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19 BEFORE THE STATE OF CALIFORNIA

20 STATE WATER RESOURCES CONTROL BOARD

21 In the Matter of Administrative Civil Liability
Complaint Issued Against G. Scott Fahey and Sugar
22 Pine Spring Water, LP

Closing Brief of the Modesto and
Turlock Irrigation Districts and the City
and County of San Francisco In the
Matter of Administrative Civil Liability
Complaint Issued Against G. Scott
Fahey and Sugar Pine Spring Water, LP

25 **I. Introduction**

26 This Closing Brief is submitted on behalf of the Modesto Irrigation District (“MID”), the
27 Turlock Irrigation District (“TID”) and the City and County of San Francisco (“CCSF”). MID
28 and TID (collectively “M/TID”) hold numerous appropriative water rights for diversion and use

1 of the waters of the Tuolumne River, including numerous pre-1914 and post-1914 appropriative
2 rights for diversion and storage of water at the New Don Pedro Reservoir (“NDPR”). NDPR is
3 located on the mainstem of the Tuolumne River, downstream of the springs and creeks from
4 which G. Scott Fahey and the Sugar Pine Spring Water Limited Partnership (collectively,
5 “Fahey”) diverts pursuant to State Water Resources Control Board (“SWRCB”) Permit No.
6 20748 (Application No. 29977) and Permit No. 21289 (Application No. 31491). All of M/TID’s
7 appropriative water rights are senior to Fahey’s Permit Nos. 20748 and 21289. Fahey’s
8 diversions have a direct hydrological effect on the inflow to NDPR and water available under
9 M/TID’s senior water rights.

10 CCSF holds numerous pre-1914 appropriative rights for diversion and use of the waters
11 of the Tuolumne River and its tributaries, all of which are upstream of NDPR. Fahey’s points of
12 diversion are located downstream of CCSF’s points of diversion and do not directly affect the
13 water available to satisfy CCSF’s senior water rights at its points of diversion. However, under a
14 number of agreements between M/TID and CCSF, CCSF has a water bank account in NDPR
15 based on natural flow into NPDR. CCSF’s water bank account can be impacted by Fahey’s
16 diversions as a result of reduction of inflow to NDPR.

17 M/TID and CCSF participated as interested parties in the SWRCB proceedings
18 concerning the SWRCB’s proposed Administrative Civil Liability (“ACL”) against Fahey for the
19 limited purpose of protecting their respective prior rights and interests in the waters of the
20 Tuolumne River. Specifically, M/TID and CCSF are involved in these proceedings to ensure
21 that Fahey fully complies with the terms and conditions in Permit Nos. 20748 and 21289, and
22 particularly the terms and conditions of the Permits that protect M/TID’s and CCSF’s water
23 rights and interests. In defense of the proposed ACL and throughout these proceedings, Fahey
24 has advanced novel interpretations of his Permit requirements and obligations to M/TID and
25 CCSF, and it is important that the SWRCB understand M/TID’s and CCSF’s positions on these
26 issues. In addition, Fahey has misrepresented and mischaracterized the historical record and
27 interactions with M/TID and CCSF, and these errors need to be corrected.

28 M/TID and CCSF recommend that the SWRCB use this opportunity to implement an

1 enforceable framework under which Fahey may exercise his Permits in the future. M/TID and
2 CCSF are concerned about Fahey’s future compliance with his Permit terms and conditions.
3 M/TID and CCSF submit that if the SWRCB does not commence proceedings to revoke the
4 Permits the SWRCB should suspend Fahey’s right to divert under the Permits until Fahey has
5 reached a new agreement with M/TID and CCSF to restate and replace the 1992 Agreement
6 between Fahey and M/TID. The new agreement should include appropriate and enforceable
7 measures to avoid injury to M/TID’s and CCSF’s senior water rights and interests, and to ensure
8 compliance with the SWRCB’s Fully Appropriated Stream System (“FASS”) declaration for the
9 Tuolumne River.

10 **II. Argument**

11 The thrust of Fahey’s defense to the SWRCB’s proposed ACL is that Fahey was exempt
12 from the May 27, 2014 *Notice of Unavailability of Water and Immediate Curtailment for those*
13 *diverting water in the Sacramento and San Joaquin River Watersheds with a Post-1914*
14 *Appropriative Right* (“2014 Curtailment Notice”). The 2014 Curtailment Notice advised Fahey
15 that he must immediately cease diversions under Fahey’s post-1914 Permits unless such
16 diversions were exempt as provided in the 2014 Curtailment Notice. Mr. Fahey stated on the
17 Curtailment certification form that he had additional information explaining why his diversions
18 under both Permits were legally authorized notwithstanding the limited supply resulting from the
19 drought emergency. Mr. Fahey claimed that he was legally authorized to divert during the
20 curtailment period because he had purchased 82 acre-feet of Stanislaus River water from the
21 Tuolumne Utilities District (“TUD”) during a period between June 15, 2009 to June 15, 2011,
22 and he caused that water to be conveyed from Phoenix Lake to NDPR via Sullivan Creek. Mr.
23 Fahey claims that this water was stored and available in NDPR following the 2014 Curtailment
24 Notice, and that the water was available to him as an offset for the diversion and use that

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1 occurred under the Permits during the period when the 2014 Curtailment Notice was in effect.
2 For the reasons set forth below, M/TID and CCSF disagree that Fahey has any stored water or
3 stored later credit in NDPR.¹

4 **A. Fahey’s Water Rights and FASS Make-Up Water Obligations**

5 **1. Tuolumne River FASS Declaration**

6 SWRCB Decision 995 declares the Tuolumne River to be “fully appropriated” from July
7 1 to October 1 of each year, and SWRCB Decision 1594 declares the waters of the Sacramento-
8 San Joaquin Delta watershed to be fully appropriated from June 15 to August 31 of each year.
9 These findings are maintained on a list with the SWRCB’s other designated “Fully Appropriated
10 Stream Systems” in California. Pursuant to Water Code section 1206, the consequence of a
11 FASS designation is that the SWRCB will not accept water right applications or issue water
12 permits for appropriations on FASS streams during FASS periods, unless the SWRCB has made
13 a finding of an exemption from the FASS declaration. (Water Code Section 1206(b)). One such
14 exemption is that the applicant augments the natural supply with an alternative source of supply
15 from a hydrologically disconnected watershed or waterbody in order to offset the appropriation
16 proposed in the application. (See SWRCB WRO 89-25, p. 41, and WRO 91-07, p. 25).

17 **2. Permit 20748 and FASS Requirements Under 1992 Agreement with**
18 **M/TID**

19 Fahey’s water right Application No. 29977 was filed on July 12, 1991. Fahey’s
20 application sought year-round appropriation, including during the FASS period. When the
21 SWRCB investigated Fahey’s application it concluded that the FASS designation for the
22 Tuolumne River prevented the SWRCB from accepting the application and issuing a water right
23 permit unless Fahey established an exemption from the FASS restrictions for the Tuolumne
24 River. As a condition of accepting Fahey’s application to divert water during the FASS period,

25 ¹ Throughout this proceeding Fahey has characterized various statements and conversations with
26 personnel for M/TID, CCSF and the SWRCB. Rather than correct every misstatement,
27 mischaracterization or misstatement in the record, M/TID and CCSF focus this Closing Brief on
28 our understanding and interpretation of the various Permits and documents with the hope that
this is more productive to the SWRCB and Fahey concerning the measures that should be
included in the new water right agreement referenced above.

1 therefore, the SWRCB informed Fahey that he would need to provide make-up water from a
2 non-tributary source to offset any diversions during that period. Fahey thereafter negotiated and
3 entered into an agreement with M/TID, dated December 12, 1992, by which Fahey agreed to
4 pump non-tributary groundwater into NDPR in an amount equal to the amount of water to be
5 appropriated during the FASS Period, pursuant to the terms and conditions provided therein
6 (“1992 Agreement”) (Exhibit WR-19). Based on the 1992 Agreement with M/TID, and
7 continued maintenance of that Agreement, the SWRCB adopted a statement of FASS exemption
8 on January 25, 1993. (Exhibit Fahey-10).

9 The SWRCB issued Permit No. 20784 on March 23, 1995. Permit No. 20784 authorizes
10 year-round diversion of up to 0.62 cubic feet per second (“cfs”) and 44.82 acre-feet per year
11 (“afy”) from two springs that are tributary to the Tuolumne River upstream of NDPR, and it
12 includes a condition that expressly incorporates the requirements of the 1992 Agreement:

13 Diversion of water under this permit during the period from June
14 16 through October 31 of each year is subject to maintenance of
15 the Water Exchange Agreement executed on December 12, 1992
16 between the permittee and the Modesto and Turlock Irrigation
17 Districts. Pursuant to the Agreement, permittee shall provide
18 replacement water to New Don Pedro Reservoir for all water
19 diverted under this permit during the period from June 16 to
20 October 31 of each year. The source, amount and location at New
21 Don Pedro Reservoir of replacement water discharged to the
22 reservoir shall be reported to the State Water Resources Control
23 Board with the annual Progress Report by Permittee. (Permit No.
24 20748, Condition No. 19.)

25 The 1992 Agreement is equally clear about Fahey’s obligation to provide replacement
26 water to NDPR during the FASS period, every year, to satisfy the FASS requirement: “To
27 provide sufficient make-up water [i.e., the water that must be pumped into NDPR] during the
28 period of unavailability [defined as the period between June 15 and October 31], Fahey shall
pump an equivalent amount of groundwater from his [groundwater well]... . The water shall be

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1 discharged into an unnamed tributary thence into the Roger Creek arm of Lake Don Pedro.”
2 (1992 Agreement, ¶¶ 2 and 3).² The 1992 Agreement expressly prohibits Fahey from carrying-
3 over make-up water in NDPR beyond the end of the calendar year in which it is required to meet
4 FASS requirements:

5 Fahey may provide make-up water at any time of the year between
6 January 1 and December 31. Fahey may pump more water than is
7 required under this Agreement and build a surplus prior to the
8 period of unavailability; however, no carryover will be allowed to
9 subsequent years. [] It shall be the responsibility of Fahey to pump
10 sufficient make-up water according to this Agreement and to meet
11 the requirements of SWRCB Decisions 995 and 1594. Failure to
12 pump sufficient make-up water in any one calendar year shall be
13 grounds for termination of this Agreement at the sole discretion of
14 the Districts. (1992 Agreement, ¶¶ 4 and 5, emphasis added).

15 The 1992 Agreement states that its make-up water obligations should be incorporated
16 into “any permit or license granted to Fahey by the SWRCB.” (1992 Agreement, ¶ 6). The 1992
17 Agreement also requires Fahey to “file semi-annual reports with both TID and MID showing the
18 amount of water diverted monthly from Deadwood and Cottonwood Springs and the amount of
19 water pumped from Fahey’s well and discharged into Lake Don Pedro. Reports are due July 31st
20 (covering the period January 1 through June 30) and January 31st (covering the period July 1
21 through December 31 of the preceding year).” (1992 Agreement, ¶ 7). Amendments to the 1992
22 Agreement are to be made in writing. (1992 Agreement, ¶ 11).

23 3. Permit 21289 and FASS Requirements

24 On January 28, 2004 Fahey filed SWRCB water right Application No. 31491 for
25 diversion from two springs in the Tuolumne River watershed, upstream of NDPR. Application
26 No. 31491 was subject to the same FASS restrictions as Application No. 29977 (Permit No.
27 20748), as described above. That is, the FASS designation for the Tuolumne River precluded the
28 SWRCB from accepting the application and issuing a water right permit for diversion from the

² The requirement to augment flow with groundwater was subsequently modified by the SWRCB, and Fahey was allowed to augment the Tuolumne River supply during the FASS period with surface water imported from the Stanislaus River watershed. Fahey never informed M/TID that it would meet this requirement with water from the Stanislaus River rather than the groundwater well.

1 Tuolumne River from June 16 to October 31 of each year, unless Fahey established and the
2 SWRCB found a basis for a FASS exemption. As a condition of accepting Fahey’s application,
3 therefore, the SWRCB required Fahey to augment the inflow of non-tributary water to NDPR in
4 an amount equal to the amount of water to be appropriated under Application 31491 during the
5 FASS Period.

6 On January 26, 2004, the SWRCB’s Chief of the Division of Water Rights made the
7 required finding of exemption from the FASS for Fahey’s Application No. 31491. The finding
8 was made on the express condition that “diversion of water during the period from June 16
9 through October 31 of each year would be subject to maintenance of a water exchange
10 agreement between the applicant and the Modesto Irrigation District and the Turlock Irrigation
11 District.” (See January 26, 2004 Statement of Exemption from FASS). The finding identified
12 Fahey’s October 20, 2003 agreement with TUD as the source of non-tributary make-up water to
13 satisfy the requirements of the FASS declaration.

14 Pursuant to Paragraph 6 of the 1992 Agreement, the FASS make-up obligations in the
15 1992 Agreement are to be “incorporated into and made part of any permit or license granted to
16 Fahey by the SWRCB.” (1992 Agreement, ¶ 6). Accordingly, when the SWRCB issued a
17 permit on Application No. 31491 on August 1, 2011, the 1992 Agreement was referenced in
18 Condition 34 of Permit No. 21289. Condition 34 states Fahey’s responsibility to provide
19 replacement water to mitigate for injury to M/TID or CCSF’s water rights or interests shall “take
20 into consideration [Fahey’s] obligations to provide replacement water under the Water Exchange
21 Agreement executed on December 12, 1992 between [Fahey] and the Districts.” Thus, Permit
22 No. 21289 confirms that the 1992 Agreement applies with the same force and effect to Permit
23 No. 21289 as it does to Permit No. 20784. Condition 34 in no manner amends or terminates the
24 requirements in the 1992 Agreement, but rather affirms and continues Fahey’s obligations under
25 the 1992 Agreement.

26 **4. Replacement Water Requirements Under Permit Nos. 20748 and**
27 **21289**

28 In addition to the requirement to provide make-up water to meet FASS obligations, as

1 provided in the 1992 Agreement and Permit Nos. 20748 and 21289, the permits impose
2 additional obligations on Fahey to provide “replacement” water to mitigate water rights injury to
3 M/TID and CCSF as a result of Fahey’s diversions. This obligation to provide “replacement
4 water,” as described in Condition 20 of Permit No. 20748 and Condition 34 of Permit No. 21289,
5 is a separate and distinct obligation from the “make-up water” required to meet the requirements
6 of the FASS declaration for Fahey’s diversions during the June 16 to October 31 period. The
7 “replacement water” requirements arise only if and to the extent Fahey’s diversions cause injury
8 to M/TID and/or CCSF, and the Permits require M/TID and CCSF to provide notice to Fahey
9 when replacement water is required. Replacement water is not required to mitigate injury that
10 may be caused by Fahey’s diversions during the FASS period of each year, because Fahey is
11 strictly obligated under the 1992 Agreement and his Permit conditions to provide make-up water
12 for all of his diversions during the June 16 to October 31 period of each year, without notice
13 from M/TID and CCSF.

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15 **B. Fahey has no right to store water in NDPR, and had no water stored to or
credits in NDPR storage during the 2014 Curtailment period**

16 The 1992 Agreement is clear: Fahey must provide make-up water to offset all of his
17 diversions during the FASS period of each year. The water may be delivered prior to incurrence
18 of the obligation (i.e., may be delivered from January 1 to June 15), and may be delivered after
19 the FASS period, between November 1 and before December 31. But “no carryover will be
20 allowed to subsequent years.” This means that no water can be delivered in one year to meet a
21 FASS obligation in a subsequent year. Fahey has no water bank account and no stored water
22 credits in NDPR. Thus, water Fahey claims to have acquired from TUD and delivered to NDPR
23 in 2009, 2010 and 2011 was not available as make-up water to meet Fahey’s FASS requirements
24 in 2012 and beyond (including the period when the 2014 Curtailment Notice was in effect). To
25 the extent Fahey diverted under his Permits during the FASS period during 2012, 2013, 2014 and

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1 2015, he did so in violation of the express provisions of the 1992 Agreement and his permits.³

2 Fahey acknowledged in the ACL proceedings that he has no right to store water in
3 NDPR. (Hrg. Trans. (Jan. 25, 2016), p. 174: 8-10). Rather, he claims to have a “credit” as a
4 result of introducing non-tributary or “foreign” water into NDPR. But that is water that Fahey is
5 required to introduce to NDPR as a condition of his Permits and the 1992 Agreement in order to
6 offset diversions during the FASS period when no water is otherwise available. The 1992
7 Agreement says that this water cannot be carried over to a subsequent year to meet FASS make-
8 up water obligations. Thus, Fahey’s characterization of the non-tributary deliveries as a “credit”
9 rather than “storage” is a difference without a factual or legal distinction, and Fahey cannot avoid
10 his annual FASS obligation by calling the non-tributary deliveries a “credit.”

11 Moreover, Fahey did not provide any notice to M/TID or CCSF, let alone submit the
12 written reports required in the 1992 Agreement, that water had been delivered to NDPR in 2009-
13 2011. Indeed, when Fahey notified the SWRCB in June 2014, in response to the 2014
14 Curtailment Notice, that he had acquired water from TUD and purportedly conveyed that water
15 to NDPR more than three years earlier, Fahey did not notify M/TID as required in the 1992
16 Agreement. Fahey’s failure to provide the proper diversion reports and notice violated the 1992
17 Agreement and the water right Permits.

18 Finally, Fahey has provided no evidence or information to M/TID, CCSF or the SWRCB
19 that the water he acquired from TUD actually was delivered to NDPR. Fahey has only provided
20 an agreement with TUD and a billing ledger purportedly showing a volume of water spilled from
21 Phoenix Reservoir at the Sullivan Creek Spillway. Fahey has provided no information in this
22 proceeding or otherwise about the source, amount and location of the deliveries to NDPR, as
23 required in the 1992 Agreement and the Permits.

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27 ³ Since Permit 20748 was issued in 1995, Fahey never provided FASS make-up water or
28 replacement water as required, except in 2009, 2010 and 2011. (Hrg. Trans. (Jan. 25, 2016), p.
74-78).

1 **C. The 1992 Agreement and FASS Conditions in Fahey’s Permits are Still in**
2 **Effect**

3 Throughout these proceedings Fahey has asserted that Condition 19 of Permit No. 20748,
4 which incorporates the 1992 Agreement and the FASS make-up water requirements, is “invalid”
5 or “obsolete” or otherwise not in force or effect. Fahey claims that the FASS-related conditions
6 in the Permits, obligating delivery of “make-up water” for diversions during the FASS period,
7 have been superseded by the “replacement water” condition in Permit No. 21289 (Condition 34).
8 As a consequence of Condition 34, Fahey claims that FASS make-up water is no longer required
9 under Fahey’s permits. To support this argument, Fahey further claims that the hydrologic
10 conditions that existed in the Tuolumne River watershed in 1961 - when SWRCB adopted
11 Decision 995 finding the Tuolumne River fully appropriated during the summer and fall months
12 - are no longer relevant since the completion of NDPR in 1971. Fahey also has asserted that the
13 Fourth Agreement between M/TID and CCSF had the effect of voiding Decision 995. These
14 arguments are without merit.

15 The 1992 Agreement and the conditions in both Permits speak for themselves, and are
16 clear about when Fahey is to provide make-up water to meet the requirements of the FASS.
17 Fahey provides no evidence or testimony that the 1992 Agreement was ever terminated or
18 amended in writing,⁴ or that the SWRCB modified his Permits to eliminate the FASS make-up
19 water requirement. Maintenance of the 1992 Agreement is a condition precedent to diversion
20 under both Permits; if the 1992 Agreement is terminated or no longer in force and effect, that
21 condition fails and the Permits themselves would become null and void and Fahey’s diversions
22 would be without basis of right.

23 Fahey confuses the conditions in his permits that obligate “replacement water” to avoid
24 legal injury with the requirement of the FASS to provide “make-up water.” The replacement

25 ⁴ Fahey testified during the hearing that he did not provide FASS water to M/TID because Leroy
26 Kennedy, a Turlock Irrigation District employee, orally told him that he did not need to comply
27 with the 1992 agreement “unless they [M/TID] contacted me first.” (Hrg. Trans. (Jan. 25, 2016),
28 p. 75: 11-12). This testimony is unsubstantiated and self-serving hearsay testimony, and should
 be given no weight in this proceeding. In any event, the 1992 Agreement expressly requires all
 modifications to be in writing.

1 water conditions were not included in the Permits to address Fahey’s FASS obligations, but are
2 separate conditions to protect M/TID’s senior water rights and interests in the waters of the
3 Tuolumne River. While it is true that the FASS “make-up water” will also satisfy Fahey’s
4 “replacement water” obligations for diversions during the FASS period, the requirement to
5 provide replacement water to avoid injury during other times of the year does not in any way
6 modify Fahey’s obligations to provide make-up water pursuant to the 1992 Agreement and the
7 Permits.

8 That NDPR was completed and became operational after Decision 995 was adopted in
9 1961 is irrelevant to this proceeding, and in no matter informs interpretation of Fahey’s Permit
10 conditions. Likewise, the Fourth Agreement between M/TID and CCSF – that provides for a
11 CCSF water bank account in NDPR – has no bearing on the FASS conditions in Fahey’s permits.
12 The findings in Decision 995 that the waters of the Tuolumne River are fully appropriated during
13 the months of July through October have been affirmed in numerous SWRCB orders since
14 Decision 995 was adopted. This finding was not challenged when Fahey accepted his Permits,
15 including the FASS conditions, and the record is clear that Fahey had full knowledge and
16 understanding of his FASS obligations. Fahey has never contested the factual basis for the FASS
17 declaration until this proceeding.

18 Moreover, the completion of NDPR in 1971 is not relevant or material to the findings
19 made in Decision 995, and does not support Fahey’s claim that completion of NDPR invalidates
20 the SWRCB’s fully appropriated finding in Decision 995. M/TID’s permits for NDPR and its
21 pre-1914 appropriations and senior licenses for diversion at La Grange Dam downstream of
22 NDPR existed decades before the SWRCB adopted Decision 995 in 1961. Those water rights
23 were well known and fully considered by the SWRCB in finding the Tuolumne River fully
24 appropriated. In short, the perfection of NDPR permits via construction and operation of NDPR
25 after Decision 995 was adopted cannot, and does not, invalidate or alter any finding in Decision
26 995, and the time for challenging the findings made in Decision 995 and in subsequent SWRCB
27 FASS Orders has long since expired.

28 Similarly, the Fourth Agreement between M/TID and CCSF, dated May 23, 1966, does

1 not alter the factual circumstances upon which the SWRCB found in Decision 995 that the
2 Tuolumne River was fully appropriated. Nor does it alter Fahey’s FASS make-up water
3 obligations or replacement water obligations as set forth in the Permits. The Fourth Agreement
4 is an agreement between M/TID and CCSF, *inter se*, to provide CCSF with a water bank account
5 in NDPR, which CCSF helped construct through substantial financial contribution. The water
6 bank account established by the Fourth Agreement implements a physical solution between the
7 Parties for management of their respective senior water rights. The Fourth Agreement is built on
8 calculation of the natural flow of the Tuolumne River, and as such any diversion by Fahey
9 upstream of NDPR can reduce the inflow to NDPR and affect the water bank accounting.

10 Fahey has no interest in the water bank established under the Fourth Agreement, and his
11 reference to the Fourth Agreement is a distraction to these proceedings. While the Fourth
12 Agreement accounting is relevant to M/TID and CCSF making a call for “replacement water,”
13 and while CCSF and M/TID prefer to notify Fahey when his diversions cause injury outside of
14 the FASS period, Fahey’s obligation to provide FASS water is not in any way affected by water
15 accounting in NDPR, under the Fourth Agreement or otherwise. (See Permit 20784, Condition
16 20(2), which states that even if Fahey is relieved of replacement water obligations due to NDPR
17 spill, all water diverted during the June 15 to October 31 is subject to the FASS make up water
18 obligation).

19 **III. Requested Relief**

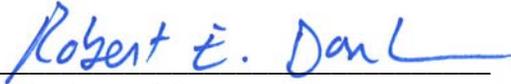
20 In light of Fahey’s lack of compliance with key Permit conditions and the extreme
21 positions Fahey has taken in this ACL proceeding, M/TID and CCSF have serious concerns
22 about Fahey’s future compliance with his Permit conditions. Fahey’s failure to comply with the
23 1992 Agreement is grounds for M/TID to terminate the Agreement, which would cause a failure
24 of the fundamental conditions in the Permits. Under these circumstances, proceedings to revoke
25 Fahey’s permits may be warranted.

26 Short of revocation, however, M/TID and CCSF respectfully request that the SWRCB
27 exercise its continuing jurisdiction over the Permits and order Fahey to suspend diversions until
28 such time that Fahey has entered into a new written agreement with M/TID and CCSF to restate

1 and supersede the 1992 Agreement. M/TID and CCSF request that the order require this new
2 agreement to fully describe both Fahey's make-up water and replacement water obligations, and
3 include specific information about the source, timing, place of delivery, and regulation of both
4 the make-up water and replacement water. The new agreement must also require Fahey to
5 provide clear and timely notice of delivery of make-up and replacement water, and reporting of
6 deliveries on a regular basis to M/TID and the SWRCB. M/TID and CCSF further request that
7 the relevant terms and conditions in Permit Nos. 20748 and 21289 be amended to incorporate the
8 terms and conditions of the new make-up and replacement water agreement. Fahey's right to
9 divert under the permits should be suspended until the new make-up and replacement water
10 agreement has been executed and incorporated into revised Permit No. 20748 and Permit No.
11 21289.

12
13 Dated: June 17, 2016

ELLISON, SCHNEIDER & HARRIS L.L.P
FOR CITY AND COUNTY OF SAN
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(Revised January 5, 2016)

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