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Attorneys for the Prosecution Team

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

STATE OF CALIFORNIA

IN THE MATTER OF: ADMINISTRATIVE	)	SHOWING OF GOOD CAUSE FOR
CIVIL LIABILITY AND CEASE AND	)	PROPOSED CHANGES TO PORTIONS OF
DESIST ORDER AGAINST G. SCOTT	)	REVISED DRAFT ORDER NOT
FAHEY AND SUGAR PINE SPRING	)	IDENTIFIED IN APRIL 3, 2019 HEARING
WATER, LP	)	TEAM EMAIL

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1 The Division of Water Rights Prosecution Team has good cause for proposed changes to  
2 sections of the March 29, 2019 Revised Draft Order Adopting a Cease and Desist Order and  
3 Imposing Administrative Civil Liability (“Revised Draft Order”) against G. Scott Fahey and Sugar  
4 Pine Spring Water, LP (collectively, “Respondent”) that are in addition to those the Hearing Team  
5 identified in its email dated April 3, 2019. In response to the Hearing Team’s questions, the  
6 Prosecution Team concluded that the Respondent has no right to store water in New Don Pedro  
7 Reservoir and his permits cannot reasonably be interpreted to authorize carry over of replacement  
8 water credits to subsequent years. (Prosecution Team, Memorandum in Response to April 3, 2019  
9 Briefing Request on Revised Draft Order (Apr. 10, 2019), *see generally*.) Even assuming he had  
10 replacement water credits available, he still could not divert or use water when water was unavailable  
11 for his priority of right. (*Id.*) The Respondent therefore violated his permit terms and diverted water  
when it was unavailable for his priority of right during both the Fully Appropriated Stream (“FAS”) period and non-FAS periods, resulting in additional liability for unauthorized diversion.

12 The additional liability increases the statutory maximum liability under Water Code section  
13 1052 and, because he would have sold more water, increases his economic benefit for unauthorized  
14 diversion. The Respondent’s days of violation for trespass increase by 63 days and the unauthorized  
15 diversion increases by 7.62 acre-feet, resulting in 241 total days of trespass and 32.95 acre-feet of  
16 unauthorized diversion, increasing the statutory maximum liability for trespass during drought to  
\$323,375. His economic benefit for unauthorized diversion increases to \$238,717.

17 The Prosecution Team recommends changes to additional sections of the Revised Draft Order  
18 for consistency with its responses to the Hearing Team’s questions and with other sections of the  
19 Revised Draft Order that the Hearing Team included in its April 3, 2019 email. Changes in Section  
20 7.1.1 are necessary to reflect the increased days of violation and unlawfully diverted water. Changes  
21 in Section 7.1.2.1 are necessary to reflect higher economic benefit from sales of spring water.  
22 Changes in Section 7.1.3 are necessary to reflect the increased length of time trespass occurred under  
23 Water Code section 1052 as a result of unauthorized diversion during the non-FAS period when  
24 water was unavailable for his priority of right. Finally, changes to Section 7.2 are necessary for  
internal consistency with revisions to section 7.1.2.1 and 7.1.3.

25 Respectfully submitted,

26 

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## SERVICE LIST OF PARTICIPANTS

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