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Mr. G. Scott Fahey
c/o Idaho Department of Parks and Recreation
P.O. Box 83720
Boise, Idaho 83720-0065

December 19, 1994

Dear Mr. Fahey:

I am writing to transmit to you the conditions that San Francisco will request the State Water Resources Control Board include in your permit to appropriate water from the Tuolumne River in California in order to allow San Francisco to withdraw its protest to the proposed diversion.

First, I would like to respond to your question of whether your proposed diversions would in fact affect San Francisco's water supply. Deadwood and Cottonwood springs, from which you propose to divert, are tributary to the North Fork of the Tuolumne River and the Clavey River, which in turn are tributaries to the Tuolumne. Accordingly, depletions from those springs could, in certain circumstances, affect the quantities of water available to San Francisco.

We have discussed potential permit conditions in light of the fact that at times, the proposed diversion would not directly result in a loss to San Francisco's water supply. The fundamental purpose behind these conditions offered by San Francisco is to ensure that the water supply and accounting among San Francisco and the Districts that would have existed without the proposed diversions is preserved, no more and no less. However, there are numerous operational circumstances that make the development of an equation to determine responsibility for providing make up water extremely difficult. Under these circumstances, the use of a narrative condition would be most appropriate. I have listed proposed narrative permit terms below.

I would like to take this opportunity to explain a few aspects of the proposed conditions that might not be immediately obvious from a first reading. First, while you already have an agreement with the Modesto and Turlock Irrigation Districts to provide replacement water, a determination of effects on San Francisco will have to be made in conjunction with the Districts due to the complex water supply accounting procedures between the three entities. In addition, in some circumstances, depletions of water available to the Districts would result in loss of water supply to San Francisco because of the allocation of responsibility for flows by the Raker Act and FERC. Accordingly, the proposed permit terms reference various determinations to be made by the Districts and effects on the Districts' water supplies caused by the proposed diversion. However, your arrangement with the Districts would be taken into account in determining the requirement for any replacement water. It should be noted that the City is concerned about ground water you might extract to provide replacement water that would otherwise reach New

Don Pedro reservoir. We assume that the Districts are satisfied that your agreement with them protects their interests concerning ground water that would have reached basins to the west and underlying the Districts.

Second, the proposed conditions contain references to “potential” reductions in water supply available to San Francisco. This does not mean that you would be held accountable for diversions that have not yet occurred, or that San Francisco would wait to set the amount of replacement water required based on its perceived water supply needs in a shortage caused by drought. Rather, any determination of potential reductions in water supply would always look backwards in time and be set according to the quantities of your actual diversions. This provision works in your favor as well, since it allows San Francisco to notify you ahead of time of potential deficits so that you will have an opportunity to arrange for a replacement supply. It also creates greater flexibility, as it avoids the necessity for providing replacement water each year for the past year’s diversions. Again, the sole function of these proposed conditions is to replace any actual depletion of water supplies available to San Francisco and the Districts directly caused by your proposed diversions.

The following permit conditions would be sufficient to allow San Francisco to withdraw its protest to the proposed diversion:

1. Permittee shall not interfere in any way with San Francisco’s obligations to the Modesto and Turlock Irrigation Districts (“Districts”) pursuant to the Raker Act and/or the Fourth Agreement between the Districts and San Francisco.
2. Permittee’s diversion will reduce inflow to New Don Pedro Reservoir (“NDP”), potentially to the detriment of San Francisco and the Districts. Permittee must provide replacement water to the extent that it is determined by San Francisco and the Districts that Permittee’s diversions have reduced the water supplies of San Francisco and the Districts. This requirement of providing replacement water is subject to the following:
 - a. The determination of whether Permittee’s diversion has potentially or actually reduced the water supplies of San Francisco and the Districts will be made annually. At such time, San Francisco and the Districts will determine if either or both of their water supplies have been potentially or actually reduced by Permittee’s diversions. Such determination will take into account replacement water provided to the Districts pursuant to the Agreement between Permittee and the Districts, dated December 12, 1992, and any other replacement water provided by Permittee in advance of Permittee’s diversions. Such determination will recognize when Permittee’s diversions occurred during periods when District and San Francisco reservoirs were spilling, or were being operated in anticipation of spill; during these periods, **Permittee will not be held responsible for providing replacement water.** Permittee may be held responsible for different amounts of replacement water to San Francisco and the Districts. If the determination is of “potential” reductions in water supplies not yet realized due to the existence of a multi-year drought, such potential reduction will be identified by San Francisco and the Districts.

b. Permittee shall provide replacement water within one year of the annual notification of potential or actual water supply reduction caused by Permittee's diversions. At its discretion, San Francisco may extend the time period within which replacement water will be provided. Replacement water must be provided by Permittee in a manner that will offset the separate reductions in water supplies of San Francisco and the Districts. Replacement water may be provided in advance and credited to future replacement water requirements.

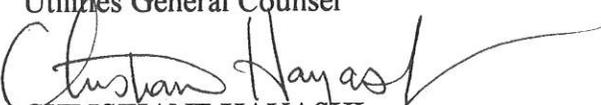
c. Replacement water may not be provided from a source that is hydraulically connected to surface water tributary to the Tuolumne River. If Permittee replaces water diverted pursuant to this permit with groundwater which it extracts, Permittee shall demonstrate that any extracted groundwater which replaces diverted surface water is water which would not otherwise reach NDP. Permittee shall demonstrate that there is hydrologic separation between the groundwater it extracts and groundwater flow from the east of NDP into NDP; or, alternatively, Permittee shall demonstrate that aquifer characteristics are such that subsurface flow to NDP is not substantial and that any extraction of groundwater by Permittee would have essentially no impact on groundwater recharge via subsurface inflow from the east to NDP.

d. The water accounting procedures between San Francisco and the Districts, as they may be modified from time to time in the future, shall be the basis of all calculations concerning Permittee's impact on the water supplies of San Francisco and the Districts.

e. Permittee shall include records of groundwater pumpage or provision of other replacement water with its annual report of use to the State Water Resource Control Board.

I hope that these proposed conditions are satisfactory and that San Francisco may withdraw its protest and allow your venture to proceed without further delay. Please do not hesitate to call if you have any questions regarding these proposed permit conditions.

Sincerely,

LOUISE H. RENNE
City Attorney
THOMAS M. BERLINER
Utilities General Counsel

CHRISTIANE HAYASHI
Deputy City Attorney

cc: Yoko Mooring, SWRCB
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Mr. Wm. Van Dyck
Ms. Yoko Mooring
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
901 P Street
Sacramento, CA 95814

December 19, 1994

Dear Ms. Mooring and Mr. Van Dyck:

Enclosed please find your carbon copy of a letter from myself to Mr. G. Scott Fahey, regarding his application to appropriate water from Deadwood and Cottonwood Springs in Tuolumne County, Application number 29977.

As you recall from our field investigation of September 29, 1994, Mr. Fahey and I agreed to negotiate permit terms that would both allow his proposed venture to proceed to his satisfaction and protect the prior water rights of the City and County of San Francisco. The enclosed letter represents such an agreement. I previously transmitted a draft to Mr. Fahey and he indicated that those permit terms would be satisfactory.

Thank you for your patience and assistance in this matter. Please let me know if you have any questions.

Sincerely,

LOUISE H. RENNE
City Attorney

THOMAS M. BERLINER
Utilities General Counsel

CHRISTIANE HAYASHI
Deputy City Attorney