

EDMUND G. BROWN JR.
GOVERNORMATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

SEP 01 2015

G. Scott Fahey
2787 Stony Fork Way
Boise, ID 83706

Certified Mail No: 7003 1680 0000 2965 9572

Bart Barringer
Agent for Service of Process
Sugar Pine Spring Water LP
1324 J Street
Modesto, CA 95354

Certified Mail No: 7003 1680 0000 2965 9589

APPLICATION ID: A029977 AND A031491 - ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND DRAFT CEASE AND DESIST ORDER FOR UNAUTHORIZED DIVERSION FROM SPRINGS TRIBUTARY TO TUOLUMNE RIVER IN TUOLUMNE COUNTY

Enclosed are: (1) an Administrative Civil Liability Complaint (ACL Complaint) and (2) a draft Cease and Desist Order (CDO), both relating to your unauthorized diversions from springs tributary to the Tuolumne River in Tuolumne County. This letter serves as notice of the intent of the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) to proceed with formal enforcement against you. Specifically, the Division intends to impose the Administrative Civil Liability proposed in the ACL Complaint and adopt the CDO.

You have 20 days from receipt of this notice to act or face additional liability. Therefore, these matters require your immediate attention.

VIOLATION DESCRIPTION

G. Scott Fahey and Sugar Pine Spring Water, LP, own and operate a bulk water filling station located on Tuolumne County Assessor Parcel Number (APN) 052-060-048-00. The water filling station is fed by four springs operated by Fahey under water right Permits 20784 and 21289. These Permits are subject to the April 23, 2015, "Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water in the San Joaquin River Watershed with Post-1914 Appropriative Rights," as well as a similar notice issued in 2014.

As described in the ACL Complaint and draft CDO, investigation by the Division has uncovered evidence that Fahey and Sugar Pine Spring Water, LP, have diverted during the periods covered by the 2014 and 2015 Unavailability Notices, and that they threaten to continue unauthorized diversions. Unauthorized diversions are a trespass pursuant to California Water Code section 1052.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

ADMINISTRATIVE CIVIL LIABILITY

Water Code section 1052, subdivision (c), provides that any person or entity committing a trespass during a period for which the Governor has issued a proclamation of a state of drought emergency may be liable in an amount not to exceed the sum of one thousand dollars (\$1,000) for each day the trespass occurs plus two thousand five hundred dollars (\$2,500) for each acre-foot of water diverted or used in excess of that diverter's rights. Water Code section 1052, subdivision (d)(2), provides that civil liability may be imposed administratively by the State Water Resources Control Board (State Water Board or Board) pursuant to Water Code section 1055.

As described in the ACL Complaint, the maximum civil liability for the alleged violations in 2014 is \$345,866 [296 days at \$1,000 per day plus 19.95 acre-feet at \$2,500 per acre-foot], and the maximum civil liability for the alleged violations in 2015 is \$49,000 [44 days at \$1,000 per day plus 2.00 acre-feet at \$2,500 per acre-foot], for a total combined maximum civil liability of \$394,866 for the alleged violations.

Based on your failure to comply with these legal requirements, I am hereby issuing the enclosed ACL Complaint proposing that a liability of **\$224,875** be imposed for your failure to comply with the Unavailability Notice. **If you fail to respond to the ACL Complaint in one of the manners below within 20 days of receiving this notice, then the State Water Board will issue an ACL Order and seek recovery of this proposed liability amount as authorized by California Water Code section 1055.4.**

CEASE AND DESIST ORDER

California Water Code section 1831, subdivision (d)(1) authorizes the State Water Board to issue a Cease and Desist Order in response to a violation or threatened violation of the prohibition against unauthorized diversion of water.

If you disagree with the facts or time schedules for the corrective actions set forth in the CDO, you may request a hearing before the State Water Board. **Your request for a hearing must be in writing, signed by you or on your behalf, and mailed or hand-delivered to ensure receipt by the State Water Board within 20 days from the date you receive this notice.** You may mail your written hearing request to: State Water Resources Control Board, Division of Water Rights, Attn: Enforcement Section, P.O. Box 2000, Sacramento, CA 95812-2000.

You may hand-deliver your written hearing request to: State Water Resources Control Board, Division of Water Rights, Records Unit, 1001 I Street, 2nd Floor, Sacramento, CA 95814.

If you request a hearing, a hearing will be scheduled before the State Water Board or a designated hearing officer. Prior to the hearing, you will be required to submit any written testimony and other evidence you would like the State Water Board to consider. You will be notified of the hearing date and the submittal deadlines as soon as they are scheduled.

If you fail to come into compliance or request a hearing within 20 days of the date you receive this notice, the State Water Board will adopt the CDO. If you fail to comply with the adopted CDO, the State Water Board may consider additional enforcement of the CDO without further notice. Such enforcement may include the imposition of administrative civil liability of up to **\$10,000 for each day of noncompliance**, or referral to the Attorney General for further action.

SUMMARY OF OPTIONS

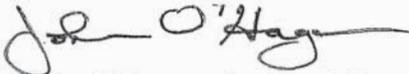
1. Submit a written request for hearing within 20 days of receiving the enclosed ACL Complaint and/or draft CDO. Any written request for hearing must specify whether you seek hearing on the ACL Complaint, the draft CDO, or both; or
2. Do nothing, and receive a final ACL Order and final CDO as described above.

INFORMATIONAL ORDER

Also enclosed is an Informational Order, which requires submittal of specific information regarding your water diversion and use.

If you have any questions regarding the CDO or ACL Complaint, please contact Kathy Mrowka, Manager, Enforcement Section at (916) 341-5363 or Kathy.Mrowka@waterboards.ca.gov; or Andrew Tauriainen, Senior Staff Counsel, Office of Enforcement, at (916) 341-5445 or Andrew.Tauriainen@waterboards.ca.gov.

Sincerely,



John O'Hagan, Assistant Deputy Director
Division of Water Rights

Enclosures: 1) Draft Cease and Desist Order
2) Administrative Civil Liability Complaint
3) Informational Order