

Mona, Ernie@Waterboards

From: Tauriainen, Andrew@Waterboards
Sent: Friday, January 22, 2016 10:30 AM
To: Glen Hansen; Petruzzelli, Kenneth@Waterboards; Unit, Wr_Hearing@Waterboards; Diane Kindermann Henderson; bbarringer@mblaw.com; agodwin@MRGB.ORG; Bill Paris; anna.brathwaite@mid.org; lwood@olaughlinparis.com; red@eslawfirm.com; jonathan.knapp@sfgov.org
Cc: Prager, John@Waterboards; O'Hagan, John@Waterboards; Mrowka, Kathy@Waterboards
Subject: RE: Fahey ACL/CDO Hearing

Mr. Hansen:

This email provides the Prosecution Team's response to your email below, and is copied to the Hearing Team and all parties.

You refer to "documents" as plural, although you submitted two copies of the same notice from the Assistant Deputy Director, one from Mr. O'Hagan and one forwarding Mr. O'Hagan's notice from the Executive Director to the Board.

The Prosecution Team considers the original notice from Mr. O'Hagan to be outside the scope of your document requests. Assuming *arguendo* that the notice is somehow within the scope of any of your requests, the Prosecution Team considers the original notice from Mr. O'Hagan to be privileged, and thus was not obligated to disclose it. The Prosecution Team was never aware of the email from Mr. Howard to the Board, and as such was under no obligation to disclose that email. It appears that someone outside of the Prosecution Team disclosed the notice such that both emails reached you. The Prosecution Team was not aware of that disclosure, and as such was under no obligation to disclose the original notice.

Moreover, the notice emails do not fall under any of the nine categories described in your December 7, 2015, Public Records Act request. The pro-forma notice was prepared after the decision to file an enforcement action, as is required under the delegation of authority to the Assistant Deputy Director for Water Rights. The notice has nothing to do with the investigation. The notice does not support the enforcement action. The notice not state any information not already described in the enforcement action. The notice does not relate in any way to witness preparation for hearing. The notice does not relate to permitting issues, and these notice are not included in Permit Files.

Your implied accusation of unlawful withholding of documents by the Prosecution Team is not well received. The Prosecution Team has been exceedingly open with its records in this matter, disclosing the relevant records months ago, before having been asked, and certainly before having been required to do so. Your numerous and repetitive document requests have cost significant staff time and resources, and have not helped prepare this matter for hearing.

It is not necessary for the Prosecution Team to update yesterday's letter confirming complete disclosure of non-privileged records.

Andrew Tauriainen, Attorney III
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From: Glen Hansen [mailto:GHansen@aklandlaw.com]

Sent: Thursday, January 21, 2016 8:34 PM

To: Petruzzelli, Kenneth@Waterboards; Unit, Wr_Hearing@Waterboards; Diane Kindermann Henderson; bbarringer@mblaw.com; agodwin@MRGB.ORG; Bill Paris; anna.brathwaite@mid.org; lwood@olaughlinparis.com; red@eslawfirm.com; jonathan.knapp@sfgov.org

Cc: Tauriainen, Andrew@Waterboards; Prager, John@Waterboards; O'Hagan, John@Waterboards; Mrowka, Kathy@Waterboards

Subject: RE: Fahey ACL/CDO Hearing

Everyone:

The undersigned counsel for Fahey finds the email and attached letter response from the Prosecution Team, below, unacceptable and of doubtful credibility. Attached are documents that we were just made aware of and received this afternoon from a third party. To our understanding, the attached documents were never produced or made available by the Prosecution Team to Fahey and are highly relevant in this proceeding. They also fit within the parameters of the Hearing Officers' instructions in the Order that was issued earlier today. If we are incorrect and these were already produced to Fahey, please provide us evidence of the date and method of production of these documents. Assuming we are correct, we hereby demand that the Prosecution Team follow the Hearing Officers' instructions more thoroughly and completely and provide all documents that the Hearing Officers required to be produced. Wrongfully withholding such documents is unlawful, patently unfair and violate Fahey's due process rights in this proceeding.

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From: Petruzzelli, Kenneth@Waterboards [<mailto:Kenneth.Petruzzelli@Waterboards.ca.gov>]

Sent: Thursday, January 21, 2016 7:35 PM

To: Unit, Wr_Hearing@Waterboards; Diane Kindermann Henderson; Glen Hansen; bbarringer@mblaw.com; agodwin@MRGB.ORG; Bill Paris; anna.brathwaite@mid.org; lwood@olaughlinparis.com; red@eslawfirm.com; jonathan.knapp@sfgov.org

Cc: Tauriainen, Andrew@Waterboards; Prager, John@Waterboards

Subject: Fahey ACL/CDO Hearing

Dear Mr. Mona,

Please see the attached correspondence from the Prosecution Team regarding the *Hearing Officer's Partial Ruling on Prosecution Team's December 10 and December 11 Motions for Protective Order or, Alternatively, Motions to Quash; Fahey's Opposition; and Fahey's December 18 Motion to Compel Depositions and Document Disclosures*. The Prosecution Team is not aware of the existence of any documents meeting any of the criteria listed on page 10 of the Hearing Officer's partial ruling.

Sincerely,

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