

## AGREEMENT

This Agreement, by and between G. Scott Fahey ("Fahey"), an individual, the Turlock Irrigation District ("TID"), a California irrigation district, and the Modesto Irrigation District ("MID"), a California irrigation district, is made with reference to the following:

### RECITALS

A. Fahey has filed an application with the State Water Resources Control Board (SWRCB) to appropriate water from Deadwood and Cottonwood springs which are tributary to the Tuolumne River (Application No. 29977).

B. Fahey desires to appropriate up to 40,000 gallons per day (44.82 acre-feet per year) year-round from these two springs under the terms and conditions set forth in Application No. 29977.

C. SWRCB Decision 995 declares that the waters of the Tuolumne River are fully appropriated from July 1 to October 31, and SWRCB Decision 1594 declares that the waters of the Sacramento-San Joaquin Delta are fully appropriated from June 15 to August 31. As a result Fahey is unable to appropriate water from Deadwood and Cottonwood springs from June 15 through October 31 (hereinafter referred to as the "period of unavailability").

D. Fahey proposes an exchange of water with TID and MID (collectively "the Districts") by pumping into Lake Don Pedro an amount equal to the amount of water appropriated from Deadwood and Cottonwood springs during the June 15 through October 31 period of unavailability (hereinafter referred to as "make-up water").

### NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Fahey shall be entitled to appropriate up to 20,000 gallons per day (22.41 acre-feet per year) from Deadwood Spring and up to 20,000 gallons per day (22.41 acre-feet per year) from Cottonwood Spring according to the terms and conditions in SWRCB Application No. 29977.

2. Between the period June 15 and October 31 of any year, Fahey is limited to 17 acre-feet (40,000 gallons per day x 138 days).

3. To provide sufficient make-up water during the period of unavailability, Fahey shall pump an equivalent amount of ground water from his well located in the SW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 8, T3S, R15E,

MDB&M. The water shall be discharged into an unnamed tributary thence into the Roger Creek arm of Lake Don Pedro.

4. Fahey may provide make-up water at any time of the year between January 1 and December 31. Fahey may pump more water than is required under this Agreement and build a surplus prior to the period of unavailability; however, no carryover will be allowed to subsequent years.

5. It shall be the responsibility of Fahey to pump sufficient make-up water according to this Agreement and to meet the requirements of SWRCB Decisions 995 and 1594. Failure to pump sufficient make-up water in any one calendar year shall be grounds for termination of this Agreement at the sole discretion of the Districts.

6. This Agreement shall be incorporated into and made a part of any permit or license granted to Fahey by the SWRCB.

7. **Reporting Requirements.** Fahey shall file semi-annual reports with both TID and MID showing the amount of water diverted monthly from Deadwood and Cottonwood springs and amount of water pumped from Fahey's well and discharged into Lake Don Pedro. Reports are due July 31st (covering the period January 1 through June 30) and January 31st (covering the period July 1 through December 31 of the preceding year).

8. **Inspection.** The Districts shall be allowed reasonable access to Fahey's pump to inspect and test the pump and well and to verify the diversions reported by Fahey. The Districts shall provide at least five days' written notice prior to inspection.

9. **Water Rights.** Fahey shall not accrue any interest in the Districts' water rights by virtue of this Agreement. Nothing contained herein shall be construed as a grant of water rights or an interest in the Districts' water rights.

10. **Indemnity.** Fahey shall defend, indemnify and hold Districts, Districts' directors, officers, representatives, agents and employees, and each of them, harmless from and against any and all expenses, losses, damages, claims or liabilities arising directly or indirectly from any act or omission in the performance of Fahey's obligations under this Agreement, and from and against any and all costs, expenses or liabilities incurred in or in connection with any of such claims or any proceeding brought thereon, except to the extent caused by the negligence or willful misconduct of the Districts.

11. **Amendment.** This Agreement may be amended only by a written instrument duly executed by all the parties.

12. **Non-Assignment.** Fahey shall not assign or transfer any right or interest in this Agreement, in whole or in part, without the prior written consent of both TID and MID. Any such assignment or transfer by Fahey without such consent shall be void.

13. **Notice.** Any notice, request, demand or other communication required or permitted hereunder shall be deemed properly given when delivered either by personal delivery in writing, or by first-class mail, postage prepaid, addressed as follows:

G. SCOTT FAHEY  
120 North Bryan  
Oakdale, CA 95361

TURLOCK IRRIGATION DISTRICT  
Attn: General Manager  
333 East Canal Drive  
P. O. Box 949  
Turlock, CA 95381-0949

MODESTO IRRIGATION DISTRICT  
Attn: Chief Executive Officer  
1231 Eleventh Street  
P. O. Box 4060  
Modesto, CA 95352

This agreement is dated this 12 day of December, 1992.

  
G. SCOTT FAHEY 12/12/92

TURLOCK IRRIGATION DISTRICT

  
for ERNEST GEDDES  
General Manager

MODESTO IRRIGATION DISTRICT

  
KENNETH H. MCKINNEY  
Deputy Chief Executive Officer

## RESOLUTION NO. 92-207

RESOLUTION APPROVING AGREEMENT BETWEEN  
TURLOCK IRRIGATION DISTRICT, MODESTO  
IRRIGATION DISTRICT, AND G. SCOTT FAHEY

WHEREAS, G. Scott Fahey (Fahey) has filed an application with the State Water Resources Control Board (Board) to appropriate water from Deadwood and Cottonwood springs which are tributary to the Tuolumne River (Application No. 29977); and

WHEREAS, Fahey desires to appropriate up to 40,000 gallons per day (44.82 acre-feet per year) year-round from these two springs under the terms and conditions set forth in Application No. 29977; and

WHEREAS, The Board has declared that the waters of the Tuolumne River are fully appropriated from July 1 to October 31, and the waters of the Sacramento-San Joaquin Delta are fully appropriated from June 15 to August 31. As a result Fahey is unable to appropriate water from Deadwood and Cottonwood springs from June 15 through October 31; and

WHEREAS, Fahey proposes an exchange of water with the District and the Modesto Irrigation District by pumping into Lake Don Pedro an amount equal to the amount of water appropriated from Deadwood and Cottonwood springs from June 15 through October 31.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Turlock Irrigation District as follows:

1. The water exchange agreement between the District, Modesto Irrigation District, and Fahey is hereby approved.
2. The General Manager is authorized to sign the agreement on behalf of the District.

Moved by Director Short, seconded by Director Berryhill, that the foregoing resolution be adopted.

Upon roll call the following vote was had:

Ayes:	Directors Short, Berryhill, Long, Crowell
Noes:	Directors None
Absent:	Director Clauss

The President Pro Tempore declared the resolution adopted.

I, Barbara A. Hetrick, Secretary of the Board of Directors of the TURLOCK IRRIGATION DISTRICT, do hereby CERTIFY that the foregoing is a full, true, and correct copy of a resolution duly adopted at a regular meeting of the said Board of Directors held the 22nd day of December, 1992.

Barbara A. Hetrick  
Secretary of the Board of Directors  
of the Turlock Irrigation District

*YM file*  
*29977*

December 30, 1992

State Water Resources Control Board  
Division of Water Rights  
P. O. Box 2000  
Sacramento, CA 95810

Dear Ms. Mooring,

Please find enclosed a copy of a fully executed Agreement between Modesto Irrigation District, Turlock Irrigation District and myself. This is a water exchange agreement between myself and TID/MID. The Agreement was formulated to avoid any conflict that Application No. 29977 would have with SWRCB Decisions 995 and 1594. The copy of this Agreement with the SWRCB now allows my application to be given public notice, I believe.

Please respond that you have received this letter with the Agreement enclosed and the current time table for giving my application public notice. Thank you for your help concerning Application No. 29977.

Sincerely,



G. SCOTT FAHEY