

**EXHIBIT 67**

Month	Permit 20784 (A029977) (Gallons)	Permit 21289 (A031491) (Gallons)	Total Diversion In Gallons	Total Diversion in Acre-Feet	Total Diversion with Pro-rated June, October and November Quantities (Acre- Feet)
May	639,117	437,740	1,076,858	3.30	0.53
June	681,103	600,075	1,281,178	3.93	3.93
July	718,556	661,652	1,380,208	4.24	4.24
August	644,405	452,645	1,097,050	3.37	3.37
September	648,128	396,315	1,044,443	3.20	3.20
October	694,220	469,579	1,163,799	3.57	3.46
November	576,025	219,493	795,518	2.44	1.22
<b>Total</b>					<b>19.95</b>

34. Permits 20784 and 21289 authorize the diversion and use of water year round, from January 1 to December 31 of each year. No water was available for diversion under the permits from May 27 through October 30 and from November 4 through November 18, 2014, a total of 172 days, inclusive of both periods. Based upon available information obtained from State Water Board staff's investigation, water is normally not diverted on Sundays. Therefore, staff concludes that Fahey diverted water for a total of 148 days in 2014 during periods when no water was available under Fahey's Permits. Fahey diverted a total of 19.95 acre-feet of water during those periods.
35. On April 29, 2015, in lieu of submitting an online Certification Form in response to the April 23 Unavailability Notice, Fahey submitted a copy of the June 3, 2014, letter submitted in response to the 2014 Unavailability Notice.
36. Following the April 23 Unavailability Notice, State Water Board staff attempted to contact Fahey to schedule an inspection of Permits 20784 and 21289. Staff left multiple telephone messages over the course of two weeks before Fahey responded by telephone on June 12, 2015. Fahey indicated that he was unavailable to meet with staff to conduct an inspection of his facilities and that, if an inspection was required, he would not be available before the end of the summer.
37. The overhead bulk water truck filling station is a secure area, protected by a locked gate on the access road from U.S. Forest Route 1N04 (Cottonwood Road). Based on a prior inspection (conducted on October 23, 2007) associated with issuance of Permit 21289, State Water Board staff is not aware of any water sources or diversion facilities located beyond the gate, other than Fahey's permitted spring diversions and transfer station, that can be used to fill tanker trucks with water.
38. On July 12, 2015, State Water Board staff deployed surveillance equipment in the publically accessible road easement along Cottonwood Road near the entrance to APN 052-060-48-00. The surveillance equipment was deployed to capture images of vehicles accessing the property. State Water Board staff limited their observations and deployment of surveillance equipment to the publically accessible road side and did not access the Sugar Pine Spring Water, LP, property.
39. On July 23, 2015, State Water Board staff returned to the site to collect surveillance data from equipment deployed on July 12, 2015. During this visit, within a period of 90 minutes, staff observed four tanker trucks (approximate 6,600 gallon capacity each) at or just down the road from the property that is the site of the transfer station. Staff observed a tanker truck enter the property at approximately 12:15 PM and leave at approximately 12:54. Staff also observed a tanker truck enter the property at approximately 1:06 PM, just prior to staff's departure from the site. The data collected on July 23, 2015, includes surveillance data collected from July 12 through July 23.

40. On August 5, 2015, State Water Board staff collected surveillance data from equipment deployed on July 23, 2015. During that visit, staff observed three tanker trucks entering and/or leaving the access road to APN 052-060-48-00. The data collected on August 5, 2015, includes surveillance data collected from July 23 through August 5.
41. State Water Board staff reviewed photo images collected from the surveillance equipment and observed that a total of 99 tanker trucks accessed the water transfer station property on 22 out of 25 days between July 12 and August 5, 2015, at a rate from one to eleven trucks per day (three days had zero trucks). Based on the available information consistent with the size of the water tanker trucks personally observed by State Water Board staff and by photo surveillance, staff estimates the capacity of these water tanker trucks to be approximately 6,600 gallons each. Thus, staff estimates that 653,400 gallons, or 2.00 acre-feet, of water were diverted during the period.
42. On August 12, 2015, State Water Board staff contacted Mr. Fahey via telephone in an attempt to schedule an inspection of the facilities. Staff informed Mr. Fahey that he was still subject to the April 23 Unavailability Notice. Mr. Fahey indicated that he would not be able to meet. During the conversation, Mr. Fahey indicated that he has not ceased diversions during 2015 and that he continues to sell water to commercial water bottling companies.
43. Diversion when there is no water available under the priority of the water right constitutes unauthorized water diversion and use. Unauthorized diversion is prohibited, and is a trespass. (Wat. Code § 1052.)
44. This enforcement action is based on lack of available water supply under the priority of the right. The Unavailability Notices were issued for the purpose of advising the public and water diverters of the lack of available water under the priority of the rights identified in each Notice; the Notices are not the basis for this enforcement action.

#### PROPOSED CIVIL LIABILITY

45. Water Code section 1052 provides that the maximum civil liability that can be imposed by the State Water Board in this matter for the unauthorized diversion and use of the water during a drought period is \$1,000 for each day of trespass plus \$2,500 for each acre-foot of water diverted or used in excess of that diverter's water rights.
46. Evidence demonstrates that Fahey's unauthorized diversions in 2014 began on May 27, 2014, and continued, with a four-day interruption, until November 18, 2014, for a total of 148 days of unauthorized diversion under each Permit (assuming that diversions occur six out of every seven days), for a combined total of 296 days of unauthorized diversion in 2014. During that period, Fahey diverted 19.95 acre-feet of water in excess of that available to serve his permitted water rights.
47. Evidence demonstrates that Fahey's unauthorized diversions in 2015 have occurred from at least July 13 through August 5, 2015, for a total of 22 days under each water right, or a combined total of 44 days of unauthorized diversion. Over that period, Fahey diverted approximately 2.00 acre-feet of water (99 tanker trucks at 6,600 gal/tanker) in excess of that available to serve his permitted water rights. Evidence suggests that Fahey's unauthorized diversions in 2015 may have begun as early as April 29, 2015, and there is no evidence that diversions have ceased. The Division of Water Rights intends to submit all evidence of 2015 unauthorized diversions that is available at the time of any hearing on this matter, and may propose additional penalties based thereon.
48. 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.

49. In determining the amount of civil liability, California Water Code section 1055.3 requires that the State Water Board consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and any corrective action taken by the violator.
50. In this case, Fahey has made unauthorized diversions of water from the Tuolumne River watershed during a severe drought, when there was insufficient water supply available for Fahey's permitted water rights. Fahey was aware that the State Water Board had determined that there was insufficient water supply available for Fahey's permitted water rights. These unauthorized diversions have reduced the amount of water available for downstream water right holders during an extreme drought emergency. Moreover, Fahey's diversions reduced the water available for instream resources and riparian habitat downstream.
51. Fahey received a significant economic benefit by continuing diversions during the violations period. During 2015, irrigation districts north of the Delta have paid at least \$250 per acre-foot of replacement water. Thus, by illegally diverting 19.95 acre-feet of water from June 3, 2014 through November 18, 2014, and 2.00 acre-feet of water from July 13, 2015 through August 5, 2015, Fahey avoided purchased water costs of at least \$5,488. However, Fahey sells the spring water to commercial water bottling operations, likely at significantly higher costs than that paid by irrigation districts for replacement water.
52. The Division estimates that its staff cost to investigate the unauthorized diversion issues and develop the enforcement documents to be \$15,624.
53. Having taken into consideration the factors described above, the Assistant Deputy Director for Water Rights recommends an ACL for the unauthorized diversion of water in the amount of **\$224,875**. The recommended penalty is based on reducing the number of violation days to a single violation between the two rights per day, which is appropriate given the specific circumstances of this case, including Fahey's continued diversions despite lack of availability of water to serve his rights during 340 days of two consecutive drought years, Fahey's economic benefit derived from the water sales, and the need to provide a strong disincentive for continued unauthorized diversions by Fahey and any similarly-situated parties. The Division of Water Rights Prosecution Team may consider revising the proposed penalty based on all evidence that becomes available before any hearing on this matter, including evidence of economic benefit derived from water sales.
54. Should the matter go to hearing, the State Water Board may consider a different liability based on the evidence received, including additional staff costs incurred, up to the maximum amount provided by law. It is estimated that if this matter goes to hearing, additional staff costs incurred for the prosecution staff would be approximately \$10,000.

#### RIGHT TO HEARING

55. Fahey may request a hearing on this matter before the State Water Board. Any such request for hearing must be in writing and received or postmarked within 20 days of the date this notice is received. (California Water Code, § 1055, subd. (b).)
56. If Fahey requests a hearing, Fahey will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of an ACL by the State Water Board. If a hearing is requested, separate notice setting the time and place for the hearing will be mailed not less than 10 days before the hearing date.
57. If Fahey requests a hearing, the State Water Board will consider at the hearing whether to impose the civil liability, and, if so, whether to adjust the proposed liability within the amount authorized by