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BEFORE THE STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

**In the matter of Administrative Civil
Liability Complaint issued against G. Scott
Fahey and Sugar Pine Spring Water, LP**

Motion to Strike and Motion in Limine

I. INTRODUCTION

The Prosecution Team requests that the Hearing Officer strike any and all testimony, evidence, and argument submitted by G. Scott Fahey and Sugar Pine Spring Water, LP (collectively "Fahey") for the purposes of proving he did not divert water without authorization, now and at the hearing, that his water right permits and permits' terms should be different or, for various reasons, that his permit terms are now irrelevant, obsolete, or inapplicable. The Prosecution Team further requests that any argument, evidence, and testimony admitted and considered at the hearing should be limited to argument, evidence, and testimony, that is relevant to the issues outlined in the Hearing Notice and appropriate for an enforcement proceeding. The Hearing Officers should not admit or consider any argument, evidence, or testimony that Fahey did not divert water without authorization on the basis that his water right permits and permits' terms should be different or, for various reasons, that his permit terms are now irrelevant, obsolete, or inapplicable.¹

II. BACKGROUND

The Hearing Notice outlines the key issues for the hearing. They are:

¹ A true and correct copy of the Hearing Notice is available at http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/fahey/docs/notice_fahey.pdf.

- 1) Has Fahey violated, or is Fahey threatening to violate, the prohibition set forth in Water Code section 1052 against the unauthorized diversion or use of water (trespass)? This may include, but is not limited to consideration of the following questions related to allegations or defenses:
 - a) Did Fahey divert water under Permits 20784 and 21289 when water was unavailable for diversion under his priority of right?
 - b) If Fahey diverted water, does Fahey hold or claim any water rights other than Permits 20784 and 21289 that would authorize the diversion?
 - c) What other relevant circumstances should be considered by the State Water Board in determining whether unauthorized diversion of water has occurred or is threatening to occur?
- 2) If a trespass occurred, should the State Water Board adopt the September 1, 2015 draft CDO against Fahey with revision or without revision?
- 3) Should the State Water Board impose administrative civil liability upon Fahey for trespass and, if so, in what amount and on what basis? In determining the amount of civil liability, the State Water Board must take into consideration all relevant circumstances, (Wat. Code, § 1055.3), including but not limited to:
 - a) What is the extent of harm caused by Fahey alleged unauthorized diversions?
 - b) What is the nature and persistence of the alleged violation?
 - c) What is the length of time over which the alleged violation occurred?
 - d) What corrective actions, if any, have been taken by Fahey?
 - e) What other relevant circumstances should be considered by the State Water Board in determining the amount of any civil liability?

Despite the clearly stated outline of key issues in the Hearing Notice, much of the testimony, evidence, and argument Fahey has submitted for his case in chief for the purpose of proving that he did not divert water without authorization asserts that his permits and his permits' terms should be different or that permit terms are now irrelevant, obsolete, or inapplicable. Fahey's evidence, testimony, and argument that that his permits and permits' terms should be different or that his permit terms are now irrelevant, obsolete, or inapplicable appear primarily in two exhibits.

Exhibit Fahey 1, “Testimony of G. Scott Fahey”²

- Page 4, last paragraph, continuing to page 5 in the first full paragraph – Fahey asserts that 30 percent of the springs’ water is surface water and 70 percent is percolating groundwater and, therefore, that only 30 percent of the water is jurisdictional.
- Page 7, last paragraph – This paragraph begins with “Therefore, despite the fact that my diversions were primarily groundwater.” Again, Fahey asserts that his diversions are primarily groundwater and, therefore, not jurisdictional.
- Page 15, under heading number 2 “D995 is Obsolete and Term 20 Must Control” – In this section, Fahey argues that Water Right Decision (“D”) 995 is now “obsolete,” due to the construction of New Don Pedro Reservoir. Consequently, Fahey argues, the fully appropriated stream condition determined in D995 is no longer relevant and, as a result, “Term 20 necessarily must control over Term 19.” This assertion relies on Exhibit 68 and 76.

Exhibit Fahey 71, “Expert Witness Testimony of Ross R. Grunwald”³

- The second paragraph, starting with the sentence “However, in reality, this is a worst case scenario and does not relate to the actual case. In fact, water extractions from the various components of the system are much greater than any observed reduction in surface spring flow” begins a discussion that continues for the rest of Dr. Grunwald’s testimony to support the assertion that “the impairment of surface flow from the springs is much less than that reporting to the Sugar Pine Spring Water, LP, collection system.”

Although the Prosecution Team, above, has cited specific instances of Fahey’s evidence, testimony, and argument that that his permits and permits’ terms should be different or that his permit terms are now irrelevant, obsolete, or inapplicable, other minor references occur through Exhibit Fahey 1 and Fahey 71.⁴

² A true and correct copy of Exhibit Fahey 1, “Testimony of G. Scott Fahey,” is available at http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/fahey/exhibits/fahey01.pdf.

³ A true and correct copy of Exhibit Fahey 71, “Expert Witness Testimony of Ross R. Grunwald,” is available at http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/fahey/exhibits/fahey71.pdf.

⁴ See attachments to Declaration of Kenneth Petruzzelli in Support of Motion to Strike and Motion in Limine for highlighted sections of Fahey’s argument, evidence, and testimony that that his permits and permit terms should be different or that permit terms are now irrelevant, obsolete, or inapplicable.

III. ARGUMENT

Fahey's argument, evidence, and testimony that his permits and his permits' terms should be different or that his permits' terms are now irrelevant, obsolete, or inapplicable do not relate to any of the key issues outlined in the Hearing Notice.

In an adjudicative hearing, the State Water Board shall admit any relevant evidence if it is the sort of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. (Govt. Code, § 11513 subd. (c).) However, the presiding officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time. (Govt. Code, § 11513 subd. (f).)

The issues in the Hearing Notice do not include whether D995 still applies and it does not include challenging the fully appropriated stream ("FAS") determinations. Fahey even acknowledges that "the Board's requirement for Fahey to establish the 1992 water exchange agreement with the Districts was based on the Tuolumne River being managed as a FAS system as determined by decision 995." (Exhibit Fahey 1, p. 15.) As a result, Fahey simultaneously acknowledges that his permits and his permits' terms are premised upon D995 and the FAS determination, but then goes on to challenge D995 and the FAS determination. By arguing that D995 and the FAS determination no longer apply, Fahey is attempting to argue that Term 19 in Permit 20784 no longer has effect. These are not issues in this hearing. If Fahey wants to delete Term 19 from Permit 20784 or modify Term 19 he can file a change petition, but for now the issue is whether he complied with Term 19.

Similarly, Fahey asserts that his springs are primarily groundwater and therefore not jurisdictional. (Exhibit Fahey 1, p. 5.) He relies on expert testimony from Dr. Grunwald to support this assertion. (Exhibit Fahey 71.) However, Fahey states in his testimony that in the course processing Application 31491 (the application for Permit 21289), the Division of Water Rights considered whether the springs under the permit, Marco Spring and Polo Spring, were groundwater. (Exhibit Fahey 1, p. 5.) Dr. Grunwald similarly states that when he prepared and submitted the water supply analysis for Application 31491 he assumed that "all of the water extractions from the various components of the system would directly impact the surface spring flow." (Exhibit Fahey 71, p. 1) As a result, he concluded that "the reduction of water volume reporting to the drainage basin would correspond to the total water extracted." (*Id.*) Mr. Fahey therefore made and submitted Application 31491, under penalty of perjury, on the premise that the springs are jurisdictional and directly impact downstream tributaries. This issue has been

raised, considered by the State Water Board, and incorporated into the very permit whose terms Fahey accepted. The issues now are whether Fahey has complied with those permit terms, not whether those terms should now change or not apply due to the sudden discovery of new facts.

Fahey's argument, evidence, and testimony that his permits and his permits' terms should be different or that his permits' terms are now irrelevant, obsolete, or inapplicable would necessitate an undue consumption of time and lack any probative value. The Hearing Officers should therefore strike all such argument, evidence, and testimony that Fahey has submitted for his case in chief and attempts to submit at the hearing.

Fahey's testimony, evidence, and argument that his permits and his permits' terms should be different or that permit terms are now irrelevant, obsolete, or inapplicable, is proper for change petitions, but not in enforcement proceedings. Accepting and considering such testimony, evidence, and argument in enforcement proceedings is not appropriate. It would turn enforcement proceedings into change proceedings. Enforcement proceedings, including this one, are not noticed to consider permit changes. Allowing enforcement proceedings to function as change proceedings would turn the Office of Enforcement into an office for processing change petitions. This is not the Office of Enforcement's function and the Office of Enforcement lacks capacity for this function. Most importantly, allowing enforcement proceedings to accept and consider testimony, evidence, and argument that a permit or a permit's terms should be different or that a permit terms are irrelevant, obsolete, or inapplicable would encourage permittees to violate their permits. On the unlikely chance a permittee gets caught and the State Water Board seeks to enforce the permit and permit terms, the permittee would simply seek to avoid liability by asserting that the permit and permit terms should be different or that the permit terms are irrelevant, obsolete, or inapplicable. The State Water Board could no longer administer water rights in an orderly manner.

IV. CONCLUSION

Based on the foregoing, the Prosecution Team requests that the Hearing Officers strike any argument, evidence, and testimony that Fahey has submitted or attempts to submit, for the purpose of supporting his assertion that he did not divert water without authorization, that his permits and his permits' terms should be different or that his permits' terms are now irrelevant, obsolete, or inapplicable. These are not key issues outline in the Hearing Notice. Although the evidence, argument, and testimony Fahey submitted may be relevant and appropriate for a change petition, this not a proceeding for a change petition. This is an enforcement proceeding. None of it is relevant or appropriate now. Any argument, evidence, and testimony admitted and

considered at the hearing should be limited to argument, evidence, and testimony, that is relevant to the issues outlined in the Hearing Notice and appropriate for an enforcement proceeding.

Respectfully submitted,



Kenneth Petruzzelli
OFFICE OF ENFORCEMENT
Attorney for the Prosecution Team

**Service List
(Revised January 5, 2016)**

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BEFORE THE STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

**In the matter of Administrative Civil
Liability Complaint issued against G. Scott
Fahey and Sugar Pine Spring Water, LP**

**Declaration of Kenneth Petruzzelli in
Support of Motion to Strike and Motion in
Limine**

I, Kenneth Petruzzelli, declare as follows:

1. I am an Attorney III (Specialist) with the State Water Resources Control Board's Office of Enforcement. I have been a practicing attorney since 2003, California Bar No. 227192. I joined the Office of Enforcement in 2015. I have represented the Prosecution Team as lead counsel in the matter of the Administrative Civil Liability Complaint and Draft Cease and Desist Order issued against G. Scott Fahey and Sugar Pine Spring Water, LP (Fahey or Defendant) since about November 17, 2015, when I replaced Andrew Tauriainen. Mr. Tauriainen still serves as co-counsel in the matter.
2. On or about December 16, 2015, counsel for G Scott Fahey and Sugar Pine Spring Water, LP (collectively "Fahey") submitted written testimony and exhibits to support their case in chief.
3. Fahey's exhibits include testimony, evidence, and argument that assert or support assertions that his permits and permit terms should be different or that his permit terms are now, for various reasons, irrelevant, obsolete, or inapplicable.
4. I have highlighted portions of Fahey's exhibits that include testimony, evidence, and argument that assert or support assertions that his permits and permit terms should be different or that his permit terms are now, for various reasons, irrelevant, obsolete, or inapplicable. I have marked these exhibits and included relevant portions of them as Attachment 1, excerpt from Exhibit Fahey 1, and Attachment 2, an excerpt from Exhibit Fahey 71.

Declaration of Kenneth Petruzzelli
G. Scott Fahey and Sugar Pine Spring Water, LP
ACLC and Draft CDO

I declare under penalty of perjury to the laws of the State of California that the foregoing is true and correct. Executed this 13th day of January 2016, at Sacramento, California.



Kenneth Petruzzelli

EXHIBIT 1

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Glen C. Hansen (SBN 166923)
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BEFORE THE STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

**IN THE MATTER OF
ADMINISTRATIVE CIVIL
LIABILITY COMPLAINT ISSUED
AGAINST G. SCOTT FAHEY AND
SUGAR PINE SPRING WATER, LP**

**EXPERT WITNESS TESTIMONY OF G.
SCOTT FAHEY**

Written Testimony of G. Scott Fahey
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20. Permittee shall comply with the following provisions which are derived from the City and County of San Francisco (San Francisco) letter dated December 19, 1994 filed with the State Water Resources Control Board:

1) Permittee shall not interfere with San Francisco's obligations to the Modesto and Turlock Irrigation Districts (Districts) pursuant to the Raker Act and/or any implementing Agreement between the Districts and San Francisco.

2) Permittee shall provide replacement water to New Don Pedro Reservoir for water diverted under this permit which is adverse to the prior rights of San Francisco and the Districts. A determination of whether permittee's diversion has potentially or actually reduced the water supplies of San Francisco and the Districts will be made annually by the latter parties in accordance with water accounting procedures being used by said parties.

Permittee shall provide replacement water within one year of the annual notification by San Francisco or the Districts of potential or actual water supply reduction caused by permittee's diversions. Permittee shall provide replacement water 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. [Exhibit 20, Bates-Stamped pages 314-315.]

E. Application To Appropriate Water (A031491) Marco and Polo Springs.

On August 9, 2002, I filed an application to appropriate water (primarily groundwater) from the Wet Meadow Springs (later adding the "Marco Spring" and "Polo Spring" points of diversion) in Tuolumne County. (Exhibit 27, Bates-Stamped pages 575-615; Exhibit 34, Bates-Stamped page 635.) A temporary application number X003488 was issued, but later changed and given number 31491. (Exhibit 28, Bates-Stamped pages 616-617.) The Board's Yoko Mooring questioned the need for me to even apply for such a water right ("WR"). In her own notes of a phone call she had with me on January 30, 2003, she stated: "*I also questioned the need of WR. His source appears to be groundwater.*" (Exhibit 29, Bates-Stamped page 618.) Additionally, I was informed by my designated representative for A031491, Diane Kindermann, during the final submission of the CEQA, NEPA, and WAA reports to the Division of Water Rights that Kathy Mrowka considered that the water proposed for appropriation was mostly percolating groundwater too. They were both correct.

During my September 2 through 8, 2015 site visit I observed that every spring that would normally be issuing water that time of year was dry; including the Marco and Polo spring sites, which stopped running May 2014 and July 2015 respectively. The other sites issuing water to my pipeline conveyance system were providing 22 gallons/minute. I did not consider it reasonable that that much water would issue at those sites if undeveloped and in their natural state. Therefore, I contacted Ross Grunwald a hydro-geologist certified by the State of California.

Written Testimony of G. Scott Fahey
Page 5 of 17

Beginning in 1996, Ross had previously conducted every pre and post spring development analysis for each spring. I asked Ross to consider the amount of water that he believed the conveyance system intercepted that is surface water versus percolating ground water. In Ross's professional opinion, he considers that on average 30% is surface water and 70% is percolating ground water. Additionally, Gary Player a hydro-geologist, formally certified in the State of California, was asked to conduct a peer review of the analysis Ross had conducted in the past. Gary considers the work Ross has done to be professional, technically competent, and an accurate portrayal of the quality, quantity, and type of water diverted by my system. Therefore, I shall testify that only 30% of the water diverted and sold by Sugar Pine Spring Water is jurisdictional surface water. As such, any future annual Permittee Use Reports will report the surface water diverted accordingly. (Witness Testimony and Statement of Qualifications of Ross Grunwald, Exhibits 71 and 72 and Witness Testimony and Statement of Qualifications of Gary Player, Exhibits 73 and 74.)

F. Surplus Water Agreement With TUD And Exception Approved.

In Application X003488 (A031491), I confirmed, under penalty of perjury, that the terms of A029977 would adhere to the X003488 diversions. (Exhibit 27, Bates-Stamped page 579.) However, Board employees Manas Thananant and Larry Attaway considered my statement, but believed that "we need something more to clarify that those agreements are expandable for the new app." (Exhibit 29, Bates-Stamped page 618.) In response, I began preparing a new, expandable agreement that is inclusive of both water rights, A29977 and X003488.

Thereafter, I submitted for the Board's review an *Agreement For Surplus Water Service* with the Tuolumne Utilities District ("TUD"), which Board staff approved. (Exhibit 30, Bates-Stamped page 620; Exhibit 31, Bates-Stamped page 622; Exhibit 32, Bates-Stamped pages 630.) I executed that agreement with TUD on October 20, 2003. (Exhibit 33, Bates-Stamped page 634; Exhibit 35, Bates-Stamped page 636.) The Board's Yoko Mooring wrote a *Memorandum*, dated December 23, 2003 (Exhibit 36, Bates-Stamped pages 639-640), in which she stated that

Permittee's obligations to provide replacement water, under this agreement shall take into consideration permittee's obligations to provide replacement water under the Water Exchange Agreement. [Exhibit 36, Bates-Stamped page 640.]

On January 26, 2004, the Board's Victoria A. Whitney wrote a *Statement for File*, in which she approved an Exception from the Legal Effects of a Declaration of a Fully Appropriated Stream System (FASS) for me to "provide replacement water to NDPR for all water diverted during the FASS period each year by way of a Water Exchange Agreement, executed on October 20, 2003, with TUD for surplus water." (Exhibit 37, Bates-Stamped page 641.) With the Board's approved FASS exception of record in the Board's X003488 file, the *Notice of Application to Appropriate Water* was issued on January 28, 2004 for A031491. (Exhibit 39, Bates-Stamped pages 650-651.) That notice stated: "Applicant accepts and understands that Application 31491 shall be conditioned and subjected to the same terms and conditions as the previous agreements." (Exhibit 39, Bates-Stamped page 650.)

Written Testimony of G. Scott Fahey
Page 7 of 17

I immediately informed the Board staff and CCSF that I had no objection to those changes proposed by CCSF. (**Exhibit 42**, Bates-Stamped page 693; **Exhibit 43**, Bates-Stamped page 695.) Therefore, Board staff told CCSF: “It appears that his acceptance of the conditions alleviates your concern.” (**Exhibit 44**, Bates-Stamped pages 711-712.) The Board followed with a letter, dated January 31, 2005, confirming that the CCSF protest could be dismissed as a result of using the wording as corrected by the CCSF letter, dated November 8, 2004, which wording would be included in any permit issued by the Board. (**Exhibit 46**, Bates-Stamped pages 726-727.) Later, CCSF reiterated that

The Initial Study/Mitigated Negative Declaration does not refer to the terms accepted by the applicant to dismiss San Francisco’s protest. As compliance with the accepted terms are part of the proposed project, we request that the accepted terms be referred to in the project description and discussed in Section IX, Hydrology and Water Quality. As noted in the City’s November 8, 2004 letter, San Francisco only intends to notify the applicant of the need to provide replacement water when necessary; that is, when the applicant’s use has led to a reduction, or has a strong potential of reducing, the water supply of San Francisco. Also as noted, the wide range of year-to-year hydrology on the Tuolumne River makes it impossible to predict whether or not the diversions of the applicant in one year will have a negative impact to San Francisco the next year or later. [**Exhibit 54**, Bates-Stamped page 1050.]

The Districts also protested A031491 (**Exhibit 41**, Bates-Stamped pages 687-689), but later agreed that the terms sought by CCSF (described above) “specifically protect the prior rights of both CCSF and the Districts and inclusion of those terms in the permit would be sufficient to resolve the Districts’ Protest.” (**Exhibit 53**, Bates-Stamped pages 1043-1044.)

H. Surface Water Shortage, 2009 Notice.

On February 26, 2009 the Board sent me (presumably as a “Diverter of Surface Water”) a *Notice of Surface Water Shortage for 2009*. (**Exhibit 69**.) That notice stated: “If you plan to.....need water beyond the limited supply available, you may find yourself in a very serious dilemma”; and “[y]ou may....contract for water deliveries from a water supplier, such as..... a local water....district.” That was the first time that anyone had given me notice that surplus water should be purchase in case it is needed as replacement water whether for a diversion curtailment or otherwise. In good-faith reliance on the Board’s direction set forth in that notice to “contract for water deliveries from a water supplier...”, from June 15, 2009 through June 15, 2011, I purchased from and had TUD wheel 88.55 acre-feet of surplus water to New Don Pedro Reservoir (“NDPR”) (**Exhibit 70**.), pursuant to the terms of my existing water rights emanating from the A029977 and A031491 permits.

Therefore, despite the fact that my diversions were primarily groundwater, with the TUD Agreement in place for that very reason with its out-of-basin water source approved by the Board (**Exhibit 65**, Bates-Stamped page 342.), I was able to purchase surplus water from TUD and TUD had it wheeled to NDPR, and it is standing by in case it is needed as replacement water

2. D995 Is Obsolete And Term 20 Must Control.

Second, the Board's requirement for Fahey to establish the 1992 water exchange agreement with the Districts was based on the Tuolumne River being managed as a fully appropriated stream system as determined by decision 995 (hereinafter "D995"). (Exhibit 5, Bates-Stamped pages 38-40.) However, D995 was adopted in 1961, under a different water infrastructure and delivery regime. (Exhibit 76). In other words, 995 became obsolete with the creation of NDPR 10 years later. It should have never been referenced or been used to mandate the 1992 agreement. CCSF's financial contribution for the construction of New Don Pedro Reservoir ("NDPR") in return created a 570,000 acre-feet impoundment (hereinafter the "water bank") dedicated to CCSF. (Exhibit 68.) NDPR and the water bank enable 60% of the Tuolumne River's unimpaired flow to be allocated to the CCSF and the remaining 40% to the Districts. Therefore, D995 was obsolete long before 1992 and should never have been used to justify the WEA obligations. Term 20 of A029977, unlike D995, is relevant to the hydrodynamics of the Tuolumne River as they have existed since 1971 and should control how the demand for replacement water was managed. Term 20 takes into consideration the post NDPR infrastructure and the water bank hydrodynamics that were not contemplated when the Board determined that the Tuolumne River was a fully appropriated stream system by D995 in 1961. Thus, Term 20 necessarily must control over Term 19.

3. Protection Of CCSF's Water Rights Mandates Notification To Fahey If It Wants Fahey To Provide Water.

Third, the September 26, 1994, memo from Daniel B. Steiner, a CCSF Civil Engineering consultant, to CCSF attorney Chris Hayushi, explains some of the complex accounting scenarios that must be considered for CCSF senior rights to be protected. (Exhibit 14, Bates-Stamped pages 230-232.) Regardless of A029977, if CCSF has a positive balance in its water bank, it loses water as a result of any upstream third-party diversion and the Districts are shielded from that loss by the NDPR water bank accounting system, which, at the expense of CCSF, shields the Districts from any loss. To protect their water rights and the unfair loss of CCSF water due to the NDPR water bank accounting process, Term 20 of A029977 must have primacy of operation with regard to Term 19. Term 19 in A029977 must be subordinate to Term 20. Conversely to those four (4) accounting examples, if the CCSF diverts the unimpaired flow of the Tuolumne River during the month of July, contrary to D995, while its water bank is being debited and I release replacement water, e.g. 30 acre-feet, to NDPR, then the water flowing into NDPR would have a net increase of 30 ac-ft. and the CCSF water bank would be debited 30 ac-ft. less than it should be for the water it diverted, thereby, the Districts suffer a loss. That is why CCSF insisted that the "and/or" in Term 20 of the A029977 permit be change to "and" in Term 34 of the A031491 permit; thereby, neither the Districts nor CCSF can call for replacement water without the other party knowing when it will be released and how much will be allocated to each party. Thus, the allegation in the ACL about my alleged obligation under Term 19 to replace water without CCSF and the District's request cannot be correct interpretation of the permits. Additionally, that is why the A03149 permit is without a condition similar to "Term 19."

Additional correct facts support the exemption as set forth below in 4, 5, and 6.

EXHIBIT 71

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8 **BEFORE THE STATE OF CALIFORNIA**
9 **STATE WATER RESOURCES CONTROL BOARD**

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11 **IN THE MATTER OF**
12 **ADMINISTRATIVE CIVIL**
13 **LIABILITY COMPLAINT ISSUED**
AGAINST G. SCOTT FAHEY AND
SUGAR PINE SPRING WATER, LP

EXPERT WITNESS TESTIMONY OF
ROSS R. GRUNWALD

GeoResource Management



December 13, 2015

Mr. Scott Fahey
Sugar Pine Spring Water, LP
2787 Stony Fork Way
Boise, ID 83706

Re: Evaluation of Ground Water Withdrawals to the Sugar Pine Spring Water System

Dear Mr. Fahey,

I have been associated with Sugar Pine Spring Water Company since spring of 1996. Development of water collection facilities has evolved over the intervening twenty years. Most recently water flowing to your collection tank was derived from three development wells and two subsurface infiltration galleries installed below the water table at Deadwood, Sugar Pine, Marco and Polo springs.

In my report: "Water Availability Analysis" prepared for and submitted to the Chief, Division of Water Rights, California State Water Resources Control Board, on July 14, 2010, the assumption was made that all of the water extractions from the various components of the system would directly impact the surface spring flow. Thus, the reduction of water volume reporting to the drainage basin would correspond to the total water extracted. However, in reality, this is a worst case scenario and does not relate to the actual case. In fact, water extractions from the various components of the system are much greater than any observed reduction in surface spring flow.

No definitive studies have been made to determine what this difference may be. However, in my professional opinion, the reduction of spring flow is, on average, on the order of 30% of the volume of water removed from the wells and infiltration galleries installed by Sugar Pine Spring Water, LP. Since only 30% of the water withdrawn from system impairs the spring water flows, the remaining 70% is clearly sourced from percolating ground water beneath the site.

The above estimate is based on my experience with the project from its inception in 1996 to the present. A detailed study of water withdrawals and spring flow must be made in order to establish a more definitive ratio between surface flow impairment and withdrawal of percolating ground water. Nevertheless, it is clear that the impairment of surface flow from the springs is much less than that reporting to the Sugar Pine Spring Water, LP, collection system.

Sugar Pine Spring Water
December 13, 2015
Page 2

Respectfully submitted,



Ross R. Grunwald
California Professional Geologist #3948
California Certified Hydrogeologist #269



Water Availability Analysis Attached