

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
6

7

8

BEFORE THE STATE OF CALIFORNIA

9

STATE WATER RESOURCES CONTROL BOARD

10

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

DECLARATION OF GLEN HANSEN IN
SUPPORT OF OPPOSITION TO THE
PROSECUTION TEAM'S MOTIONS FOR
PROTECTIVE ORDERS / TO QUASH,
AND MOTION TO COMPEL
DEPOSITIONS AND DOCUMENT
DISCLOSURES OF:

- (1) KATHERINE MROWKA;
- (2) DAVID LaBRIE;
- (3) THE PERSON MOST
KNOWLEDGEABLE; AND
- (4) SAMUEL COLE

16

17

18

19

20

21

22

23

24

25

26

27

28

1 I, Glen Hansen, declare:

2 1. I am a Senior Counsel in the law firm of Abbott & Kindermann, LLP, counsel of
3 record for G. Scott Fahey and Sugar Pine Spring Water, LP in the above-entitled proceeding.

4 2. On October 28, 2015, I received the Prosecution Team's disclosure of the non-
5 privileged portions of the Prosecution Team's investigative file, and the water permit files. On
6 November 1, 2015, I sent an email to Andrew Tauriainen, of the Prosecution Team, in which I
7 explained that the Prosecution Team's disclosures did not contain relevant documents from 2012
8 through September 2015. It seemed unimaginable that there would be no non-privileged internal
9 communications among Board Staff regarding Fahey's written and timely responses to the 2014
10 or 2015 curtailment notices, which responses demonstrated a legally and factually valid
11 exemption from the Board's curtailment orders. Accordingly, I requested assistance from the
12 Prosecution Team in locating such relevant documents that appeared to be missing from the
13 Prosecution Team's disclosures.

14 3. Later on November 13, 2015, I received an email from Mr. Tauriainen with
15 additional documents identified in the file, in which email he stated to me that all records that the
16 Prosecution Team was aware of, other than privileged documents, were provided.

17 4. On November 20, 2015, my office retrieved the electronic file from the Board's
18 Records Unit. This office confirmed during the week of November 23, 2015, that there were
19 insufficient relevant documents or correspondence included for the 2012 – September 2015
20 timeframe.

21 5. In response to the absence of such documents in the Prosecution Team's
22 disclosures, I sent a Demand for Production of Documents to the Prosecution Team on December
23 1, 2015, for relevant documents related to: (1) the Board's process for handling water right holder
24 responses to the 2014 and 2015 Curtailment Certification Forms; (2) violations of required
25 discharges from New Don Pedro Reservoir during the curtailment periods; and (3)
26 correspondence involving David LaBrie and Samuel Cole.

27 6. On December 2, 2015, I had a phone call with Kenneth Petruzzelli, of the
28 Prosecution Team, regarding the documents requested by Fahey. Mr. Petruzzelli indicated that

1 emails of Board staff regarding this administrative enforcement proceeding against Fahey were or
2 could have been destroyed, and were or could be continuing to be destroyed even months after the
3 Administrative Civil Liability Complaint (“ACL”) was filed in this matter. While Mr. Petruzzelli
4 asserted that the Prosecution Team believed that Fahey’s requested documents were not relevant,
5 he also stated that the Prosecution Team would provide written responses to Fahey’s discovery
6 requests. During that phone conversation, I did not engage in any argument about the Prosecution
7 Team’s relevancy objection, but instead decided to wait for the promised written response from
8 the Prosecution Team and formally reply to that.

9 7. Later on December 2, 2015, I sent a follow-up email to Mr. Petruzzelli asking for
10 further clarification as to the past, and potentially ongoing, destruction of relevant emails by
11 Board staff. I wrote:

12 As I reflect on our phone conversation this morning, I need to confirm
13 something that I believe you said. Is it true that all staff emails about the
14 Fahey matter that were sent and received before September 1, 2015, have
15 been deleted by the Board, and that such deletions took place during the
16 time the Prosecution Attorney became “involved in late July” (your
17 words), and during the time that the Board was preparing the “Order for
18 Additional Information” that was eventually served on Fahey on
19 September 1, 2015?

20 Also, did destruction of staff emails regarding the Fahey matter continue
21 during and after the ACL was served, until today?

22 Did the Board immediately preserve all of the staff emails on the Fahey
23 matter (going back 90 days) at the time it began formal proceedings
24 against Fahey on September 1, 2015? If so, then you should have staff
25 emails dating back to at least June 1, 2015.

26 Also, please immediately provide us with a privilege log. Our experience
27 is that even emails between staff and attorneys that are themselves
28 privileged or contain work product often have attached to them earlier
29 emails between staff that are not privileged (and so the longer preservation
30 rule for attorney emails has the effect of preserving the earlier staff emails
31 that would otherwise have been deleted). That is why a privilege log is
32 needed.

33 Please respond to these questions as soon as possible in order that we
34 might consider whether Fahey has a spoliation of evidence claim/defense
35 against the Board in its prosecution of this matter. We need to determine
36 whether, at the same time the Board was demanding relevant documents
37 from Fahey (on September 1, 2015) it was permanently deleting its own
38 internal staff emails on the same adjudicative enforcement matter
39 involving Fahey.

1 A true and correct copy of the December 2, 2015, email is attached to this declaration as

2 **Exhibit 1.**

3 8. On December 3, 2015, Mr. Petruzzelli sent an email to me in which he stated that
4 the Prosecution Team was preparing a response to Fahey's Demand for Document Production and
5 the issues raised in my email from December 2, 2015.

6 9. Having not yet received the promised written response from the Prosecution Team
7 (and with the deadline for discovery cutoff rapidly approaching), I sent a Public Records Act
8 Request to the Board on December 7, 2015, in which I formally requesting the documents
9 described in the December 1, 2015, Demand for Production of Documents, including copies of
10 any correspondence between David LaBrie, Samuel Cole and any third party related to this
11 matter.

12 10. On December 8, 2015, Mr. Petruzzelli sent an email to me in which fe finally
13 provided the Prosecution Team's written response to Fahey's document demands, which response
14 was promised in the phone call on December 2, 2015. In that email, the Prosecution Team
15 confirmed, for the first time, that emails of non-management staff that was older than 90 days
16 were deleted. In other words, staff emails relevant to this matter and sent or received prior to
17 September 1, 2015, could have been deleted on an ongoing basis for months after the ACL was
18 filed. The Prosecution Team also stated that not until December 3, 2015 (after my email of
19 December 2, attached as Exhibit 1), was a "litigation hold" placed on all related communications
20 to avoid further deletion of relevant, non-privileged communications. Furthermore, Mr.
21 Petruzzelli denied Fahey's request for a privilege log, stating that "they are burdensome and
22 oppressive."

23 11. The Prosecution Team's December 8, 2015, written response also included
24 additional responsive disclosures, including a June 18, 2015, email from David LaBrie to Taro
25 Murano and Laura Lavallee, which was sent during the timeframe in which all emails were
26 purported to have been destroyed. A true and correct copy of the December 8, 2015, disclosure is
27 attached to this declaration as **Exhibit 2.**

28 12. Facing a looming discovery cutoff deadline, and recognizing the likelihood of

1 missing relevant documents in the Prosecution Team's disclosures (including such things as
2 missing staff emails), this office served Notices of Deposition to Katherine Mrowka and David
3 LaBrie on December 9, 2015.

4 13. Mr. Petruzzelli responded to me by email on December 10, 2015, suggesting the
5 possibility that the deposition of David LaBrie could be delayed to accommodate LaBrie's
6 vacation. I responded by email with my concerns over the Prosecution Team's positions in
7 previous adjudications to Move to Quash depositions that fail to meet the procedural timelines
8 under the Civil Discovery Act. The Prosecution Team's counsel then foreclosed any opportunity
9 to meet and confer to resolve my concern; Mr. Petruzzelli responded in an email that there was no
10 need for the depositions and demanded withdrawal of the deposition notices or they would move
11 to quash.

12 14. I subsequently served the final two Notices of Deposition for the Person Most
13 Knowledgeable and Samuel Cole on December 10 and December 11, 2015, respectively, in order
14 to meet the discovery cutoff deadline. A true and correct copy of the December 10 and 11, 2015,
15 Notices of Deposition of the Person Most Knowledgeable and Samuel Cole are attached to this
16 declaration as Exhibit 3.

17 15. On December 10, 2015, the Prosecution Team served its Motion For Protective
18 Order/Motion To Quash Fahey's Notice of Deposition for Katherine Mrowka and David LaBrie.

19 16. On December 11, 2015, the Prosecution Team expanded its alternative instant
20 motion to include the Notice of Deposition of Person Most Knowledgeable.

21 17. On December 14, 2015, the Prosecution Team served its final augmented motion
22 encompassing all current and future discovery requests by Fahey, including the Notice of
23 Deposition for Samuel Cole.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct. Executed on December 18, 2015, at Sacramento, California.

26
27 

28
Glen Hansen

EXHIBIT 1

Lisa Haddix

From: Petruzzelli, Kenneth@Waterboards <Kenneth.Petruzzelli@Waterboards.ca.gov>
Sent: Thursday, December 03, 2015 1:21 PM
To: Glen Hansen
Subject: RE: G. Scott Fahey and Sugar Pine Spring Water, LP - ACL/CDO Hearing - Demand For Production of Documents

Hi Glen,

I am preparing a response to your demand for production of documents, including a response to some of the issues you raised in the email below.

Kenneth Petruzzelli, Senior Attorney
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
tel: (916) 319-8577
fax: (916) 341-5896
kenneth.petruzzelli@waterboards.ca.gov

From: Glen Hansen [<mailto:GHansen@aklandlaw.com>]
Sent: Wednesday, December 02, 2015 4:42 PM
To: Petruzzelli, Kenneth@Waterboards
Cc: Weaver, Nathan@Waterboards; Buckman, Michael@Waterboards; Tauriainen, Andrew@Waterboards; Mona, Ernie@Waterboards; Bill Paris; Diane Kindermann Henderson; Brathwaite, Anna; Linda Wood; jonathan.knapp@sfgov.org; Bart Barringer (bbarringer@mblaw.com); agodwin@MRGB.ORG; O'Hagan, John@Waterboards
Subject: RE: G. Scott Fahey and Sugar Pine Spring Water, LP - ACL/CDO Hearing - Demand For Production of Documents

Mr. Petruzzelli:

As I reflect on our phone conversation this morning, I need to confirm something that I believe you said. Is it true that all staff emails about the Fahey matter that were sent and received before September 1, 2015, have been deleted by the Board, and that such deletions took place during the time the Prosecution Attorney became "involved in late July" (your words), and during the time that the Board was preparing the "Order for Additional Information" that was eventually served on Fahey on September 1, 2015?

Also, did destruction of staff emails regarding the Fahey matter continue during and after the ACL was served, until today?

Did the Board immediately preserve all of the staff emails on the Fahey matter (going back 90 days) at the time it began formal proceedings against Fahey on September 1, 2015? If so, then you should have staff emails dating back to at least June 1, 2015.

Also, please immediately provide us with a privilege log. Our experience is that even emails between staff and attorneys that are themselves privileged or contain work product often have attached to them earlier emails between staff that are not privileged (and so the longer preservation rule for attorney emails has the effect of preserving the earlier staff emails that would otherwise have been deleted). That is why a privilege log is needed.

Please respond to these questions as soon as possible in order that we might consider whether Fahey has a spoliation of evidence claim/defense against the Board in its prosecution of this matter. We need to determine whether, at the same

time the Board was demanding relevant documents from Fahey (on September 1, 2015) it was permanently deleting its own internal staff emails on the same adjudicative enforcement matter involving Fahey.

Glen C. Hansen
Senior Counsel

Email: ghansen@aklandlaw.com



2100 21st Street | Sacramento, CA 95818

tel: (916) 456-9595 | fax: (916) 456-9599

website | blog | email

This electronic message transmission contains information from the law firm of Abbott & Kindermann, LLP which may be confidential or privileged. Recipients should not file copies of this e-mail with publicly accessible records. The information is intended to be for the use of the individual(s) named above. If you are not the intended recipient, please be aware that any disclosure, copying, distribution or use of the contents of this message is prohibited.

Abbott & Kindermann, LLP Circular 230 Notice: To ensure compliance with IRS requirements, we inform you that any U.S. federal tax advice contained in this communication is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of avoiding any federal tax penalties. Any legal advice expressed in this message is being delivered to you solely for your use in connection with the matters addressed herein and may not be relied upon by any other person or entity or used for any other purpose without our prior written consent.

From: Glen Hansen

Sent: Wednesday, December 02, 2015 1:08 PM

To: 'Petruzzelli, Kenneth@Waterboards'

Cc: 'Weaver, Nathan@Waterboards'; 'Buckman, Michael@Waterboards'; 'Tauriainen, Andrew@Waterboards'; 'Mona, Ernie@Waterboards'; 'Bill Paris'; Diane Kindermann Henderson; 'Brathwaite, Anna'; 'Linda Wood'; 'jonathan.knapp@sfgov.org'; 'Bart Barringer (bbarringer@mblaw.com)'; 'agodwin@MRGB.ORG'

Subject: RE: G. Scott Fahey and Sugar Pine Spring Water, LP - ACL/CDO Hearing - Demand For Production of Documents

Mr. Petruzzelli:

This email confirms that portion of our phone conversation beginning at 11:22 a.m. this morning, in which you stated that you were not aware of any Board procedures or rules that govern (1) the Motion to Compel made by the Prosecution Team; (2) the manner or time in which the Hearing Officers of the Board will rule on that motion; or (3) the time or manner whereby Fahey may oppose that motion. Nor are we aware of any such procedures, policies or rules that have been implemented or promulgated by the Board that govern that motion – the relevant regulations are simply silent on that issue. The lack of such procedures raises serious Due Process concerns, especially since the Prosecution team served that 141-page motion at 3:33 p.m. on the Wednesday before the long Thanksgiving Holiday Weekend.

Therefore, as I stated to you over the phone, we will provide the Board with our opposition papers to that 141-page motion as expeditiously as we can. We hereby demand a reasonable opportunity to oppose and be heard on that motion, which involves significant constitutional privacy issues.

Glen C. Hansen
Senior Counsel

Email: ghansen@aklandlaw.com



2100 21st Street | Sacramento, CA 95818

tel: (916) 456-9595 | fax: (916) 456-9599

website | blog | email

This electronic message transmission contains information from the law firm of Abbott & Kindermann, LLP which may be confidential or privileged. Recipients should not file copies of this e-mail with publicly accessible records. The information is intended to be for the use of the individual(s) named above. If you are not the intended recipient, please be aware that any disclosure, copying, distribution or use of the contents of this message is prohibited.

Abbott & Kindermann, LLP Circular 230 Notice: To ensure compliance with IRS requirements, we inform you that any U.S. federal tax advice contained in this communication is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of avoiding any federal tax penalties. Any legal advice expressed in this message is being delivered to you solely for your use in connection with the matters addressed herein and may not be relied upon by any other person or entity or used for any other purpose without our prior written consent.

From: Glen Hansen
Sent: Tuesday, December 01, 2015 4:52 PM
To: Petruzzelli, Kenneth@Waterboards
Cc: Weaver, Nathan@Waterboards; Buckman, Michael@Waterboards; Tauriainen, Andrew@Waterboards; 'Mona, Ernie@Waterboards'; Bill Paris; Diane Kindermann Henderson; Brathwaite, Anna; Linda Wood; jonathan.knapp@sfgov.org; Bart Barringer (bbarringer@mblaw.com); agodwin@MRGB.ORG
Subject: RE: G. Scott Fahey and Sugar Pine Spring Water, LP - ACL/CDO Hearing - Demand For Production of Documents

Mr. Petruzzelli:

Attached is a letter with a demand for production of documents served by counsel for Scott Fahey/Sugar Pine Spring Water LP on the State Water Resources Control Board and its Staff. Your immediate response is appreciated.

Glen C. Hansen
Senior Counsel
Email: ghansen@aklandlaw.com



2100 21st Street | Sacramento, CA 95818
tel: (916) 456-9595 | fax: (916) 456-9599
[website](#) | [blog](#) | [email](#)

This electronic message transmission contains information from the law firm of Abbott & Kindermann, LLP which may be confidential or privileged. Recipients should not file copies of this e-mail with publicly accessible records. The information is intended to be for the use of the individual(s) named above. If you are not the intended recipient, please be aware that any disclosure, copying, distribution or use of the contents of this message is prohibited.

Abbott & Kindermann, LLP Circular 230 Notice: To ensure compliance with IRS requirements, we inform you that any U.S. federal tax advice contained in this communication is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of avoiding any federal tax penalties. Any legal advice expressed in this message is being delivered to you solely for your use in connection with the matters addressed herein and may not be relied upon by any other person or entity or used for any other purpose without our prior written consent.

EXHIBIT 2

From: LaBrie, Dave@Waterboards
Sent: Thursday, June 18, 2015 3:50 PM
To: Murano, Taro@Waterboards
Cc: Lavallee, Laura@Waterboards
Subject: RE: Nestle Water Hauler
Attachments: www.uniondemocrat.com_News_Business_Fresh-water-flows-fr.pdf

Taro,

The bottled water operation that we are looking at has two water right permits, **A029977 (P020784)** and **A031491 (P021289)**, held in the name of **G. Scott Fahey**, owner of the **Sugar Pine Spring Water** company. His phone # is **(208)345-5170** and his email address is springwater@cableone.net.

The person at the Stanislaus National Forest headquarters that I spoke with is **Beth H Martinez**, (209) 532-3671 (ext. 321). She is described in the newspaper article as the Forest Supervisor, but is listed in the USFS contacts as Public Service Program Area Leader.

I was unable to gather information on parcels involved due to insufficient ParcelQuest access. ArcGIS Parcel layer for Tuolumne County lists one parcel with a POD as 520300400, but ParcelQuest did not recognize it.

Newspaper article attached.

Dave

From: Murano, Taro@Waterboards
Sent: Wednesday, June 17, 2015 3:07 PM
To: Lavallee, Laura@Waterboards; LaBrie, Dave@Waterboards
Cc: Anderson, Skyler@Waterboards; Cole, Samuel@Waterboards
Subject: Nestle Water Hauler

Could you please provide the parcel number and forest service staff contact information. We would like to do some preliminary research on the location in preparation for the surveillance op. Skyler and Sam will be handling the site recon and surveillance installation.

Taro Murano, Senior Environmental Scientist
Enforcement Unit 5, Division of Water Rights
State Water Resources Control Board
1001 I Street, 14th Floor
Sacramento, CA 95814
Phone: 916-341-5399
Email: tmurano@waterboards.ca.gov

EXHIBIT 3

Lisa Haddix

From: Lisa Haddix
Sent: Thursday, December 10, 2015 2:59 PM
To: Petruzzelli, Kenneth@Waterboards; Unit, Wr_Hearing@Waterboards
Cc: Mona, Ernie@Waterboards; Weaver, Nathan@Waterboards;
andrew.tauriainen@waterboards.ca.gov; Prager, John@Waterboards; Diane Kindermann
Henderson; bbarringer@mblaw.com; agodwin@MRGB.ORG; anna.brathwaite@mid.org;
bparis@olaughlinparis.com; lwood@olaughlinparis.com; jonathan.knapp@sfgov.org;
Sharon Buckenmeyer; Glen Hansen
Subject: Fahey ACL/CDO Hearing - Notice of Deposition of Person Most Knowledgeable
Attachments: 2015-12-10 Notice of Depo to PMK.pdf

All,

Attached please find the following document:

NOTICE OF DEPOSITION OF PERSON MOST KNOWLEDGEABLE OF MATTERS REGARDING G. SCOTT FAHEY AND SUGAR PINE SPRING WATER, LP

Thank you

Lisa Haddix
Litigation Assistant



2100 21st Street | Sacramento, CA 95818
tel: (916) 456-9595 | fax: (916) 456-9599
website | blog | email

This electronic message transmission contains information from the law firm of Abbott & Kindermann, LLP which may be confidential or privileged. Recipients should not file copies of this e-mail with publicly accessible records. The information is intended to be for the use of the individual(s) named above. If you are not the intended recipient, please be aware that any disclosure, copying, distribution or use of the contents of this message is prohibited.

Abbott & Kindermann, LLP Circular 230 Notice: To ensure compliance with IRS requirements, we inform you that any U.S. federal tax advice contained in this communication is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of avoiding any federal tax penalties. Any legal advice expressed in this message is being delivered to you solely for your use in connection with the matters addressed herein and may not be relied upon by any other person or entity or used for any other purpose without our prior written consent.

1 Diane G. Kindermann (SBN 144426)
2 Glen C. Hansen (SBN 166923)
3 ABBOTT & KINDERMANN, LLP
4 2100 21st Street
5 Sacramento, CA 95818
6 Telephone: (916) 456-9595
7 Facsimile: (916) 456-9599

8 Attorneys for
9 G. Scott Fahey and Sugar Pine Spring Water, LP

10 **BEFORE THE STATE OF CALIFORNIA**
11 **STATE WATER RESOURCES CONTROL BOARD**

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

17 **NOTICE OF DEPOSITION OF PERSON**
18 **MOST KNOWLEDGEABLE OF**
19 **MATTERS REGARDING G. SCOTT**
20 **FAHEY AND SUGAR PINE SPRING**
21 **WATER, LP**

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

24 PLEASE TAKE NOTICE that pursuant to Water Code section 1100, Government Code
25 sections 11450.10 and 11450.20, California Code of Civil Procedure section 2025.010 et seq., and
26 the procedures and practices of the State Water Resources Control Board (the "Board"), the
27 deposition of the **PERSON MOST KNOWLEDGEABLE** of the matters listed below will be
28 taken by G. Scott Fahey and Sugar Pine Spring Water, LP (collectively, "Fahey"), upon oral
examination before a certified shorthand reporter of the State of California as follows:

29 DATE: December 23, 2015
30 TIME: 9:00 a.m.
31 LOCATION: Abbott & Kindermann, LLP
32 2100 21st Street
33 Sacramento, CA 95818
34 916-456-9595

35 Said deposition will commence at the above date and time, and continue from day to day
36 thereafter, Sundays and holidays excepted, until completed. Fahey reserves the right to record this
37 deposition by videotape.

1 NOTICE IS FURTHER GIVEN that the matters on which examination is requested are as
2 follows:

- 3 (a) All Curtailment Certification Forms ("Forms") received by the Board from any
4 and all primary owners between April 1, 2014, and July 1, 2015, where the box on
5 the Form for "OTHER I have additional information explaining how much water I
6 am diverting, the use of that water, the measure being undertaken to reduce use,
7 and the basis on which I contend that the diversion and use is legally authorized
8 notwithstanding the very limited amounts of water available during this drought
9 emergency" was marked or checked off;
- 10 (b) All written correspondence from April 1, 2014 and July 1, 2015, between the
11 Board and the Primary Owners of the water right applications who signed the
12 Forms described in item (a), above, which correspondence was made or sent
13 following the submission by the Primary Owners of the Forms; and
- 14 (c) All Board rules, procedures and policies as to how the Board's staff should or is
15 supposed to respond to such Forms described in item (a), above, where the box
16 "OTHER" has been marked or checked off.

17 Pursuant to the provisions of Section 2025.230 of the Code of Civil Procedure, the Board
18 must designate and produce at the deposition one or more of its officers, directors, managing
19 agents, employees, or agents who is/are most qualified to testify on its behalf (collectively,
20 "Persons Most Knowledgeable") as to the above-described matters to the extent of any
21 information known or reasonably available to the Deponent. It is hereby requested that the Board
22 provide prompt notification in writing to the undersigned as to the name, address, telephone
23 number, capacity, and job title of each person so designated to testify and the matters on which
24 this person will testify.

25 Such a deposition of the designated **PERSON MOST KNOWLEDGEABLE** is relevant
26 and necessary in this matter for the following reasons:

- 27 (1) The **PERSON MOST KNOWLEDGEABLE** will provide testimony of
28 the Board's rules, procedures and/or policies regarding how the Board

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

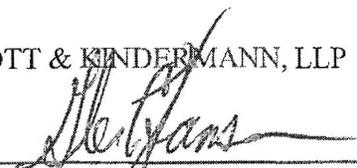
does or should respond to such Forms where the "OTHER" box is marked or checked off;

(2) The **PERSON MOST KNOWLEDGEABLE** will provide testimony as to whether the responses by the Board's staff to Fahey's Forms with the "OTHER" box marked, both in 2014 and 2015 (including the staff responses here that indicated Fahey may have a right to divert, but then failing to provide a definitive answer despite Fahey's requests for a response), complied with those rules, procedures and/or policies; and

(3) The **PERSON MOST KNOWLEDGEABLE** will provide testimony as to whether it is the Board's policy to assess continuing penalties for wrongful diversions for those same time periods when the Board's staff is failing to comply with those rules, procedures and/or policies, including, but not limited to, such time periods (as happened in this matter) when the Board's staff has indicated that a Primary Owner may have a right to divert for the reasons explained on the Form, but the staff fails to provide a definitive answer despite the Primary Owner's requests for such an answer; and

(4) On December 8, 2015, the Prosecution Team announced that it will not provide the information contained in items "(a)" and "(b)" above, in this proceeding, but only in response to a Public Records Act request that the Board will likely respond not respond to until after the hearing in this matter.

Dated: December 10, 2015

ABBOTT & KINDERMANN, LLP
By: 
Glen C. Hansen
Attorneys for G. Scott Fahey and
Sugar Pine Spring Water, LP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 10, 2015, I served the foregoing document(s) described as:

**NOTICE OF DEPOSITION OF PERSON MOST KNOWLEDGEABLE
OF MATTERS REGARDING G. SCOTT FAHEY AND
SUGAR PINE SPRING WATER, LP**

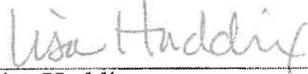
On the parties stated below, by placing a true copy thereof in an envelope addressed as shown below by the following means of service:

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 10, 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 10, 2015, at Sacramento, California.



Lisa Haddix

Lisa Haddix

From: Lisa Haddix
Sent: Friday, December 11, 2015 2:37 PM
To: Petruzzelli, Kenneth@Waterboards; Unit, Wr_Hearing@Waterboards
Cc: Mona, Ernie@Waterboards; Weaver, Nathan@Waterboards;
andrew.tauriainen@waterboards.ca.gov; Prager, John@Waterboards; Diane Kindermann
Henderson; bbarringer@mblaw.com; agodwin@MRGB.ORG; anna.brathwaite@mid.org;
bparis@olaughlinparis.com; lwood@olaughlinparis.com; jonathan.knapp@sfgov.org;
Sharon Buckenmeyer; Glen Hansen
Subject: Fahey ACL/CDO Hearing - Notice of Deposition of Samuel Cole
Attachments: 2015-12-11 Notice of Depo to Samuel Cole.pdf

All,

Attached please find the following document:

NOTICE OF DEPOSITION OF SAMUEL COLE

Thank you

Lisa Haddix
Litigation Assistant



2100 21st Street | Sacramento, CA 95818
tel: (916) 456-9595 | fax: (916) 456-9599
website | blog | email

This electronic message transmission contains information from the law firm of Abbott & Kindermann, LLP which may be confidential or privileged. Recipients should not file copies of this e-mail with publicly accessible records. The information is intended to be for the use of the individual(s) named above. If you are not the intended recipient, please be aware that any disclosure, copying, distribution or use of the contents of this message is prohibited.

Abbott & Kindermann, LLP Circular 230 Notice: To ensure compliance with IRS requirements, we inform you that any U.S. federal tax advice contained in this communication is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of avoiding any federal tax penalties. Any legal advice expressed in this message is being delivered to you solely for your use in connection with the matters addressed herein and may not be relied upon by any other person or entity or used for any other purpose without our prior written consent.

1 Diane G. Kindermann (SBN 144426)
2 Glen C. Hansen (SBN 166923)
3 ABBOTT & KINDERMANN, LLP
4 2100 21st Street
5 Sacramento, CA 95818
6 Telephone: (916) 456-9595
7 Facsimile: (916) 456-9599

8 Attorneys for
9 G. Scott Fahey and Sugar Pine Spring Water, LP

10
11 **BEFORE THE STATE OF CALIFORNIA**
12 **STATE WATER RESOURCES CONTROL BOARD**

13 **IN THE MATTER OF**
14 **ADMINISTRATIVE CIVIL**
15 **LIABILITY COMPLAINT ISSUED**
16 **AGAINST G. SCOTT FAHEY AND**
17 **SUGAR PINE SPRING WATER, LP**

18 **NOTICE OF DEPOSITION OF SAMUEL**
19 **COLE AND REQUEST FOR**
20 **PRODUCTION OF DOCUMENTS**

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

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

DATE: December 23, 2015
TIME: 1:00 p.m.
LOCATION: Abbott & Kindermann, LLP
2100 21st Street
Sacramento, CA 95818
916-456-9595

Said deposition will commence at the above date and time, and continue from day to day thereafter, Sundays and holidays excepted, until completed. Fahey reserves the right to record this deposition by videotape.

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.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

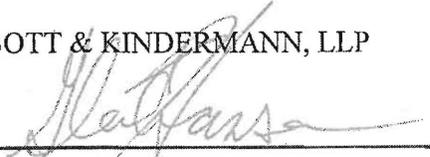
6. **DOCUMENTS** not otherwise responsive to this Request shall be produced if such **DOCUMENTS** support, refer to, relate to, or explain the **DOCUMENTS** which are called for by this Request, or if such **DOCUMENTS** are attached to **DOCUMENTS** called for by this Request.

DOCUMENTS TO BE PRODUCED

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

Dated: December 11, 2015

ABBOTT & KINDERMANN, LLP

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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:

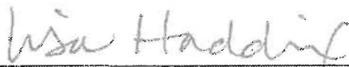
NOTICE OF DEPOSITION OF SAMUEL COLE AND REQUEST FOR PRODUCTION FO DOCUMENTS

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 18, 2015, I served the foregoing document(s) described as:

DECLARATION OF GLEN HANSEN IN SUPPORT OF OPPOSITION TO THE PROSECUTION TEAM'S MOTIONS FOR PROTECTIVE ORDERS / TO QUASH, AND MOTION TO COMPEL DEPOSITIONS AND DOCUMENT DISCLOSURES OF:

- (1) KATHERINE MROWKA;
- (2) DAVID LaBRIE;
- (3) THE PERSON MOST KNOWLEDGEABLE; AND
- (4) SAMUEL COLE

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 18, 2015, before 5:00 p.m. The transmission was reported as complete and without error. [CRC 2.256 (a)(4), 2.260].

BY FEDEX: On the above-mentioned date, I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons listed on the attached service list. I placed the envelope or package for collection and overnight delivery following our ordinary business practices.

BY PERSONAL SERVICE: I placed a true copy in a sealed envelope addressed to each person[s] named at the address[es] shown and giving same to a messenger for personal delivery before 5:00 p.m. on the above-mentioned date.

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct. Executed on December 18, 2015, at Sacramento, California.



Lisa Haddix

1 SERVICE LIST

2
3 Division of Water Rights **Via Email and U.S. Mail**
4 State Water Resources Control Board
5 Attention: Ernest Mona
6 Joe Serna Jr., - CalEPA Building
7 1001 I St., 2nd Floor
8 Sacramento, CA 95814

9 **DIVISION OF WATER RIGHTS** **Via Email**
10 Prosecution Team
11 Kenneth P. Petruzzelli
12 SWRCB Office of Enforcement
13 1001 I Street, 16th Floor
14 Sacramento, CA 95814
15 kenneth.petruzzelli@waterboards.ca.gov

16 **TURLOCK IRRIGATION DISTRICT** **Via Email**
17 Arthur F. Godwin
18 Mason, Robbins, Browning & Godwin, LLP
19 700 Loughborough Drive, Suite D
20 Merced, CA 95348
21 agodwin@mrgb.org

22 **MODESTO IRRIGATION DISTRICT** **Via Email**
23 William C. Paris, III
24 O'Laughlin & Paris LLP
25 2617 K Street, Suite 100
26 Sacramento, CA 95816
27 bparis@olaughlinparis.com
28 anna.brathwaite@mid.org
lwood@olaughlinparis.com

CITY AND COUNTY OF SAN FRANCISCO **Via Email**
Jonathan Knapp
Office of the City Attorney
1390 Market Street, Suite 418
San Francisco, CA 94102
Jonathan.knapp@sfgov.org

Bart Barringer, **Via Email**
Law Offices of Mayol & Barringer
P.O. Box 3049
Modesto, CA 95353
bbarringer@mblaw.com