

State Water Resources Control Board  
Division of Water Rights  
Response to Order 2015-0028-DWR  
In the Matter of Unauthorized Diversion by:  
**G. SCOTT FAHEY AND SUGAR PINE SPRING WATER LP**

**RESPONSE TO INFORMATION REQUEST 2(A)**

**Request 2(A):** Fahey shall provide the following information for water diversions that are conducted under any basis of right at facilities covered by **Permits 20784** and **21289**:

- Monthly amounts of water diverted and the basis of right allowing for the diversions for each month from **May 2014 through October 2014** and **April 2015 through the date of the Information Order (September 1, 2015)**.
  - The diversion information shall include the total amount of water diverted in the month and the maximum rate of diversion for each month
- Filing the Response:
  - The Response shall be filed electronically at: <http://water24a/waterrights/water-issues/programs/ewrims/curtailment/wateruseinfo.shtml>.

RESPONSE TO INFORMATION REQUEST 2(A)

# Monthly Amounts of Water Diverted

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**Exchange Water Diverted & Maximum Rate of Diversion per Month (May-October 2014; April 2015-Present)**

Month/Year	Total Acre-Feet (AF) of Water Diverted Per Month	Maximum Rate of Diversion Per Month (Cubic Feet per Second = CFS)
<p><b>May 2014</b></p>	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>                      - Deadwood Spring: 0.87 AF                      - Sugar Pine Spring: 1.10 AF</p> <p><u>Exchange at Point of Diversion for Permit No. 21289:</u>                      - Marco Spring: 0.54 AF                      - Polo Spring: 0.81 AF</p> <p><b>TOTAL: 3.32 AF</b></p>	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>                      - Deadwood Spring: 0.014 CFS                      - Sugar Pine Spring: 0.018 CFS</p> <p><u>Exchange at Point of Diversion for Permit No. 21289:</u>                      - Marco Spring: 0.009 CFS                      - Polo Spring: 0.013 CFS</p>
<p><b>June 2014</b></p>	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>                      - Deadwood Spring: 1.03 AF                      - Sugar Pine Spring: 1.06 AF</p>	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>                      - Deadwood Spring: 0.017 CFS                      - Sugar Pine Spring: 0.018 CFS</p>

	<p><u>Exchange at Point of Diversion for Permit No. 21289:</u>                  - Marco Spring: 0.74 AF                  - Polo Spring: 1.11 AF</p> <p><b>TOTAL: 3.94 AF</b></p>	<p><u>Exchange at Point of Diversion for Permit No. 21289:</u>                  - Marco Spring: 0.012 CFS                  - Polo Spring: 0.019 CFS</p>
<p><b>July 2014</b></p>	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>                  - Deadwood Spring: 1.11 AF                  - Sugar Pine Spring: 1.10 AF</p> <p><u>Exchange at Point of Diversion for Permit No. 21289:</u>                  - Marco Spring: 0.81 AF                  - Polo Spring: 1.22 AF</p> <p><b>TOTAL: 4.24 AF</b></p>	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>                  - Deadwood Spring: 0.018 CFS                  - Sugar Pine Spring: 0.018 CFS</p> <p><u>Exchange at Point of Diversion for Permit No. 21289:</u>                  - Marco Spring: 0.013 CFS                  - Polo Spring: 0.020 CFS</p>
<p><b>August 2014</b></p>	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>                  - Deadwood Spring: 0.88 AF                  - Sugar Pine Spring: 1.10 AF</p> <p><u>Exchange at Point of Diversion for Permit No. 21289:</u>                  - Marco Spring: 0.56 AF                  - Polo Spring: 0.83 AF</p> <p><b>TOTAL: 3.37 AF</b></p>	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>                  - Deadwood Spring: 0.014 CFS                  - Sugar Pine Spring: 0.018 CFS</p> <p><u>Exchange at Point of Diversion for Permit No. 21289:</u>                  - Marco Spring: 0.009 CFS                  - Polo Spring: 0.014 CFS</p>

<p><b>September 2014</b></p>	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>  - Deadwood Spring: 0.93 AF  - Sugar Pine Spring: 1.06 AF</p> <p><u>Exchange at Point of Diversion for Permit No. 21289:</u>  - Marco Spring: 0.49 AF  - Polo Spring: 0.73 AF</p> <p><b>TOTAL: 3.21 AF</b></p>	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>  - Deadwood Spring: 0.016 CFS  - Sugar Pine Spring: 0.018 CFS</p> <p><u>Exchange at Point of Diversion for Permit No. 21289:</u>  - Marco Spring: 0.008 CFS  - Polo Spring: 0.012 CFS</p>
<p><b>October 2014</b></p>	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>  - Deadwood Spring: 1.03 AF  - Sugar Pine Spring: 1.10 AF</p> <p><u>Exchange at Point of Diversion for Permit No. 21289:</u>  - Marco Spring: 0.58 AF  - Polo Spring: 0.86 AF</p> <p><b>TOTAL: 3.57 AF</b></p>	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>  - Deadwood Spring: 0.017 CFS  - Sugar Pine Spring: 0.018 CFS</p> <p><u>Exchange at Point of Diversion for Permit No. 21289:</u>  - Marco Spring: 0.009 CFS  - Polo Spring: 0.014 CFS</p>

Month/Year	Total Acre-Feet (AF) of Water Diverted Per Month	Maximum Rate of Diversion Per Month (Cubic Feet per Second = CFS)
April 2015	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>  - Deadwood Spring: 0.79 AF  - Sugar Pine Spring: 1.19 AF</p> <p><u>Exchange at Point of Diversion for Permit No. 21289:</u>  - Marco Spring: 0.84 AF  - Polo Spring: 0.21 AF</p> <p style="text-align: center;"><b>TOTAL: 3.03 AF</b></p>	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>  - Deadwood Spring: 0.013 CFS  - Sugar Pine Spring: 0.020 CFS</p> <p><u>Exchange at Point of Diversion for Permit No. 21289:</u>  - Marco Spring: 0.014 CFS  - Polo Spring: 0.004 CFS</p>
May 2015	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>  - Deadwood Spring: 0.76 AF  - Sugar Pine Spring: 1.23 AF</p> <p><u>Exchange at Point of Diversion for Permit No. 21289:</u>  - Marco Spring: 0.76 AF  - Polo Spring: 0.13 AF</p> <p style="text-align: center;"><b>TOTAL: 2.88 AF</b></p>	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>  - Deadwood Spring: 0.012 CFS  - Sugar Pine Spring: 0.020 CFS</p> <p><u>Exchange at Point of Diversion for Permit No. 21289:</u>  - Marco Spring: 0.012 CFS  - Polo Spring: 0.002 CFS</p>

<p><b>June 2015</b></p>	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>                  - Deadwood Spring: 0.78 AF                  - Sugar Pine Spring: 1.19 AF</p> <p><u>Exchange at Point of Diversion for Permit No. 21289:</u>                  - Marco Spring: 0.91 AF                  - Polo Spring: 0.10 AF</p> <p><b>TOTAL: 2.98 AF</b></p>	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>                  - Deadwood Spring: 0.013 CFS                  - Sugar Pine Spring: 0.020 CFS</p> <p><u>Exchange at Point of Diversion for Permit No. 21289:</u>                  - Marco Spring: 0.015 CFS                  - Polo Spring: 0.002 CFS</p>
<p><b>July 2015</b></p>	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>                  - Deadwood Spring: 0.91 AF                  - Sugar Pine Spring: 1.23 AF</p> <p><u>Exchange at Point of Diversion for Permit No. 21289:</u>                  - Marco Spring: 0.95 AF                  - Polo Spring: 0.05 AF</p> <p><b>TOTAL: 3.14 AF</b></p>	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>                  - Deadwood Spring: 0.015 CFS                  - Sugar Pine Spring: 0.020 CFS</p> <p><u>Exchange at Point of Diversion for Permit No. 21289:</u>                  - Marco Spring: 0.015 CFS                  - Polo Spring: 0.001 CFS</p>
<p><b>August 2015</b></p>	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>                  - Deadwood Spring: 0.86 AF                  - Sugar Pine Spring: 1.23 AF</p>	<p><u>Exchange at Point of Diversion for Permit No. 20784:</u>                  - Deadwood Spring: 0.014 CFS                  - Sugar Pine Spring: 0.020 CFS</p>

	<p><u>Exchange at Point of Diversion for Permit No. 21289:</u>                  - Marco Spring: 0.89 AF                  - Polo Spring: 0.00 AF</p> <p style="text-align: center;"><b>TOTAL: 3.192 AF</b></p>	<p><u>Exchange at Point of Diversion for Permit No. 21289:</u>                  - Marco Spring: 0.014 CFS                  - Polo Spring: 0.000 CFS</p>
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# Basis of Right Allowing for the Diversions

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**Basis of Allowing for Diversions By Exchange Under Permits 20784 and 21289:**

G. Scott Fahey and Sugar Pine Spring Water LP (collectively "**Fahey**") contend that Fahey's right to divert water pursuant to Permits 20784 and 21289 (together "**Permits**") by exchange is firmly established by the following facts:

- No water was actually diverted under the Permits; rather water was diverted pursuant to an exchange as described below. None of the water diverted under the exchange was necessary to serve other water right holders, whether junior or senior to Fahey;
- Fahey is required under the Permits' terms to provide replacement water to the New Don Pedro Reservoir ("**NDPR**") for any water that is diverted under the Permits adverse to the senior water rights of the City and County of San Francisco, Modesto Irrigation District, and the Turlock Irrigation District ("**SF and Districts**") downstream from the Permits' diversion points. An agreement ("**Original Exchange Agreement**") was established for the exchange of water to replace water diverted by Fahey pursuant to the Permits to provide this replacement water to SF and the Districts. Under the terms of the Permits, SF and the Districts are to notify Fahey annually of any potential or actual reductions in water supply as a result of Fahey's diversions under the Permits. If Fahey does not receive any such notice, there is no obligation to provide replacement water to SF and the Districts. Fahey purchased eighty-two (82) acre-feet of out-of-basin Stanislaus River Water from the Tuolumne Utility District ("**TUD**"); half of this water (41 acre-feet) was purchased in the year 2009, and half (41 acre-feet) was purchased in the year 2011. (See documentation evidencing these purchases in Fahey's Response to Order 2015-0028-DWR). This out-of-basin water ("**Surplus Water**") was wheeled from Phoenix Lake to NDPR via Sullivan Creek. The surplus water was purchased, wheeled, and stored in NDPR in order to protect Fahey from any *future* notice from SF and Districts, in response to which Fahey was prepared to provide the Surplus Water as replacement water. The Districts agreed that Surplus Water is being exchanged at Fahey's point of diversion under the Permits. (See **2014 Exchange Letter**).
- Because the Surplus Water stored in NDPR was not needed by SF and Districts, Fahey used that Surplus Water for Fahey's own needs during the time that the Permits were curtailed. Because the Surplus Water was made available under the 2014 Exchange Letter, NDPR's outflow remained unaffected by Fahey's diversions under the exchange. Likewise, no water rights downstream of Fahey's point of diversions were affected by diversions made, and would not be until the surplus eighty-two acre-feet stored in NDPR is fully diverted pursuant to the exchange.
- Fahey has not diverted, nor claims to have a right to divert, any water other than the Surplus Water, the eighty-two acre-feet he purchased and stored in NDPR and was made available by the 2014 Exchange Letter during the time that water use under the Permits is curtailed.

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Response to Order

Fahey Use of Stored Surplus Exchange Water in New Don Pedro Reservoir

Month/Year	Acre-Feet (AF) Diverted Under Exchange	Remaining Stored Exchange Water in Acre-Feet (AF)  Start: 82 AF
May 2014	3.306 AF	78.69 AF
June 2014	3.932 AF	74.76 AF
July 2014	4.237 AF	70.52 AF

<b>August 2014</b>	3.37 AF	67.16 AF
<b>September 2014</b>	3.207 AF	63.95 AF
<b>October 2014</b>	3.575 AF	60.37 AF
<b>April 2015</b>	3.662 AF	56.71 AF
<b>May 2015</b>	3.144 AF	53.57 AF
<b>June 2015</b>	2.954 AF	50.61 AF
<b>July 2015</b>	3.029 AF	47.58 AF
<b>August 2015</b>	3.192 AF	44.39 AF