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**SUGAR PINE
SPRING WATER LP**

FAX TRANSMITTAL

DATE: December 19, 2003

TO: Yoko Mooring – SWRCB, Wtr. Rgts. Div.

FAX #: (916) 341-5400

TELE #: (916) 341-5362

FROM: G. Scott Fahey

NUMBER OF PAGES (INCLUDING THIS COVER SHEET) 2

Our fax machine telephone number is (208) 345-5107.

If there are any questions regarding this transmittal, please call (208) 345-5170.

Yoko

The following page is a copy of a fully executed "Application and Agreement for Surplus Water Service" I have entered into with the Tuolumne Utilities District (TUD).

If you have any questions or require any additional information from TUD do not hesitate to contact Joe Whitmer @ (209) 532-5536 x 515, or call me @ (208) 345-5170.

- Regards –
Scott Fahey

STATE WATER RESOURCES
CONTROL BOARD
2003 DEC 22 AM 7:10
SECRETARY

DEC 19-2003 16:55

SUGAR PINE SPR. WTR. LP

208 345 5107 P.02

Outlet # _____ Account # _____ Station # Proemix Dam mydocuments/rules/surplus.wtr/applicat n for Surplus water 4_2001

TUOLUMNE UTILITIES DISTRICT APPLICATION AND AGREEMENT FOR SURPLUS WATER SERVICE

G. Scott Fahey, hereinafter called "Applicant," has requested TUOLUMNE UTILITIES DISTRICT, hereinafter called "District," to sell to Applicant, when available, non-potable untreated "Surplus Water" and deliver the same to Applicant from the District's Proemix Ditch, at the rate applicable to a 10 cfs minimum inch, at a cost per unit delivered determined by applying 41 AC-FR (Ferturans) (fee/rate schedule) for use on the N/A acre parcel, that is Tuolumne County Assessor's Parcel Number N/A and being located at (service address) 7.0 Mile Park / Colburn Rd., telephone # (208) 345-5170.

For the Application will be considered complete, a map showing: 1) location of property, 2) area to which water will be applied, and 3) point of service, must be attached hereto. The use of water under this application is restricted to lands, area, quantity and flow of water, and purpose of use as stated herein. Any use other than stated herein, including but not limited to applying water to lands other than identified on the attached map will be considered sufficient cause for the District's immediate termination of this application.

The District is willing to comply with Applicant's request subject to the following terms and conditions:

1. All deliveries of water hereunder will be made in accordance with District's Rules and Regulations applicable to such service, it being agreed, however, that nothing will prevent District from ceasing, restricting or apportioning deliveries hereunder in the case of insufficient water supply.
2. Applicant shall pay District in full immediately upon receipt of billing from the District for untreated water at the rate and charges set forth in the District's Raw Water Rate schedule identified herein above, and as revised from time to time by the District's Board of Directors.
3. Applicant hereby acknowledges notification that all water supplied hereunder is untreated water from open ditches, canals and conduits and is unfit for human consumption. Water provided hereunder is not intended nor in any way offered, and shall not be used for, residential or domestic uses including, but not limited to drinking, cooking or bathing. Any such use of this water shall be grounds for the District to immediately terminate this agreement and District shall thereby be released from any obligation for the delivery of such water.
4. Deliveries of water hereunder shall be made at the point where Applicant's water conduit contacts District facility and measurements shall be made as near thereto as practicable. All necessary works for the measurement and diversion of water from said facility shall be installed, owned, maintained and operated by District. The cost to the District of all labor and materials, including measuring devices, for the diversion of water from said facility shall be born by Applicant. All conduits and right-of-ways necessary for receiving and conveying water from said point of delivery to Applicant's point of use shall be provided and installed by Applicant and Applicant shall be responsible for the maintenance and operation thereof. Applicant's failure to operate and maintain the same shall be cause for discontinuance of service.
5. District shall have the right to temporarily discontinue water deliveries hereunder in order to perform necessary maintenance, repairs or improvements to the canal system or associated facilities. It is not uncommon for these outages to last seven or more consecutive days. In the event of a reduction or interruption of the water supply because of drought, errors in operation, or other causes beyond the control of the District, no liability shall accrue to the District, or its officers, agents or employees for any damage arising therefrom. Applicant shall indemnify and hold the District harmless against any claim or action arising out of any injury, illness or damage resulting from the unauthorized use of such water.
6. In the event of non-payment of water charges, District may discontinue the delivery of water, and may additionally record a claim of lien upon the property to which water is provided.
7. The term of this agreement shall be from the date of execution through the end of the current calendar year, provided, either party shall have the right to terminate this agreement by giving the other party thirty (30) days written notice.

Executed this 20th day of October 2003

Applicant:

Tuolumne Utilities District:

G. Scott Fahey
Applicant Signature

[Signature]
District Representative

Sugar Pine Spring Water
00066

Mailing Address 2787 Shaw Fork Way

City Boise State ID Zip 83706

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STATE WATER RESOURCES
CONTROL BOARD

2003 SEP 11 AM 10:02

DIV. OF WATER RIGHTS
SACRAMENTO

POLICY STATEMENT

File: mydocuments:\rules\surplus water\ surplus water policy adopted 4_10_2001

POLICY STATEMENT: The title of this policy shall be "UNTREATED SURPLUS WATER DELIVERY".

The purpose of the proposed "Surplus Water Delivery Policy" is to define procedures whereby the District may make available untreated water, on an "if and when available basis", to water users within the District, when such water is surplus to other water supply needs of the District's Tuolumne Water System operations and the contractual commitments of the District. The District, depending upon the type of water year, has available raw water that is in surplus to its needs in varying forms, amounts and timing. All too often the opportunity to put this water to beneficial use is unrealized, while at the same time there are potential water users within the District who could use an interruptible, nonfirm raw water supply. The District Board of Directors has indicated that it is their belief that it is in the best interest of all to develop methodology whereby the District could identify, as early in the water year as possible, the source, flow rate and quantities of such water that may be surplus to existing demands and make optimum use of this available water by delivering such water to potential water users. Such water can be available from four (4) sources:

- 1) Water which is referred to herein for convenience as "Power Water", which can be considered either as a part of "Surplus Water" or separately, is often available for delivery below Phoenix Powerhouse during the months of April, May and June. This water is available as a result of PG&E's operation of its Phoenix hydroelectric power generation system during those months, when the water generating electricity exceeds TUD's needs for water that year below Phoenix Reservoir;
- 2) "Supplemental Water", which can be considered a component of "Surplus Water" and is defined within the PG&E 1983 "Purchase Agreement", and is available to TUD as a result of projected annual South Fork yield.

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Both Power Water and Supplemental Water are available for District use under the 1983 PG&E Purchase Agreement. Power water may be made available under separate application to the District and available for delivery to potential water users only during the "power period" as defined in the 1983 "Purchase Agreement" with PG&E (normally during the months of April, May or June). "Power Water", may also be integrated with supplemental water and made available to water users under the terms of a "Surplus Water Agreement".

The remaining two (2) additional sources of surplus water that could be made available to users under separate agreement are: 1) water purchased from PG&E also under terms of the 1983, Purchase Agreement, which may in turn be sold to users under separate agreement approved by the General Manager and 2) "Reclamation Water" developed through the treatment of wastewater, and considered under a separate policy direction.

WATER PRORATION AND ALLOCATION

District reserves the right to allocate the delivery of available water supplies among its water users. The annual allocation of water among competing users shall be based upon the District projections of water availability, allocated on the basis of intended use. The highest priority shall be given to the delivery of treated water for municipal and industrial use through TUD's Tuolumne Water System, public trust requirements (where fish flow requirements and other environmental uses are a condition of use imposed by an appropriate regulating governmental body), and the watering of livestock (including poultry). The next highest priority shall be given for maintaining the survival of permanent crops, and fire protection; followed by irrigation of nonpermanent crops, and other agricultural and commercial uses. The final group includes the delivery of "Surplus Water" under terms outlined within the "Surplus Water Delivery" policy as stated herein, for other uses such as noncommercial recreation, scenic, and construction purposes. The delivery of "Power Water" as distinguished from "Surplus Water" (which is made up of a combination of both "Power Water" and "Supplemental Water") shall have a lower priority of allocation than the delivery of "Surplus Water".

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“Surplus Water” and “Power Water” DEFINED AND QUANTIFIED

“Surplus Water” is untreated raw water, available for distribution that is in excess of District’s other anticipated water delivery requirements. “Surplus Water” is not intended or offered for human consumption including drinking, cooking or bathing. Any such use shall constitute a misuse of this water and will be considered grounds for the immediate discontinuance of such water delivery.

The District shall annually estimate the quantity and availability of “Surplus Water” for delivery through the period April 15th through October 15th of each year. The District shall next determine the anticipated demand for “Surplus Water” by totaling the amounts of water identified on applications for service received by April 1st of each year. Delivery of “Surplus Water” shall be prorated among applicants, based upon this determination of availability, delivery contracts, and conditioned on an “if and when available” basis, without warranty. When determining the annual quantification of “Surplus Water”, availability projections shall first be made on maximizing the combination of both “Power” and “Supplemental” to be made available under a Surplus Water Application, with any remaining or uncommitted “Power Water” in excess of that committed to “Surplus Water” then being available for delivery under a separate “Power Water” application.

The availability and delivery of “Surplus Water” shall have a lowest priority for delivery as compared against other classes or types of waters delivered by the District, other than the separate delivery of “Power Water” which is the lowest class of water delivered by the District. “Surplus Water”, and “Power Water” when sold separately, shall only be available when, in the sole determination of the District, such availability and delivery shall not interfere with or impair the availability and distribution of higher priority water supplies furnished by the District.

“Surplus Water”, other than “Power Water” which may be available under separate agreement, shall only be made available to water users who have annually executed an “Application and Agreement” for “Surplus Water Service” (hereinafter Application) with the District. The annual quantity and scheduling of delivery of “Surplus Water”, and “Power Water” when sold separately, shall be divided among water use applicants based upon: 1) availability and timing of availability of both “Surplus Water” and “Power water” as determined annually by the District, 2) the total demand for “Surplus Water” and “Power Water” as determined by returned applications

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for "Surplus Water" and requests for "Power water", and 3) a proration in cases of shortage based upon the amount of water, when used, and rate of flow employed by the Applicant the prior year as a percentage of the prior year availability. Unallocated "Surplus Water", shall be made available on a first come first serve basis, following April 15th of each year. The delivery of all "Power Water" shall also be on a first come first serve basis, following the District's determination of availability, and completion and return to the District of a completed request form provided by the District. The rate of delivery of "Surplus Water" and "Power Water" shall be subject to reduction due to distribution delivery restraints.

The District shall endeavor by posting and/or by other means, notify water users of the availability of "Surplus Water" and "Power Water" as determined or estimated by the District. Such notification shall include an estimate of the amount and timing of availability of such water for the upcoming or remainder of the irrigation season. The irrigation season as used herein shall be that period of time between April 15 through October 15th of each year, unless changed by action of the Board of Directors of the District.

APPLICATION FOR THE DELIVERY OF "Surplus Water"

Each year, prior to April 1st, applicants must complete and return to the District an application requesting the delivery of "Surplus Water". The District shall attempt to deliver, but does not guarantee the delivery of the amount of water requested, but will allocate and deliver "Surplus Water" based upon established prorations, estimates of availability, ability to deliver, and other priority needs and obligations to provide water.

The completed application shall include the following information:

1. The amount of "Surplus Water" in miner inch flow Applicant wishes delivered,
2. Period of time (example: April 15th through July 15th) applicant wishes delivery to take place,
3. Intended purpose of use, (pasture, pond recreation, industrial use, etc.)
4. Inclusion of a map indicating the location of the land upon which the "Surplus Water" is to be used, including the District's point of delivery,
5. The total area (acres) to be irrigated or upon which "Surplus Water" will be used, and
6. Other condition or restrictions under which applicant desires delivery to be made.

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TERMS OF DELIVERY

1. The point of delivery for water delivered from the District's distribution system to the Applicant shall be as identified on the map attached to the application, or as otherwise specified or approved by the District. Applicant will be responsible for conveyance, custody and control of all water passing beyond the District's point of delivery. Applicant will be responsible for compliance with all laws, ordinances, and regulations, applicable to the conveyance, use, custody and/or control of "Surplus Water" beyond the point of delivery.
2. All water made available by the District shall be metered individually through metering device(s) as determined necessary by the District at the sole cost of Applicant. The District shall attempt to locate such device(s) as near to the point of delivery as it determines practical. Final determination of type and location of such metering device(s) shall be at the sole discretion of the District. The District shall take ownership of such metering device(s) upon their installation and shall thereafter be solely responsible for their maintenance and replacement.
3. All costs of connecting to District's point of delivery, including mainline extensions and metering shall be born by the water user. By making "Surplus Water", and "Power Water" when sold separately, available, the District shall not be obligated to construct, add or extend any facilities to provide delivery of said water.
4. It is recognized and understood that the District's water distribution system serves numerous water users. Delivering of both "Surplus" and "Power" water will be conditioned upon the capacity of the delivery system, including the capacity at point of delivery, and approved terms and times of delivery as determined by the District. When sharing a common point of delivery, each water user shall be responsible for dividing, apportioning, and/or rotating available water among themselves on the basis of their respective entitlements. This will require cooperation with the other water users and compliance with instructions, arrangements, rules and regulations of the District as are reasonably necessary for this purpose.
5. All connections to District's distribution system shall be subject to the District's continuing approval, its ordinances and its rules and regulations as adopted and modified from time to time by the District Board of Directors.

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PRICE OF "Surplus Water" DELIVERED AND "Power Water" WHEN SOLD SEPARATELY"

The price for the delivery of "Power Water" when sold separately will be eighteen dollars (\$18.00) per acre foot, or as determined from time to time by the District's Board of Directors. The minimum amount of "Power Water" available for delivery from the District shall be one (1) acre-foot. For the purposes of billing, all deliveries of "Power Water" shall be rounded up to the next nearest acre-foot.

"Surplus Water", other than "Power Water" when sold separately, shall be as indicated in Resolution Numbers 107-88 and 66-89 of the County of Tuolumne Resolution and/or as may be determined from time to time by the District's Board of Directors. This price of "Surplus Water" for those applicants with an existing raw water account with the District shall coincide with the existing, established rate for the delivery within the following "rate categories" (General Metered Service - Untreated water, General Irrigation Service and Special Agricultural Enterprise Water rate). For those applicants that do not have an existing raw water delivery account, the rate shall be applied based upon condition of the proposed use, among the previously stated "rate categories".

The District will bill the owner of the land upon which the water is delivered monthly for the water furnished, unless otherwise instructed by the property owner on forms provided by the District. In all cases the owner of the property upon which the water is applied shall be held accountable by the District for the payment of all bills immediately upon presentation of such bill by the District.

Unpaid water bills shall become delinquent forty-five (45) days after date of billing. A one and one-half percent (1.5%) delinquency charge will be applied monthly to the outstanding balance of delinquent accounts.

Failure to pay the District for water furnished shall result in discontinuance of all District provided services to Applicant, the filing of a Certificate of Lien setting forth the amount of the delinquency with the Tuolumne County Recorder, and/or the placing of the delinquent water service charges on the Tuolumne County tax rolls in accordance with District's Rules and Regulations established from time to time.

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RATE OF DELIVERY

1. Unless otherwise agreed in advance, or in case of an emergency, District personnel shall make all turn-ons and turn-offs between the hours of 7:30 am and 3:00 p.m., Monday through Saturday.
2. Water user shall be responsible for placing to beneficial use on a 24-hour per day basis; all water delivered and shall continually use such water until all contracted water has been delivered.
3. Other than for the initiating turn-on and final turn-off, or in cases involving an emergency as solely determined by the District, the water user shall pay the District a fee in the amount of \$25.00 per turn-on and turn-off. The water user shall request all turn-ons and turn-offs 24 hours in advance. In addition to the \$25.00 turn on and off fee, and except in the case of emergency as determined by the District, the water user shall reimburse the District its actual cost of turn-on and turn-off, including overhead and fringe, for all turn-ons and turn-offs made without 24 hour notice or outside the period from 7:30 am through 3:00 p.m.
4. Water shall be delivered as available by priority.
5. The operation and control of all gates and facilities at the point of delivery of District water shall be under the exclusive control of District personnel. No water user or other person shall change, adjust, or tamper with the delivery structures controlling the delivery of water except with expressed permission of District personnel.

The District does not guarantee the delivery of "Surplus" or "Power" water to the Applicants, but will make every reasonable effort to deliver the amounts of water which it estimates to be available. The District, its agents, and employees shall not be held responsible for any claim of damage, injury or death arising out of or in connection with the delivery or failure of delivery of water, including "Surplus" and "Power" water, or the failure to deliver water in amounts and/or flows less than those agreed upon or requested. Nor shall the District, its agents or employees be responsible for any claim of damage, injury or death arising out of or in connection with the control, custody, conveyance, distribution or use of such water beyond the point of delivery as defined herein.

VERIFICATION

I, SCOTT FAHEY, hereby declare:

I am Responding Party in the foregoing action and I have read the foregoing Response to Request for Production of Documents under Subpoena Duces Tecum and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on November 8, 2015 at Boise, Idaho.


SCOTT FAHEY


LEW WALLACE OF
MAYOL & BARRINGER
1224 "J" Street Modesto, CA 95354
P. O. Box 3049 Modesto, CA 95353
(209) 544-2555 Fax (209) 544-9875

VERIFICATION

I, SCOTT FAHEY, hereby declare:

I am an authorized representative of Responding Party Sugar Pine Spring Water, LP in the foregoing action and I have read the foregoing Response to Request for Production of Documents under Subpoena Duces Tecum and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on November 8, 2015 at Boise, Idaho.


SCOTT FAHEY

AMV VALLES OF
MAYOL & BARRINGER
1324 "J" Street Modesto, CA 95354
P. O. Box 3049 Modesto, CA 95333
(209) 544-9555 Fax (209) 544-9575

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Proof of Service

I am a citizen of the United States and am employed in Stanislaus County; I am over the age of eighteen (18) years and not a party to the within action; my business address is 1324 "J" Street, Modesto, California, 95354.

On November 19, 2015, I served the following document(s):

RESPONSE TO DOCUMENT REQUEST UNDER SUBPOENA DUCES TECUM

By placing a true copy thereof and served in the manner and/or manners described below to each of the parties herein and addressed as stated BELOW:

Andrew Tauriainen, Esq.
Staff Counsel III, Office of Enforcement, State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-0100

By Mail: I caused such envelope(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated. I am readily familiar with Mayol & Barringer's practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

By Hand Delivery: I caused such envelope (s) to be delivered by hand to the addressee(s) designated.

By Overnight Courier Service: I caused such envelope(s) to be delivered via overnight courier service to the addressee(s) designated.

By Facsimile: I caused said document(s) to be transmitted to the telephone number(s) of the addressee(s) designated. A copy of the transmission report showing the transmission was complete and without error is attached hereto.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Modesto, California on November 19, 2015.


ANNE KLETKE

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