

The State Water Resources Control Board (SWRCB) has not issued a decision regarding In the matter of Administrative Civil Liability issued against G. Scott Fahey and Sugar Pine Spring Water, LP. The districts will not meet with you to discuss a new agreement until after a decision has been rendered in that matter.

Thus, the Districts are blaming their wrongful interference of Fahey's water rights on the Board's delay in issuing a decision in this matter.

More troubling, the Districts' position in their December 29 letter is contrary to what the Districts told the Board in the administrative hearings on January 25-26, 2016. In their Opening Statement to the Board, the Districts expressed their position that

Mr. Fahey's permit [sic] require him to replace any and all water he diverts during the fully appropriated stream period of June 16th through October 31st of each year, and that such an obligation does not require a notification of request to Mr. Fahey *or any other oversight on the part of the districts*, except as provided in the 1992 Water Replacement Agreement between the districts and Mr. Fahey." [R.T., Jan. 25, 2016, 40:19-41:1 (emphasis added).]

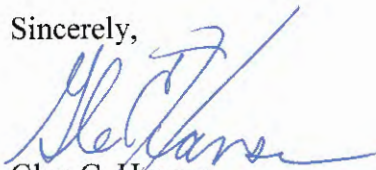
The Districts are no longer following that position that they articulated to this Board.

Because of the Districts' brazen interference with Fahey's performance of the water replacement rights and obligations under the Permits, Fahey has no other option but to submit this letter to the Board. Fahey respectfully requests that the Board either: (1) unequivocally instruct the Districts to allow Fahey to perform the replacement water rights and obligations under the Permits pending the Board's consideration of the ACL/CDO; *or* (2) quickly issue a decision on the pending ACL/CDO. Fahey will incur immediate and irreparable harm if he abides by the Districts' unlawful demands that are articulated in the December 29 letter.

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We look forward to the Board's response and instructions in this matter.

Sincerely,



Glen C. Hansen

GCH/lh

Enclosure

cc: See attached service list



December 29, 2016

G. Scott Fahey
Sugar Pine Spring Water LP
2787 S. Stony Fork Way
Boise, ID 83706-4996

RE: Water rights permits 20784 and 21289

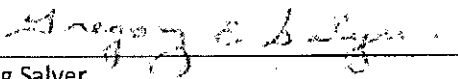
Dear Mr. Fahey:

This letter is in response to your letter of December 6, 2016.

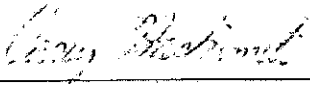
1. As we have stated previously, before the districts can proceed with any type of arrangement with you in 2017, we must have an independent verification of the losses between the Tuolumne Utilities District point of release and Don Pedro Reservoir. Your own assessment is not sufficient.
2. The State Water Resources Control Board (SWRCB) has not issued a decision regarding *In the matter of Administrative Civil Liability issued against G. Scott Fahey and Sugar Pine Spring Water, LP*. The districts will not meet with you to discuss a new agreement until after a decision has been rendered in that matter.
3. The 1992 agreement is unchanged and is still in effect. There have been no changes, amendments, or modifications to the agreement. Any subsequent actions by the SWRCB concerning your water rights have not altered that agreement. TID's letter of March 18, 2011, did not alter the agreement, nor did the January 26, 2004 SWRCB memo to file. Furthermore, there is no "MID-TID-CCSF-Fahey" water exchange agreement, nor a "2016 'physical solution'." The Fahey-TUD water exchange agreement does not alter the 1992 agreement with the Districts, nor does your unilateral interpretation of your water right permit obligations.
4. On two previous occasions the Districts have stated to you that no water will be credited in Don Pedro Reservoir for 2017 and beyond until you have executed a new agreement that restates and supersedes the 1992 Agreement. Without a credit in Don Pedro Reservoir, approved by the Districts, you will not be permitted to divert water during the FASS period.

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The Districts have tried to accommodate you and your operations but we cannot continue to have you infer that you have any rights beyond what is contained in the 1992 Agreement and the two water right permits issued by the SWRCB for Permits 20784 and 21289.



Greg Salyer
General Manager
Modesto Irrigation District



Casey Hashimoto, P.E.
General Manager
Turlock Irrigation District

cc MID/TID Administrative Files
Kenneth P. Petruzzelli, SWRCB
✓ Diane G. Kindermann
Glen C. Hansen
Bart Barringer
Jonathan Knapp
Robert E. Donlan
Arthur F. Godwin

1 SERVICE LIST

2
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