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## State Water Resources Control Board

### **NOTICE OF PUBLIC HEARING AND PRE-HEARING CONFERENCE**

**The State Water Resources Control Board  
will hold a Public Hearing to consider  
Amador Water Agency's Petition for Partial Assignment of  
State Filed Application 5647 and Accompanying Application 5647X03, and  
Reversion of Rights Previously Assigned to Jackson Valley Irrigation District  
Under State Filed Application 5648 (Permit 12167)**

**North Fork Mokelumne and Bear Rivers in Amador County**

**A Pre-Hearing Conference Call will commence on  
August 12, 2020 at 1:00 p.m.<sup>1</sup>**

**The Public Hearing will commence on  
September 28, 2020 at 9:00 a.m.  
and continue, if necessary, on  
September 29, 2020**

**in the Coastal Hearing Room  
Joe Serna, Jr. CalEPA Building  
1001 I Street, Second Floor  
Sacramento, California**

**(Hearing may be conducted via video conference due to COVID-19)<sup>2</sup>**

#### **PURPOSE OF HEARING**

The purpose of this hearing is for the State Water Resources Control Board (State Water Board or Board) to receive evidence relevant to determining whether to approve

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<sup>1</sup> As a result of the COVID-19 emergency and the Governor's Executive Orders N-29-20 and N-33-20, the Pre-Hearing Conference will occur solely via teleconference. There will not be a physical location for the meeting due to the current limitations on public gatherings and requirements for social distancing in order to protect public health.

<sup>2</sup> Should the COVID-19 emergency cause continued restrictions on public gatherings and require social distancing to be maintained on the scheduled hearing dates, the Public Hearing may be held via video and teleconference, relocated, or postponed in order to protect public health and safety. The State Water Board will provide notice of any such change at least 14 calendar days in advance of the hearing.

a petition for partial assignment of State Filed Application (SFA) 5647 and accompanying Application 5647X03 filed by Amador Water Agency (AWA), and whether to approve a partial reversion of rights currently assigned to Jackson Valley Irrigation District (JVID) under SFA 5648 and water right Permit 12167 (Application 5648B).

### **PRE-HEARING CONFERENCE CALL**

The State Water Board will also hold a Pre-Hearing Conference Call to organize the conduct of the hearing. The goal of the Pre-Hearing Conference Call is to ensure that the hearing proceeds in an orderly and expeditious manner. The hearing officer will conduct this call on August 12, 2020 at 1:00 p.m. to discuss the following issues with the parties and their representatives:

- The schedule for conducting the hearing;
- Whether a remote hearing is feasible and appropriate; and
- Other procedural issues.

The Pre-Hearing Conference Call will **not** include discussion of: (1) the merits of the specific issues raised in the application; or (2) any substantive hearing issues unless the parties agree prior to the Pre-Hearing Conference Call to resolve a hearing issue by stipulation.

Because of the current COVID-19 emergency, no in-person appearances will be allowed for the Pre-Hearing Conference Call. Prior to the call, the hearing team will circulate the call-in information to all parties who file Notices of Intent to Appear (discussed below). The hearing team will also provide call-in information on the State Water Board's [Amador Water Agency Hearing webpage](#)<sup>3</sup> and will circulate this information to the [Water Rights Hearings Lyris email list](#).<sup>4</sup>

A court reporter will record the call electronically and prepare a transcript. Following the Pre-Hearing Conference Call, the hearing officer may issue a procedural ruling letter and the State Water Board may at its discretion modify this notice in whole or in part.

All parties intending to participate in the evidentiary portion of this hearing are required to participate in the Pre-Hearing Conference Call. Persons and entities who plan to present policy statements only and will not participate in the evidentiary portion of the hearing are encouraged, but not required, to participate in the conference call. Instructions on how parties and interested persons will be allowed to participate in the Pre-Hearing Conference Call will follow.<sup>5</sup>

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<sup>3</sup> [www.waterboards.ca.gov/waterrights/water\\_issues/programs/hearings/amador/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/amador/)

<sup>4</sup> [www.waterboards.ca.gov/resources/email\\_subscriptions/swrcb\\_subscribe.html](http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html)

<sup>5</sup> The Pre-Hearing Conference Call is open to the public; however, only parties who have submitted a timely Notice of Intent to Appear indicating that they plan to participate in the evidentiary portion of the hearing and whose name (or name of representative) appears on the service list will be allowed to participate in the discussion. Please see sections 3, 4, and 5 of the enclosure "Information Concerning Appearance at Water Right Hearings."

## **BACKGROUND**

### **State-Filed Applications**

In 1927, the Legislature authorized the State to file applications for the appropriation of water that is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking toward development, utilization, or conservation of the water resources of the state. (Wat. Code, § 10500.) These state-filed applications are held by the State Water Board, which may release from priority or assign any portion of a state-filed application when the release or assignment is for the purpose of development not in conflict with the general or coordinated plan described in the state-filed application, or with water quality objectives established pursuant to law. (*Id.*, § 10504.) The State Water Board may not release from priority or assign any portion of a state-filed application if the county in which the water originates would be deprived of water necessary for its development. (*Id.*, §§ 10505, 10505.5.)

A petition for assignment of a state-filed application must be accompanied by an application that is consistent with the requested assignment and includes a description of the proposed project. (*Id.*, § 10504.01.) Assignments of state-filed applications maintain the priority date of the original application, which may be as early as 1927. (*Id.*, § 10500.) The State Water Board must hold a hearing to determine whether to approve a petition for assignment of a state-filed application and the accompanying application. (*Id.*, §§ 10504.01, 10504.1.)

### **History of State Filed Applications 5647 and 5648**

AWA has petitioned for partial assignment of SFA 5647 and seeks partial reversion of a water right permit issued to JVID pursuant to SFA 5648. SFAs 5647 and 5648 were both filed by the State of California on July 30, 1927 to reserve water for future appropriation from tributaries of the Mokelumne River system for domestic and irrigation uses. Under both SFAs 5647 and 5648, water of the Mokelumne River is reserved for use in Amador County.

In 1959, the Department of Water Resources (DWR), exercising authority currently exercised by the State Water Board, approved a release from priority of SFAs 5647 and 5648 in favor of two applications filed by the East Bay Municipal Utility District (EBMUD) to appropriate water from the Mokelumne River.<sup>6</sup> The release from priority was subject to a reservation for use in Amador County of water from the Mokelumne River and its tributaries covered by SFAs 5647 and 5648 “of such quantity of water for direct diversion to beneficial use and such quantity of water for diversion to storage to be later applied to beneficial use as is required to produce a safe yield, which when combined with the diversions now or hereafter made through the Amador Canal now in operation in Amador County, will amount to a total of 20,000 acre feet of water per annum...” ([March 5, 1959 DWR Decision releasing priority of SFAs 5647 and 5648 in favor of EBMUD Applications 13156 and 15201].)

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<sup>6</sup> EBMUD’s applications had been approved in 1956 pursuant to Decision 858.

### **AWA's Central Amador Water Project (CAWP)**

The water right approvals sought by AWA would allow AWA to increase the diversion and use of water using Central Amador Water Project (CAWP) facilities. AWA owns and operates the CAWP, which provides water for municipal purposes to communities within the central portion of Amador County (as shown on the map filed with the State Water Board on September 10, 2018). The sources of supply for the CAWP are the North Fork Mokelumne River and the Bear River tributary to the North Fork Mokelumne River.

AWA utilizes facilities owned and operated by Pacific Gas and Electric Company (PG&E) for purposes of the CAWP pursuant to an agreement between the two parties. AWA currently leases 1,600 acre-feet in PG&E's Lower Bear River Reservoir for storage of water diverted from the Bear River. At Tiger Creek Regulation Reservoir, AWA conveys water that was either released from storage or directly diverted upstream through the Gravity Supply Pipeline to AWA's Buckhorn Water Treatment Plant in Pioneer for treatment prior to distribution to the CAWP service area.

### **AWA's License 13899 (Permit 17579, Application 5647B)**

AWA operates the CAWP pursuant to an existing water right license. On January 25, 1979, following a public hearing, the Board adopted Decision 1490, which assigned a portion of SFA 5647 to AWA. Subsequently, the Board issued Permit 17579 (Application 5647B) to AWA. On February 7, 2019, License 13899 was issued on Permit 17579 based on the rates and quantities of water documented to have been put to beneficial use in accordance with the terms and conditions of the permit.

Under License 13899, AWA is authorized to 1) directly divert up to 1,150 acre-feet per annum (afa) at a combined rate of up to 2.45 cubic feet per second (cfs) from the Bear River and the North Fork Mokelumne River from January 1 to December 31 of each year, and 2) divert up to 1,600 afa from the Bear River to storage in the Lower Bear River Reservoir, to be collected from October 1 of each year to July 15 of the succeeding year. The total amount of water to be taken from all sources and placed to beneficial use (direct diversion plus rediversion from storage) shall not exceed a combined 1,150 acre-feet per water year from October 1 to September 30.

### **Subject Petition for Partial Assignment of SFA 5647 (Application 5647X03)**

On October 7, 2004, AWA filed a second petition for partial assignment of SFA 5647, together with Application 5647X03 to expand the CAWP. AWA indicates that the additional water will be used to meet dry year demands and provide for expected increases in demand in the CAWP service area. Under the proposed project, AWA plans to utilize existing infrastructure on the North Fork Mokelumne River and the Bear River to provide up to an additional 1,050 afa of water for beneficial use from a combination of direct diversion and rediversion from storage. AWA estimates that it will be required to directly divert up to 1,050 afa and divert up to 1,400 afa to storage in order to reliably provide 1,050 afa for beneficial use.

Under Application 5647X03, AWA seeks to directly divert up to 5 cfs year-round from the North Fork Mokelumne River and the Bear River, and to divert up to 1,400 afa from the Bear River to storage in Lower Bear River Reservoir from October 1 to July 15. The total maximum amount of water AWA proposes to divert from all sources, whether by

direct diversion or diversion to storage, is 2,450 afa. The total maximum amount of water AWA proposes to put to beneficial use, whether from direct diversion or rediversion from storage, is 1,050 afa.

Additionally, AWA proposes to limit the total amount it could directly divert or redivert from storage for beneficial use under its existing License 13899 and any permit issued pursuant to Application 5647X03 to 2,200 afa. Table 1 below summarizes the maximum existing and proposed diversion and use amounts under AWA’s existing license and the subject application, the proposed maximum diversion and use amounts under both rights combined, and other information regarding the license and application.

**Table 1: Comparing License 13899 and Pending Application 5647X03**

	<b>Currently Authorized Under License 13899</b>	<b>Proposed Under Application 5647X03</b>	<b>License 13899 Combined With Any Permit Issued On Pending Application 5647X03</b>
Priority Date:	July 30, 1927	Same	Same
Sources:	Bear River and North Fork Mokelumne River	Same	Same
Combined Maximum Rate of Direct Diversion (DD):	2.45 cfs	5 cfs	5 cfs
Combined Maximum DD Amount:	1,150 afa	1,050 afa	2,200 afa
DD Season:	01/01 to 12/31	Same	Same
Maximum Diversion to Storage (DS) Amount:	1,600 afa	1,400 afa	3,000 afa
DS Season:	10/01 to 07/15	Same	Same
Total Amount Placed to Beneficial Use <sup>7</sup> :	1,150 afa	1,050 afa	2,200 afa
Place of Storage:	Lower Bear River Reservoir	Same	Same
Purpose of Use:	Municipal	Same	Same

**Reversion of Rights Covered Under SFA 5648**

In addition to its petition for partial assignment of SFA 5647, AWA is requesting a corresponding reversion to the State of 1,050 afa of water previously assigned to JVID under SFA 5648 (Permit 12167). In 1960, Permit 12167 was issued to JVID pursuant to SFA 5648, which had been partially assigned to JVID. Permit 12167 authorized the appropriation of water from the Mokelumne River for purposes of irrigation, and

<sup>7</sup> The total amount of water to be taken from all sources and placed to beneficial use (combined direct diversion plus rediversion from storage) per water year (October 1 to September 30).

originally authorized 50 cfs by direct diversion, not to exceed 5,000 afa. The right to divert 5,000 afa under JVID's permit was issued pursuant to the Amador County reservation described above. Permit 12167 is subject to the terms of the partial assignment, which provide for a reversion of rights to the State in any amount determined by the Board to be required for use upstream in Amador County (Reversion Provision). AWA is seeking a partial assignment of SFA 5647 in the same amount that would revert to the State under SFA 5648 pursuant to the Reversion Provision.

This is AWA's second request for the Board to implement the Reversion Provision in JVID's permit. In 1979, the Board granted a partial reversion of 1,150 afa to the State of rights held by JVID under SFA 5648, which was approved in conjunction with AWA's first petition for partial assignment of SFA 5647.<sup>8</sup>

### **Protests**

On March 24, 2006, the State Water Board publicly noticed AWA's pending petition and Application 5647X03 and received protests from JVID, EBMUD, DWR, and the United States Bureau of Reclamation (Reclamation).

Protests by JVID and EBMUD alleged that approval of Application 5647X03 would result in injury to prior rights held by both parties. Both protests are resolved to the extent that any permit issued to AWA is conditioned with certain protest dismissal terms agreed to by the protestants and AWA. At this time, the State Water Board has not decided whether to include any negotiated protest resolution terms in any water right permit issued on Application 5647X03 and will decide on applicable permit terms after receiving evidence during the hearing process.

Reclamation and DWR protested on the grounds that approval of Application 5647X03 would result in injury to the Central Valley Project and the State Water Project (Projects), and both parties indicated that their protests could be dismissed if any permit issued to AWA includes standard permit terms 80, 90, and 91. AWA has stated that it has no objection to inclusion of standard permit terms 80 and 90; however, AWA has objected to the inclusion of standard permit term 91 and cited to *El Dorado Irrigation District v. State Water Resources Control Board* (2006) 142 Cal.App.4th 937 (discussed below).

On April 28, 2020, Reclamation withdrew its protest without conditions. DWR's protest remains unresolved.

### **Standard Permit Term 91**

In 1980, the State Water Board adopted standard permit term 91 (Term 91). Term 91 has been included in permits issued since 1965 that authorize the diversion and use of

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<sup>8</sup> In Decision 1490, the Board approved AWA's first petition for partial assignment of SFA 5647 and partial reversion of rights previously assigned to JVID under SFA 5648. In approving AWA's petition, the Board assigned 1,150 afa under SFA 5647 to AWA and ordered a corresponding reversion to the State of 1,150 afa of the 5,000 afa originally authorized under JVID's permit. Accordingly, the maximum diversion amount allowed under Permit 12167 was reduced to 3,850 afa.

water in the Sacramento-San Joaquin Delta (Delta) watershed, which encompasses the Mokelumne River. Term 91 requires permittees and licensees with that term to curtail their diversions during periods when the Projects are augmenting natural and abandoned flows with releases of previously stored water or imported water in order to meet in-basin demands, including water quality and flow objectives in the Delta, and the Delta is considered to be in “balanced conditions.”<sup>9</sup>

Term 91 was developed to determine when water is not available for appropriation by more junior water diverters from the Delta or its tributaries, and in part to resolve protests that Reclamation and DWR had filed against water right applications in the watershed. Through various orders and decisions, the Board had conditioned the water right permits for the Projects to require Reclamation and DWR to curtail their diversions or release previously stored water to the extent necessary to meet the flow-dependent water quality objectives contained in the Bay-Delta Water Quality Control Plan.<sup>10</sup> Subsequently, Reclamation and DWR protested numerous applications to appropriate water from the Delta watershed on the grounds that if the applicants were permitted to divert water during periods when the Projects were releasing previously stored water or imported water in order to meet water quality objectives, the Projects would be forced to release additional stored water in order to compensate for the impacts of those additional diversions.

The Board has not reopened more senior permits and licenses in order to include Term 91 in the conditions for those rights, which complicates the Board’s ability to process petitions for assignment of state-filed applications with senior priority dates to the permits and licenses that currently include Term 91 (which has largely been applied to rights with a priority date of 1965 or later). In 2001, the State Water Board included Term 91 in a permit issued on a state-filed application with a 1927 priority date that had been assigned to El Dorado Irrigation District and El Dorado County Water Agency (El Dorado). El Dorado challenged the inclusion of Term 91 in the permit in court, and the court ultimately determined that the inclusion of Term 91 was inconsistent with the rule of priority because the Board had not included Term 91 or a similar restriction in all permits with more junior priority dates between 1927 and 1965. (*El Dorado Irrigation District v. State Water Resources Control Board, supra*, 142 Cal.App.4th at pp. 963-964.) The court acknowledged that the need to meet water quality objectives might justify a departure from the rule of priority, but concluded that such a departure was not justified in that case because the court assumed that water quality objectives would continue to be met by the Projects, regardless of whether El Dorado was subject to Term 91. (*Id.* at pp. 967-968.) The Projects’ ability to meet water quality objectives, particularly in drier years like 2014 and 2015, has been and will continue to be impacted by additional diversion from the watershed that are not limited

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<sup>9</sup> Balanced water conditions are defined as periods when it is mutually agreed by DWR and Reclamation that releases from upstream reservoirs plus unregulated flows approximately equals the water supply needed to meet Sacramento Valley in-basin uses plus exports.

<sup>10</sup> Currently, Board Decision 1641 is the operative water right decision that imposes responsibility on Reclamation and DWR for meeting specified water quality objectives included in the Bay-Delta Water Quality Control Plan.

by Term 91. Further, the Projects' current responsibility for meeting water quality objectives is interim and may change in the future.

### **Water Availability Information**

AWA did not perform a standard water availability analysis for Application 5647X03. Instead, AWA has taken the position that the State Water Board and its predecessor in function have already determined that water is available for appropriation by AWA under Application 5647X03 in previous water right decisions that determined that water was available for appropriation by EBMUD and JVID, and reserved water for use within Amador County. (August 24, 2015 letter to State Water Board staff from AWA's representative.)

In 2016, AWA's consultants prepared a technical memorandum evaluating the potential impacts of increased water diversions by AWA from the Mokelumne River system on river flows upstream of JVID's point of diversion and downstream of AWA's points of diversion. (RMC Water and Environment 2016). AWA's September 2017 Final Environmental Impact Report states that the proposed direct diversion and diversion to storage may reduce water flow along the Mokelumne River between AWA's points of diversion and JVID's point of diversion at Pardee Reservoir; however, there would be no net change in water flow downstream of Pardee Dam.

### **Environmental Information**

AWA is the lead agency under the California Environmental Quality Act (CEQA) for this project and adopted a Final Environmental Impact Report (EIR) in September 2017. (State Clearinghouse #2016092008.)

CEQA requires the State Water Board, as a responsible agency with discretionary approval authority over the project, to consider the environmental effects of the project identified in the Final EIR certified by the lead agency prior to reaching a decision on whether and under what conditions to approve the project. The State Water Board will consider the extent to which the lead agency has analyzed the project under CEQA and will determine whether the lead agency addressed the project with sufficient specificity for the State Water Board to issue a permit. Prior to issuing any permit, the State Water Board will make independent findings and may require additional or different mitigation measures for impacts identified by the lead agency in resource areas within the State Water Board's jurisdiction.

### **KEY ISSUES**

The State Water Board's decision whether to approve AWA's petition for partial assignment of SFA 5647 and accompanying Application 5647X03 will be based upon the evidentiary record developed during the hearing. Parties to the proceeding may submit exhibits and testimony responsive to the following issues to be considered during the hearing:

#### **1. Consideration of the petition for partial assignment of SFA 5647**

- a. Will the State Water Board's partial assignment of SFA 5647 to AWA be for purposes of development not in conflict with a general or coordinated plan (within



the meaning of Water Code section 10500) or with water quality objectives established pursuant to law?

- b. Will the partial assignment of SFA 5647 deprive the county or counties in which the water covered by the application originates of any such water necessary for the development of the county or counties?
- c. Should the State Water Board approve the petition for partial assignment of SFA 5647? If so, what conditions, if any, should be included in the approval?

## **2. Consideration of Application 5647X03**

- a. Is sufficient water available for appropriation under the priority of SFA 5647? If so, when and under what circumstances is water available? How does the Reversion Provision in JVID's permit, as interpreted in Decision 1490, inform the analysis of whether water is available for appropriation by AWA?
- b. What quantities of direct diversion and diversion to storage are necessary to reliably provide 1,050 afa for beneficial use, and are the quantities consistent with those requested in Application 5647X03? Why or why not?
- c. Will the proposed appropriation by AWA cause injury to the prior rights of other legal users of water? Are any terms and conditions necessary to avoid injury?
- d. How should the State Water Board address issues associated with Term 91 in any permit issued to AWA under SFA 5647 consistent with *El Dorado Irrigation District v. State Water Resources Control Board* (2006) 142 Cal.App.4th 937?
- e. Will approval of Application 5647X03 and the petition for assignment be in the public interest? What conditions, if any, should the State Water Board adopt in any permit that may be issued on the application to best serve the public interest?
- f. Will approval of Application 5647X03 result in any adverse environmental impacts, including water quality impacts, or harm to public trust resources? If so, what adverse impacts would result from the project? What conditions, if any, should the State Water Board adopt to avoid or mitigate any adverse impacts on water quality, fish, wildlife, or other public trust resources that may occur as a result of approval of the application?
- g. What additional terms and conditions, if any, should be included in any permit issued by the State Water Board?

## **3. Consideration of the partial reversion of rights issued to JVID under SFA 5648**

- a. Should the State Water Board approve the partial reversion of rights issued to JVID under SFA 5648 in favor of AWA? If so, what conditions, if any, should be included in the approval to ensure that the reversion is in accordance with applicable law and in the public interest?

- b. What additional terms and conditions, if any, should be included in any amended permit issued to JVID by the State Water Board consistent with the Reversion Provision contained in JVID's permit?

### **HEARING OFFICER AND HEARING TEAM**

State Water Board Member Sean Maguire will preside as the hearing officer for this proceeding. A quorum of the Board may be present during the hearing.

A hearing team will assist the hearing officer by providing legal and technical advice. The hearing team members will include: Alyssa Campbell, Environmental Scientist; Jesse Jankowski, Water Resource Control Engineer; and Dana Heinrich, Attorney IV. The hearing team and their supervisors will assist the hearing officer and other members of the State Water Board throughout this proceeding.

### **HEARING PARTICIPATION PROCEDURES**

**IF YOU WANT TO TAKE PART IN THE EVIDENTIARY HEARING**, you should carefully read the enclosure entitled "Information Concerning Appearance of Water Right Hearings." As stated in the enclosure, **any party wishing to participate in this hearing must submit a Notice of Intent to Appear (NOI)**, which must be received by the State Water Board no later than the deadline listed below. **If you did not file a protest against Application 5647X03 and you wish to participate in the hearing as a party, you must submit a request for designation as a party** with your NOI that includes information demonstrating good cause as to why you should be allowed to participate in the hearing beyond presentation of a policy statement.

Persons and entities who will not be participating as parties but instead presenting only non-evidentiary policy statements are encouraged to also file an NOI, although it is not required.

Within one week after the deadline to submit NOIs, the State Water Board will send a list of those designated as parties to the hearing with a copy of all NOIs submitted by the parties. Copies of all parties' exhibits associated with direct testimonies and corresponding exhibit identification indices must be served on each of the other parties to the proceeding and be received by the State Water Board with statements of service on all parties, no later than the deadline listed below.

### **Deadlines for Hearing Participation**

**July 29, 2020, 12:00 Noon**

Deadline for the Board to receive all NOIs and any requests for designation as a party.

**September 2, 2020, 12:00 Noon**

Deadline for service of all parties' case-in-chief exhibits, exhibit identification indices, and statements of service to all other parties, and receipt of these documents by the Board.

## **SUBMITTALS TO THE STATE WATER BOARD**

All documents submitted to the State Water Board, including NOIs, exhibits, exhibit identification indices, and statements of service, should be submitted in accordance with the direction provided in the enclosure "Information Concerning Appearance at Water Right Hearings." Submittals should be addressed as follows:

By Email: [wr\\_hearing.unit@waterboards.ca.gov](mailto:wr_hearing.unit@waterboards.ca.gov)  
with the subject of "**Amador Water Agency Hearing**"

By Mail: State Water Resources Control Board  
Division of Water Rights  
Attention: Alyssa Campbell  
P.O. Box 2000  
Sacramento, CA 95812-2000

By Hand Delivery: Joe Serna Jr. CalEPA Building  
(see note below) Water Rights Records Room  
1001 I Street, 2<sup>nd</sup> Floor  
Sacramento, CA 95814

**Note: Due to the COVID-19 emergency, all persons hand delivering submittals must first schedule an appointment** with staff by contacting [dwr@waterboards.ca.gov](mailto:dwr@waterboards.ca.gov). All hand delivered submittals must be date and time stamped by the Division of Water Rights' Records Unit on the second floor of the Joe Serna Jr. CalEPA Building at the above address prior to or at the submittal deadline. Persons hand delivering submittals must first check in with lobby security personnel on the first floor. Hand delivered submittals that do not have a timely date and time stamp by the Division of Water Rights' Records Unit will be considered late and may not be accepted by the hearing officer.

## **STAFF EXHIBITS TO BE OFFERED INTO EVIDENCE**

The following items will be offered into evidence, by reference, as staff exhibits during the hearing:

1. SWRCB-1: State Filed Application 5647.
2. SWRCB-2: All Division of Water Rights files, including correspondence, related to License 13899 (Application 5647B).
3. SWRCB-3: All Division of Water Rights files, including correspondence, related to Application 5647X03.
4. SWRCB-4: State Filed Application 5648.
5. SWRCB-5: All Division of Water Rights files, including correspondence, related to Permit 12167 (Application 5648B).

6. SWRCB-6: Department of Water Resources decision partially assigning SFA 5648 to Jackson Valley Irrigation District, dated August 28, 1959.
7. SWRCB-7: Department of Water Resources decision releasing priority of SFAs 5647 and 5648 in favor of East Bay Municipal Utility District's Applications 13156 and 15201, dated March 5, 1959.
8. SWRCB-8: State Water Board Decision 858.
9. SWRCB-9: State Water Board Decision 1490.
10. SWRCB-10: State Water Board Decision 1594.
11. SWRCB-11: State Water Board Water Right Order 84-02.
12. SWRCB-12: Final Environmental Impact Report for the Central Amador Water Project, dated September 2017.

### **DOCUMENT AVAILABILITY**

The Division of Water Rights (Division) has created File Transfer Protocol (FTP) sites for the submittal and exchange of hearing-related documents. The FTP sites will also allow the public, stakeholders, and parties to download those documents. While copies of documents will be maintained by the Division, parties are responsible for maintaining their own respective copies. Additional information including instructions on the use of the sites will follow.

### **IF YOU HAVE ANY QUESTIONS**

During the pendency of this proceeding and commencing no later than the issuance of this notice, there shall be no *ex parte* communications regarding substantive or controversial procedural matters within the scope of the proceeding between State Water Board members or hearing team members and any of the other participants. (Gov. Code, §§ 11430.10-11430.80.) Questions concerning non-controversial procedural matters should be directed to Alyssa Campbell at (916) 323-3648, or by email at [alyssa.campbell@waterboards.ca.gov](mailto:alyssa.campbell@waterboards.ca.gov); or to Dana Heinrich at (916) 341-5188, or by email at [dana.heinrich@waterboards.ca.gov](mailto:dana.heinrich@waterboards.ca.gov). (Gov. Code, § 11430.20, subd. (b).)

### **PARKING, ACCESSIBILITY, AND SECURITY**


A map to the Joe Serna Jr. CalEPA Building (CalEPA Building) and parking information are available at [www.calepa.ca.gov/headquarters-sacramento/location/](http://www.calepa.ca.gov/headquarters-sacramento/location/). The CalEPA Building is accessible to people with disabilities. Individuals who require special accommodations at the CalEPA Building are requested to contact Moises Moreno-Rivera at (916) 341-5261, or by email at [moises.moreno-rivera@waterboards.ca.gov](mailto:moises.moreno-rivera@waterboards.ca.gov).

Due to enhanced security precautions at the CalEPA Building, all visitors are required to register with security staff prior to attending any meeting. To register, visitors must go to the Visitor and Environmental Services Center located just inside and to the left of the building's public entrance, sign in, and receive a visitor's badge. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take up to fifteen minutes. Please allow adequate time to sign in.

**WEBCAST OF HEARING**

Broadcasts of the water rights hearing will be available via the internet and can be accessed at [video.calepa.ca.gov/](http://video.calepa.ca.gov/).

July 7, 2020  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Jeanine Townsend  
Clerk to the Board

Enclosures

## **INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS**

Hearing to Consider Amador Water Agency's Petition for Partial Assignment of State Filed Application 5647 and Accompanying Application 5647X03, and Reversion of Rights Previously Assigned to Jackson Valley Irrigation District Under State Filed Application 5648 (Permit 12167)

The following procedural requirements will apply and will be strictly enforced:

1. **HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Resources Control Board (State Water Board or Board) is available upon request.

Unless otherwise determined by the hearing officer, each party may make an opening statement, call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. At the discretion of the hearing officer, parties may also be afforded the opportunity to present closing statements or submit briefs. The State Water Board encourages parties with common interests to work together to make the hearing process more efficient. The hearing officer reserves the right to issue further rulings clarifying or limiting the rights of any party where authorized under applicable statutes and regulations.

Parties must file any requests for exceptions to procedural requirements in writing with the State Water Board and must serve such requests on the other parties. To provide time for parties to respond, the hearing officer will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

2. **SETTLEMENTS:** In water right enforcement hearings, a State Water Board staff member or team prosecutes an alleged violation. In such enforcement cases, the prosecution and a party who is the subject of the proposed enforcement action may at their discretion engage in private settlement discussions, or may include any other persons in those discussions. Although other persons may be authorized to participate in the hearing as parties, such a designation does not constitute a ruling that those persons must be allowed to engage in any settlement discussions between the prosecution and the party against whom the agency action is directed. The consent of other parties is not required before the State Water Board, or the Executive Director under State Water Board Resolution No. 2012-0061, can approve a proposed settlement agreement between the prosecution and a party subject to a proposed enforcement action. However, all parties will be given the opportunity to

comment on any settlement submitted to the State Water Board or the Executive Director for approval, unless all parties are signatories to the settlement agreement.

In non-enforcement hearings involving an unresolved protest between a protestant and a water right applicant or petitioner, those persons will be designated as parties in the hearing. (Cal. Code Regs., tit. 23, § 648.1, subd. (b).) Other persons who file a Notice of Intent to Appear in the hearing, may also be designated as parties. In such cases, the parties whose dispute originates the action may at their discretion meet privately to engage in settlement discussions, or may include other persons. If the original parties resolve the dispute, the hearing officer will determine future steps for the hearing, after allowing all remaining parties the opportunity to comment on any proposed settlement. The Executive Director or the State Water Board may approve a settlement in the absence of a hearing, notwithstanding the lack of consent of parties besides the protestant and the applicant or petitioner.

3. **PARTIES:** The current parties to the hearing are **Amador Water Agency** and **California Department of Water Resources**.

Current parties are required to file a Notice of Intent to Appear if they wish to participate in the hearing beyond presentation of a policy statement. Additional parties may be designated in accordance with the procedures for this hearing. For the purposes of this proceeding, those persons and entities who filed a protest to Application 5647X03 and who timely file a Notice of Intent to Appear indicating the desire to participate beyond presentation of a policy statement, shall be designated as a party. Persons or entities who did not file a protest against Application 5647X03, or those who do not file a timely Notice of Intent to Appear, may be designated as parties at the discretion of the hearing officer, for good cause shown, and subject to appropriate conditions as determined by the hearing officer. (See section 5, below.)

Except as specifically provided in this notice or by ruling of the hearing officer, only parties will be allowed to present evidence. The hearing officer may impose limitations on a party's participation. (Gov. Code, § 11440.50, subd. (c).)

4. **INTERESTED PERSONS:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not designated as parties. A person or entity that appears and presents only a policy statement is not a party and will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument, or otherwise participate in the evidentiary hearing. Interested persons will not be added to the service list and will not receive copies of written testimony or exhibits from the parties.

Policy statements are subject to the following provisions in addition to the requirements outlined in regulation. (Cal. Code Regs., tit. 23, § 648.1, subd. (d).)

- a. Policy statements are not subject to the pre-hearing requirements for testimony or exhibits, except that interested persons are requested to file a Notice of Intent to Appear, indicating clearly an intent to make a policy statement only.
- b. The State Water Board requests that policy statements be provided in writing before they are presented. Please see section 7, for details regarding electronic submittal of policy statements.

**5. NOTICE OF INTENT TO APPEAR AND REQUESTS FOR PARTY DESIGNATION:**

Persons and entities who seek to participate as parties in this hearing must file a Notice of Intent to Appear, which must be received by the State Water Board **no later than the deadline prescribed in the Hearing Notice**. Failure to submit a Notice of Intent to Appear in a timely manner may be interpreted by the State Water Board as intent not to appear. **Persons or entities who did not file a protest against Application 5637X03 must also submit a request for designation as a party** with the Notice of Intent to Appear. The request should include supporting information demonstrating good cause for designation as a party to this proceeding.

Interested persons who will not be participating as parties, but instead presenting only non-evidentiary policy statements should also file a Notice of Intent to Appear, although it is not required.

The Notice of Intent to Appear must state the name and address of the participant. Except for interested persons who will not be participating as parties, the Notice of Intent to Appear must also include: (1) the name of each witness who will testify on the party's behalf; (2) a brief description of each witness' proposed case-in-chief testimony; and (3) an estimate of the time (not to exceed the total time limit for oral testimony described in section 9, below) that the witness will need to present a brief oral summary of his or her prior-submitted written testimony. (See section 6, below.) Parties who do not intend to present a case-in-chief but wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear.<sup>1</sup> Parties who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the State Water Board and the other parties as soon as possible.

Parties who are not willing to accept electronic service of hearing documents should check the appropriate box on the Notice of Intent to Appear. (See section 7, below.)

The State Water Board will send a service list of parties to each person who has submitted a Notice of Intent to Appear. The service list will indicate if any party is unwilling to accept electronic service. If there is any change in the hearing schedule, notice will be sent to those parties on the service list and interested persons that

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<sup>1</sup> A party is not required to present evidence as part of a case-in-chief. Parties not presenting evidence as part of a case-in-chief will be allowed to participate through opening statements, cross-examination, and rebuttal, and may also present closing statements or briefs, if the hearing officer allows these in the hearing.



have filed a Notice of Intent to Appear expressing their intent to present a policy statement only.

6. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each party proposing to present testimony on factual or other evidentiary matters at the hearing as part of a case-in-chief shall submit such testimony in writing.<sup>2</sup> Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A party who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each party shall submit to the State Water Board an electronic copy of each of its exhibits. With its exhibits, each party must submit a completed Exhibit Identification Index. Each party shall also serve a copy of each exhibit and the exhibit index on every party on the service list. A statement of service with manner of service indicated shall be filed with each party's exhibits.

The case-in-chief exhibits and indices for this hearing, and a statement of service, must be received by the State Water Board and served on the other parties **no later than the deadline prescribed in the Hearing Notice**. The State Water Board may interpret failure to timely submit such documents as a waiver of party status.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
- b. The hearing officer has discretion to receive into evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A party offering an exhibit by reference shall advise the other parties and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the party relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.

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<sup>2</sup> The hearing officer may make an exception to this rule if the witness is averse to the party presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement.

- c. A party seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other parties prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a party waives the opportunity to obtain a copy of the exhibit, the party sponsoring the exhibit will not be required to provide a copy to the waiving party. Additionally, with the permission of the hearing officer, such exhibits may be submitted to the State Water Board solely in electronic form, using a file format designated by the hearing officer.
  - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
7. **ELECTRONIC SUBMISSIONS:** To expedite the exchange of information, reduce paper use, and lower the cost of participating in the hearing, participants are encouraged to submit hearing documents to the State Water Board in electronic form and parties are encouraged to agree to electronic service.

Documents submitted or served electronically must be in Adobe Portable Document Format (PDF) except where a reasonable exception may be made for a Microsoft Office-supported format, such as Microsoft Excel for spreadsheets, Microsoft PowerPoint for slide presentations, and Microsoft Excel or Word for Exhibit Identification Indices. Electronic submittals to the State Water Board of documents of 11 megabytes or less in total size (incoming mail server attachment limitation) may be sent via electronic mail to: [wr\\_hearing.unit@waterboards.ca.gov](mailto:wr_hearing.unit@waterboards.ca.gov) with a subject of “**Amador Water Agency Hearing.**” Electronic submittals to the State Water Board of documents greater than 11 megabytes in total size should be submitted on a compact disc (CD), digital versatile disc (DVD), universal serial bus (USB) flash drive, or via a platform authorized by the State Water Board. **Each electronically submitted exhibit must be saved as a separate PDF file.**

8. **PRE-HEARING CONFERENCE:** Information regarding the scheduled Pre-Hearing Conference Call is located on page two of the Hearing Notice. At the hearing officer’s discretion, additional pre-hearing conferences may be conducted before the proceeding to discuss the scope of the hearing, the status of any protests, and any other appropriate procedural issues.
9. **ORDER OF PROCEEDING:** The hearing officer will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events. The time limits specified below may be changed by the hearing officer, for good cause.
- a. **Policy Statements within the Evidentiary Hearing:** Policy statements will be heard at the start of the hearing before the presentation of cases-in-chief. Oral summaries of the policy statements will be limited to **five (5) minutes** or such other time as established by the hearing officer.

- b. **Presentation of Cases-In-Chief:** Each party who so indicates on a Notice of Intent to Appear may present a case-in-chief addressing the key issues identified in the Hearing Notice. The case-in-chief will consist of any opening statement, oral testimony, introduction of exhibits, and cross-examination of the party's witnesses. The hearing officer may allow redirect examination and recross examination. The hearing officer will decide whether to accept the party's exhibits into evidence upon a motion of the party after completion of the case-in-chief.
- i. **Opening Statements:** At the beginning of a case-in-chief, the party or the party's attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to **twenty (20) minutes** per party. A party may submit a written opening statement before the hearing or during the hearing, prior to their case-in-chief. Any policy-oriented statements by a party should be included in the opening statement.
  - ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed up to **twenty (20) minutes** to summarize or emphasize their written testimony on direct examination. Each party will be allowed up to **one (1) hour** total to summarize or emphasize all of its written testimony on direct examination.<sup>3</sup>
  - iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness's oral testimony, and other relevant matters not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) If a party presents multiple witnesses, the hearing officer will decide whether the party's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to **one (1) hour** per witness or panel of witnesses. The hearing officer has discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Ordinarily, only a party or the party's representative will be permitted to examine a witness, but the hearing officer may allow a party to designate a person technically qualified in the subject being considered to examine a witness.

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<sup>3</sup> The hearing officer may, for good cause, approve a party's request for additional time to present direct testimony during the party's case-in-chief. For example, the hearing officer may allow additional time for the oral direct testimony of the witness if the witness is adverse to the party presenting the testimony and the hearing officer is satisfied that the party could not produce written direct testimony for the witness.

- iv. **Redirect and Recross Examination:** Redirect examination may be allowed at the discretion of the hearing officer. Any redirect examination and recross examination permitted will be limited to the scope of the cross-examination and the redirect examination, respectively. The hearing officer may establish time limits for any permitted redirect and recross examination.
- v. **Questions by State Water Board and Staff:** State Water Board members and staff may ask questions at any time and may cross-examine any witness.
- c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer will allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented by another party.

Rebuttal testimony and exhibits need not be submitted prior to the hearing unless the hearing officer requires otherwise. Rebuttal evidence is limited to evidence that is responsive to evidence presented in connection with another party's case-in-chief, and it does not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.

- d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times, if appropriate, the hearing officer may allow oral closing statements or legal arguments or set a schedule for filing legal briefs or written closing statements. If the hearing officer authorizes the parties to file briefs, an electronic copy of each brief shall be submitted to the State Water Board, and one copy shall be served on each of the other participants on the service list. A party shall not attach a document of an evidentiary nature to a brief unless the document is already in the evidentiary hearing record or is the subject of an offer into evidence made at the hearing.
10. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications with State Water Board members or State Water Board hearing team staff and supervisors, regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) **Any communications regarding potentially substantive or controversial procedural matters, including but not limited to evidence, briefs, and motions, must demonstrate that all parties were served and the manner of service.** Parties may accomplish this by submitting a proof of service or by other verification, such as correct addresses in an electronic-mail carbon copy list, or a list of the parties copied and addresses in the carbon copy portion of a letter. Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers" is available upon request.

11. **RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

**Division of Water Rights**

**NOTICE OF INTENT TO APPEAR**

\_\_\_\_\_ plans to participate in the water right hearing regarding  
(Name of Participant)

Amador Water Agency's Petition for Partial Assignment of  
State Filed Application 5647 and Accompanying Application 5647X03, and Reversion of  
Rights Previously Assigned to Jackson Valley Irrigation District Under State Filed  
Application 5648 (Permit 12167)

scheduled to commence on September 28, 2020 at 9 a.m.  
and continue, if necessary, on September 29, 2020

**1. Check only one of the following boxes:**

- Option 1:** I/we intend to present a policy statement only and, therefore, not to participate as a party in this hearing.
- Option 2:** I/we intend to participate as a party in this hearing by presenting any of the following: an opening statement, direct testimony, cross-examination, and/or rebuttal.

**2. If you selected Option 2 above and intend to provide direct testimony, complete the witness table below. If not, skip to #3 below.**

Witness Name	Expert Witness?		Subject of Proposed Testimony	Estimated Length of Oral Direct Testimony (1 Hour Total)
	Yes	No		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		

(If more space is required, please add additional pages.)

**3. Fill in the following information of the participant, attorney, or other representative:**

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Optional:  I/we decline electronic service of hearing-related materials.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

