



March 29, 2019

**Via Email Only**

State Water Resources Control Board  
Attn: Jeanine Townsend, Clerk to the Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814  
Email: commentletters@waterboards.ca.gov

***Re: Revised Draft Order Adopting Cease and Desist Order and Imposing Administrative Civil Liability for G. Scott Fahey and Sugar Pine Spring Water, LP***

Dear Ms. Townsend:

The following comments are submitted on behalf of Modesto Irrigation District, Turlock Irrigation District (collectively, "the Districts"), and the City and County of San Francisco ("CCSF"). The comments address Agenda Item No. 9 for the State Water Resources Control Board's ("SWB" or "Board") April 2, 2019 regular meeting, i.e. consideration of adoption of the proposed Order issuing a cease and desist order and imposing administrative civil liability against G. Scott Fahey and Sugar Pine Spring Water, LP (collectively, "Fahey") as well as Change Sheet #1 and the Revised Draft Order, circulated to the service list at 9:17 AM on Friday, March 29, 2019.

The Districts and CCSF have reviewed the Change Sheet and Revised Draft Order, and believe that Staff made an effort to incorporate some of the changes suggested in the District's and CCSF's March 11, 2019 comment letter, but that the Revised Draft Order still fails to address many important and highly relevant legal and factual issues requiring resolution. For instance, while the Revised Draft Order now states that "Fahey's permits do not provide a right to store water in NDPR or any other reservoir and nothing in this order should be interpreted to the contrary" (pp. 56-57), a portion of the Revised Draft Order still reads that "Fahey's permits allow him to pre-position replacement water for his non-FAS Period diversions in NDPR and do not prohibit replacement water from being carried over from year to year." (p. 3.) These two statements contradict and undermine each other, and do not provide a clear directive as to Fahey's or the District's and CCSF's obligations moving forward. The Districts and CCSF believe that the Board should postpone adopting the Draft Order because more time is warranted to fully address conflicting portions of the Revised Draft Order.

Before receiving the circulated Change Sheet and Revised Draft Order, the Districts and CCSF worked together to prepare a separate set of redline revisions to the Draft Order that we believe more clearly address the issue of replacement/carryover/storage rights. Those revisions are enclosed with this letter. Based on the substantive changes made by the Revised Draft Order, and our hope that Board Staff will consider our proposed redlines, we request that the Board move consideration of this Revised Draft Order to its next normally scheduled Board meeting on April 16, 2019. This matter was initiated by the

Board in September 2015, and the Draft Order was not issued until February 2019—moving consideration of this item to the next Board meeting will not prejudice either party at this stage, and in contrast, will allow for more thorough consideration of the Revised Draft Order than the two working days (one of which is a state holiday) between when the Revised Draft Order was circulated and the proposed adoption at the Board's April 2, 2019 meeting.

Sincerely,



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Enclosure