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

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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 **G. SCOTT FAHEY AND SUGAR PINE**  
19 **SPRING WATER, LP'S RESPONSE TO**  
20 **OPPOSITION TO REVISED NOTICE OF**  
21 **INTENT TO APPEAR**

22 The Prosecution Team filed an Opposition to G. Scott Fahey and Sugar Pine Spring  
23 Water, LP's (collectively, "Fahey") Revised Notice Of Intent To Appear. The Hearing Officers  
24 in this matter should deny and reject that Opposition, and allow the Revised Notice Of Intent To  
25 Appear, for the following four (4) reasons.

26 First, as the Opposition points out, the Revised Notice Of Intent To Appear only adds two  
27 expert witnesses on hydrology. (For example, the declaration of Ross Grunweld (attached)  
28 explains his expertise about hydrology (and the related aspects of geology to that hydrology).)  
*Specifically, Mr. Grunweld and Mr. Player will testify that the water that Fahey is diverting  
consists of 70% percolating groundwater that is not subject to the jurisdiction of the Board and  
the water rights at issue in this matter, and 30% surface water that is jurisdictional and subject to  
the water rights.* That testimony could not be sufficiently obtained and developed within the  
short time frame of September 1, 2015 (when the Administrative Civil Liability was filed) and  
November 9, 2015, when the initial Notice Of Intent To Appear had to be filed. Indeed, key facts  
and evidence supporting that expert conclusion were only first known during that short time

1 frame. In addition, the administrative record was slowly made available by the Prosecution Team  
2 (with portions first made available after November 9, 2015). Thus, simple fairness allows Fahey  
3 the right to amend the original Notice Of Intent To Appear.

4 Second, the Prosecution Team is essentially reserving to itself the same right to change its  
5 notice of intent to appear that it now wants to deny Fahey. In its original Notice Of Intent To  
6 Appear, Fahey listed “Others to be determined from pending Discovery,” and stated: “We retain  
7 the right to amend this Notice because Board records from 2012 to the present are missing and  
8 subject to subpoena.” Based on those statements, Fahey then filed the Revised Notice Of Intent  
9 To Appear as other witnesses and documents became known. (Indeed, even now the Prosecution  
10 Team has not revealed all relevant documents to Fahey, alleging that emails from staff between  
11 June 1, 2015, and September 1, 2015, relating to this matter could have been permanently  
12 deleted.) In its Opposition, the Prosecution Team rejects Fahey’s reservation of rights to amend.  
13 However, that is essentially what the Prosecution Team, itself, is doing. In its notice of intent to  
14 appear, the Prosecution Team reserves the right to “call rebuttal witnesses as necessary.” But  
15 nowhere does the Prosecution Team provide an explicit right to that reservation in the rules. In  
16 other words, simple fairness dictate that both sides may amend its witness list as additional  
17 information and proposed testimony from the other side becomes known and available.

18 Third, the Prosecution Team alleges that filing the Revised Notice Of Intent To Appear is  
19 “extreme prejudicial to the Prosecution Team, as well as other parties appearing.” But there is  
20 absolutely no explanation in the Opposition of what that prejudice is. Indeed, there is none.  
21 Because only expert witnesses are added to the Revised Notice Of Intent To Appear, such experts  
22 may still be deposed under the normal rules in the Code of Civil Procedure closer to the hearing  
23 date; and the revision occurred well before the date to submit the witness testimony and  
24 documents list; and the Prosecution Team reserved the right to call rebuttal witnesses at the  
25 hearing. So there is NO prejudice shown by the Prosecution Team. Again, the Prosecution Team  
26 believes that there is no prejudice in this proceeding if the list of witnesses can be supplemented  
27 even at the hearing itself, in regards to rebuttal witnesses.

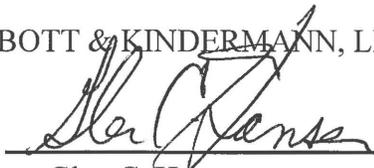
28 Fourth, the time estimates provided in Fahey’s original Notice Of Intent To Appear and

1 the Revised Notice Of Intent To Appear were based on the length of testimony that would be  
2 provided if all of Fahey's witnesses' testimony was orally given. If, however, as the Prosecution  
3 Team asserts in its Opposition, written testimony that is affirmed by the witnesses is considered  
4 direct testimony, and that only oral summaries of the written testimony are necessary on direct  
5 examination, then the time estimates in Fahey's two Notices of Intent to Appear may be reduced  
6 to satisfy the maximum one-hour requirement for the presentation of all direct testimony.  
7 Accordingly, Fahey will comply with that 1-hour requirement for all its direct testimony  
8 (supplemented by written testimony). Fahey therefor requests leave to file a Second Revised  
9 Notice Of Intent To Appear to clarify the actual ORAL testimony times of its direct witness  
10 testimony, the total of which will not exceed 1-hour.

11 Accordingly, the Hearing Officers should deny and reject the Opposition, and allow  
12 Fahey's Revised Notice Of Intent To Appear. Fahey further requests leave to file a Second  
13 Revised Notice Of Intent To Appear to clarify the actual ORAL testimony times of its direct  
14 witness testimony, the total of which will not exceed 1-hour.

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16 Dated: December 10, 2015

ABBOTT & KINDERMANN, LLP

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18 By: 

Glen C. Hansen

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

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**EXPERT DECLARATION**

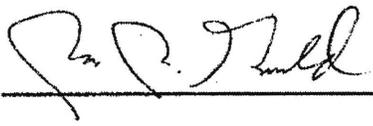
I, Ross R. Grunwald, declare:

1. My education has included a Bachelor of Science and Doctor of Philosophy in geology, a Master of Science in Oceanography, and extensive specific courses in geology, hydrogeology, and environmental characterization and remediation. I am a Registered Professional Geologist in the states of California (#3948), Oregon (#737), and Washington (#1708) and am a Certified Hydrogeologist in California (#269). I have over 50 years' experience in detailed geologic evaluation including extensive studies in environmental characterization, remediation, hydrogeologic evaluation, mineral exploration, and project management. I have worked for major and mid-level companies in positions of responsibility and I have also worked as an individual consultant. In addition I was retained as an expert witness for the United States Bureau of Land Management. My resume is attached to this declaration as Exhibit 1.

2. I am qualified to testify as an expert on, and will generally provide expert witness testimony in this matter regarding, the following subjects: (1) geology and (2) hydrogeology

3. I have agreed to testify about these matters at the administrative hearing in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except as to those matters alleged on information and belief and, as to those matters, I believe them to be true. Executed this 7<sup>th</sup> day of December 2015, at Jamestown, California.

  
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**ROSS R. GRUNWALD, Ph.D.**  
**Registered Professional Geologist**  
**Certified Hydrogeologist**

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P.O. Box 660, Jamestown, CA 95327

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Cell: (209) 743-2415

e-mail: grm@mlode.com

**Education:**

Ph.D. Geology, South Dakota School of Mines and Technology, Rapid City

M.Sc. Oceanography, University of Hawaii at Manoa, Honolulu

B.S. Geology, South Dakota School of Mines and Technology, Rapid City

**Professional Licenses and Registrations:**

Registered Professional Geologist (#3948), Certified Hydrogeologist (#269), California

Registered Professional Geologist (#737), Oregon

Licensed Professional Geologist (#1708), Washington

Member, American Institute of Professional Geologists (#1718)

U.S. Dept. of Labor MSHA Instructor—Underground & Surface

**Professional Affiliations & Committees:**

Member, Society of Sigma Xi

Registered Member, Society for Mining, Metallurgy (#1257400RM), and Exploration--Chairman, Black Hills Section, 1974, Sierra Nevada Section., 1997-99

**Employment History:**

2001 to Present: **GeoResource Management, Jamestown, California**

**PRINCIPAL AND CHIEF CONSULTANT**

Wrote NI 43-101 compliant mineral resource estimate for Sutter Gold project. Identified and evaluated new aggregate resource areas in California and New Mexico. Discovered and estimated reserves for a railroad ballast source in New Mexico that subsequently produced at the rate of 15,000 tons per week. Evaluated gold mines in the People's Republic of China, Cambodia and the Kyrgyz Republic, and directed the recovery and refining of byproduct gold from an aggregate quarry. Conducted studies and wrote reports to certify natural springs for use as bottled spring water, conducted pump tests for ground water sustainability, carried out paleontological investigations, performed surveys relating to land use in the California desert region, and completed Phase I and Phase II environmental assessments. Also, evaluated and remediated ground water contamination of metals and hydrocarbons and designed septic systems for new residential developments.

2011 to Present: **Highland Copper Company** and wholly owned subsidiary **Keweenaw Copper Co., Calumet, MI**

**VICE PRESIDENT-EXPLORATION, 2011 to 2014, SPECIAL CONSULTANT, 2014-Present**

Responsible for overseeing and managing copper exploration projects in Houghton and Keweenaw Counties, Michigan. Managed 30 employees and a budget of \$12 million.

2000 to 2001: **Resource Design Technology, Inc. Folsom, California**

**PROJECT DIRECTOR/PRINCIPAL GEOLOGIST**

Carried out geological and hydrogeological investigations and wrote reclamation plans for aggregate mines located in California. Conducted California Surface Mining and Reclamation Act inspections.

1992 to 2000: **American Geological Services, Inc. Lakewood, Colorado**

**FOUNDER, CHAIRMAN, CHIEF OPERATING OFFICER AND CHIEF SCIENTIST**

Was responsible for business development and management of geologic investigations and environmental projects. Also, was responsible for regulatory compliance and technical oversight of all scientific investigations to insure that all projects were conducted in a timely and professional manner. Was in charge of all exploration and mining, and environmental projects. Insured that the proper personnel were assigned, that QA/QC and Health and Safety procedures were followed, and that the appropriate scientific technology was applied. Carried out mineral resource investigations in the People's Republic of China and Yap State in the Federated States of Micronesia, as well as in California and Nevada.

1987 to 1992: **DRX, Inc.** and wholly owned subsidiaries, **Westland Mineral Exploration Co. and DRX Micronesian Mineral Resource Company, Ltd. Denver, Colorado**

**VICE PRESIDENT AND CHIEF GEOLOGIST**

Planned and supervised a precious metals exploration program with up to thirty employees with five professional geologists in the western Pacific islands of Micronesia. Also directed exploration programs for gold and silver for several projects in the western United States. As a result of these exploration programs, substantial new ore reserves were added to the Company's assets.

1983 to 1987: CONSULTING GEOLOGIST, Sonora, CA

Planned and directed mineral exploration projects in Canada, California, South Carolina, Nevada, and the western Pacific. Wrote key technical reports that were used as the basis for the listing of three companies on the Vancouver Stock Exchange. Supervised geological and hydrological work related to assessment and remediation of leaking underground storage tanks and other contaminated sites in the Central Valley of California. This work included gasoline and other hydrocarbon contaminated sites as well as heavy metals contamination. Was involved in remediation of sites utilizing a number of methods, including vapor extraction systems, bioremediation for soils, carbon adsorption, ion exchange, and air stripping. Also participated in water supply and quality studies for several new housing developments.

1980 to 1983: **Resource Exploration, Inc., Marquette, MI**

PRESIDENT (1981-83), VICE PRESIDENT (1980)

Managed geological consulting firm of up to fifty employees engaged in exploration projects for precious, base metals and coal in areas as far ranging as Michigan, Wisconsin, South Dakota, California, Nevada, Oregon, and Canada. Also managed the de-watering, reconditioning, and underground exploration of the Ropes gold mine that subsequently produced at the rate of 2,200 tons per day.

1979 to 1980: **Hard Rock Mining Company, Breckenridge, CO**

PROJECT MANAGER

Directed the opening and reconditioning of the Gold Crest gold mine for exploratory development. This involved construction of access roads and surface support facilities, a program of test mining, milling the ore at a custom mill and marketing the concentrate.

1978 to 1979: **Homestake Mining Company, Reno, NV**

DISTRICT GEOLOGIST

Managed precious metal exploration project in California. Set up an office and constructed a sample preparation laboratory. Also obtained required permits for a major drilling effort.

1974 to 1978: **Homestake Copper Company, Calumet, MI**

PROJECT MANAGER (1977-78), CHIEF GEOLOGIST (1975-76), RESIDENT GEOLOGIST (1974)

Managed and directed a field exploration program for copper on the Keweenaw Peninsula of Michigan. This program resulted in the discovery of a resource containing 270 million pounds of copper. Also planned and directed underground exploration programs at Centennial #6 and Quincy #8 mines. In addition, developed a geologic program and ore estimating strategy for the Key Project (750 ton per day underground mine and concentrator). Was also responsible for public relations for Homestake Mining Company in Michigan. During this time managed up to 27 employees.

1976 to 1978: **Michigan Technological University, Department of Geology and Geophysics, Houghton,**

ADJUNCT PROFESSOR

Lectured on special topics relating to mining and geology. Also served on several thesis committees.

1970 to 1974: **Homestake Mining Company, Lead, South Dakota**

STAFF GEOLOGIST

Responsible for geology and grade control, ore reserve estimation, diamond drill logging, and surface and underground mapping. Developed a geological model that ultimately led to the discovery of substantial new ore-bearing structures west and north of the main mine.

1966 to 1968: **Hawaii Institute of Geophysics, Honolulu, Hawaii**

ASSISTANT IN GEOPHYSICS

Carried out groundbreaking research on the geochemistry and mineralogy of Hawaiian marine sediments.

Summers of 1961 & 62: **U.S. Geological Survey, Huron, SD**

HYDROLOGIC FIELD ASSISTANT

Participated in a study recharge characteristics of the aquifer in the classic artesian basin in South Dakota.

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**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:

**G. SCOTT FAHEY AND SUGAR PINE SPRING WATER, LP'S RESPONSE TO OPPOSITION TO REVISED NOTICE OF INTENT TO APPEAR**

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](mailto: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.

  
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Lisa Haddix

1 SERVICE LIST

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Division of Water Rights  
State Water Resources Control Board  
Attention: Ernest Mona  
PO Box 2000  
Sacramento, CA 95812-2000

**Via email and U.S. Mail**

Kenneth P. Petruzzelli  
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Sacramento, CA 95814  
Telephone: (916) 319-8577  
Facsimile: (916) 341-5896  
[kenneth.petruzzelli@waterboards.ca.gov](mailto:kenneth.petruzzelli@waterboards.ca.gov)

**Via email only**

**DIVISION OF WATER RIGHTS**  
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[Andrew.Tauriainen@waterboards.ca.gov](mailto:Andrew.Tauriainen@waterboards.ca.gov)

**Via email only**

**TURLOCK IRRIGATION DISTRICT**  
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Mason, Robbins, Browning & Godwin, LLP  
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[agodwin@mrgb.org](mailto:agodwin@mrgb.org)

**Via email only**

**MODESTO IRRIGATION DISTRICT**  
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O'Laughlin & Paris LLP  
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[lwood@olaughlinparis.com](mailto:lwood@olaughlinparis.com)

**Via email only**

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**Via email only**