

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

DIVISION DECISION 2024-0001

In the Matter of a 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)

Amador Water Agency

DECISION CONDITIONALLY APPROVING PETITION FOR PARTIAL ASSIGNMENT OF STATE FILED APPLICATION 5647 AND ACCOMPANYING APPLICATION 5647X03, AND A PARTIAL REVERSION OF RIGHTS

SOURCES: North Fork Mokelumne River and Bear River

COUNTIES: Amador and Calaveras

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 INTRODUCTION

In 2004, Amador Water Agency (AWA) filed a petition for partial assignment of State Filed Application (SFA) 5647 and accompanying water right Application 5647X03 with the State Water Resources Control Board (State Water Board or Board), Division of Water Rights (Division), requesting approval to directly divert water from the North Fork Mokelumne River and the Bear River, a tributary to the North Fork Mokelumne River, and to divert to storage in Lower Bear River Reservoir. The proposed appropriation would constitute an expansion of the Central Amador Water Project (CAWP). In addition to its petition for partial assignment of SFA 5647 and Application 5647X03, AWA requested a partial reversion to the State of a right to appropriate water from the Mokelumne River previously assigned to Jackson Valley Irrigation District (JVID) under SFA 5648 (Permit 12167).

This decision of the Division conditionally approves AWA's petition for partial assignment of SFA 5647 and accompanying Application 5647X03, and conditionally approves a partial reversion of JVID's right to divert water pursuant to Permit 12167.

2.0 BACKGROUND

2.1 Legal Framework

2.1.1 Water Right Applications

The State Water Board administers California's water rights system to help ensure that the State's limited water resources are put to the best possible use while protecting vested rights, water quality, the environment, and public trust resources. In order to approve an application to appropriate water and issue a permit, the State Water Board must find that unappropriated water is available to supply the applicant and that the intended use is beneficial and in the public interest. (Wat. Code, §§ 1255, 1375, subds. (c), (d).) In addition, the State Water Board must "consider the relative benefit to be derived from [] all beneficial uses of the water concerned, including, but not limited to, use for domestic, irrigation, municipal, industrial, preservation and enhancement of fish and wildlife . . . purposes" and any other uses protected in the relevant water quality control plan. (*Id.*, § 1257.) The State Water Board may impose terms and conditions that will best develop, conserve, and utilize in the public interest the water sought to be appropriated, protect fish and wildlife, and carry out water quality control plans. (*Id.*, §§ 1253, 1257, 1257.5, 1258.) In evaluating a water right application, the State Water Board also must ensure the protection of public trust uses, including fish and wildlife habitat, whenever feasible and in the public interest. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 434–435, 446–447.)

2.1.2 State Filed Applications

In 1927, the California 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 the development, utilization, or conservation of the water resources of the state." (Wat. Code, § 10500.) Such 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 such general or coordinated plan or with water quality objectives established pursuant to law." (*Id.*, § 10504.) Assignments of state filed applications maintain the priority date of the original state filed application, which may be as early as 1927. (*Id.*, § 10500.) The State Water Board may not release from priority or assign any portion of a state filed application if doing so would deprive the county in which the water originates of water necessary for its development. (*Id.*, § 10505; see also *id.*, § 10505.5.)

Applicants may petition the State Water Board for assignment of all or part of a state filed application. (Wat. Code, § 10504.01.) Such a petition must be accompanied by an application that is consistent with the requested assignment and includes a description

of the proposed project. (*Ibid.*) The State Water Board must hold a public hearing prior to releasing from priority or assigning any portion of a state filed application to allow interested persons to present their views and objections. (*Id.*, § 10504.1.)

2.2 History of SFAs 5647 and 5648

2.2.1 Amador County Reservation

On July 30, 1927, the State of California filed SFAs 5647 and 5648 to reserve water for future appropriation from tributaries of the Mokelumne River system for domestic and irrigation uses. (AWA-105; SWRCB-4.)¹

On July 3, 1956, the State approved Applications 13156 and 15201 filed by East Bay Municipal Utility District (EBMUD) to appropriate water from the Mokelumne River pursuant to Water Rights Decision 858. (SWRCB-8.) On March 5, 1959, the State approved a release from priority of SFAs 5647 and 5648 in favor of those applications filed by EBMUD. (AWA-6.) Effectively, the release from priority operated to reverse the priorities of the SFAs and EBMUD's applications, and, as a result, EBMUD's permits are senior in priority to any permits issued pursuant to SFAs 5647 and 5648, with an exception. The release from priority was subject to a 20,000 acre-foot per annum (afa) reservation for use in Amador County of water from the Mokelumne River and its tributaries covered by SFAs 5647 and 5648. Specifically, the reservation for Amador County provides for:

A reservation for use in Amador County from water of the Mokelumne River and its tributaries covered by Applications Nos. 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. . . .

(AWA-6, p. 4.)

As such, any permits issued pursuant to the Amador County reservation would be senior in priority to EBMUD's permits.

¹ Exhibits and testimony admitted into the administrative record are referred to throughout this decision, as here, by party name and exhibit number. Board staff exhibits are referred to as SWRCB-x. Citations to documents in the administrative record other than hearing exhibits include a description of the document, followed by the date of the document.

2.2.2 Partial Assignment to JVID and Reversion Provision

On August 28, 1959, the State approved a partial assignment of SFA 5648 to JVID pursuant to the 20,000 afa reservation for Amador County. (AWA-107.) On February 8, 1960, Permit 12167 was issued to JVID pursuant to this partial assignment, and originally authorized a direct diversion of 50 cubic feet per second (cfs) of water from the Mokelumne River, not to exceed 5,000 afa for purposes of irrigation.² (AWA-106.)

Permit 12167 is subject to the terms of the partial assignment of SFA 5648, which provide for a reversion of rights to the State in any amount determined by the Board to be required for use in Amador County for irrigation, domestic, or municipal purposes at points upstream from JVID's point of diversion at Pardee Reservoir. (AWA-106, p. 32; AWA-107, p. 3.) The reversion provision also requires any upstream user to provide JVID with a substitute water supply as a condition precedent to the reversion of more than 2,200 afa. (AWA-107, pp. 3–4.)

2.2.3 AWA's Prior Petition for Assignment of SFA 5647 (Application 5647B) and Decision 1490

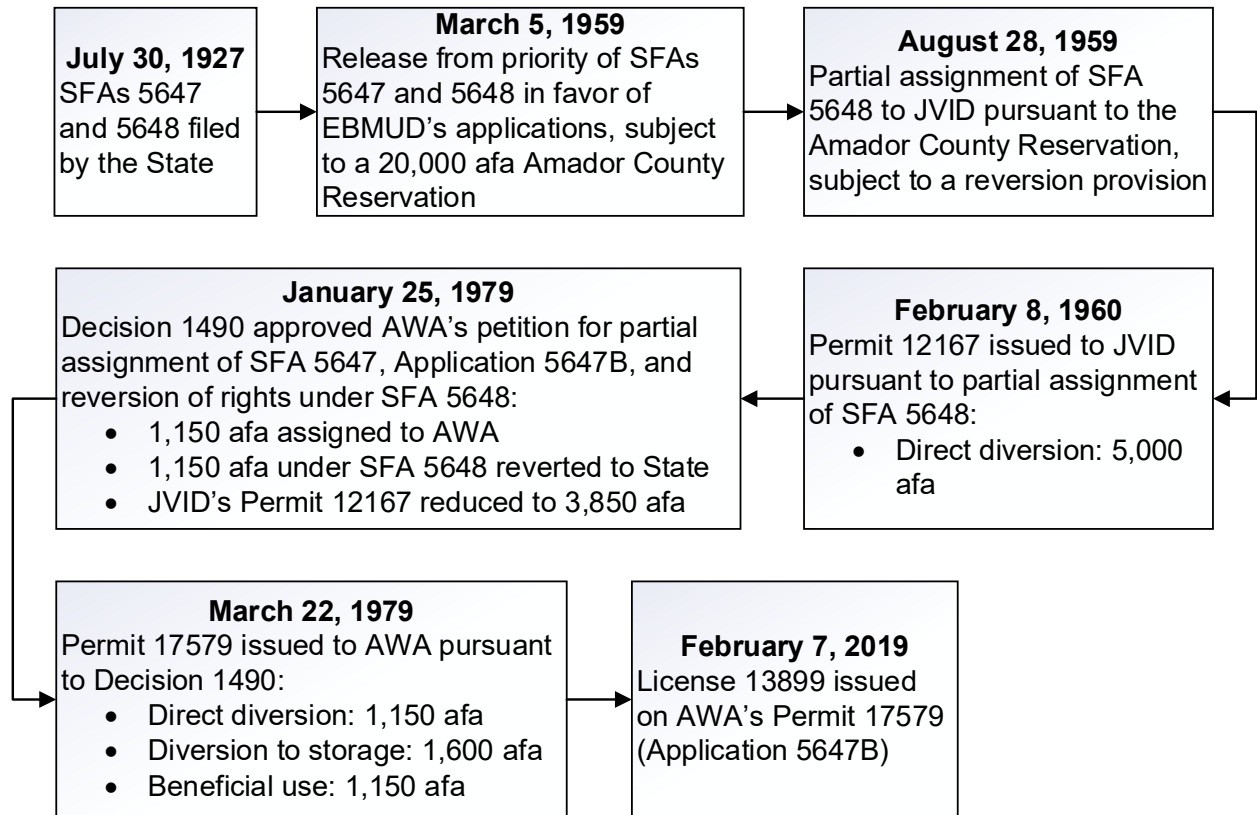
On January 25, 1979, following a public hearing, the Board adopted Decision 1490, approving AWA's first petition for partial assignment of SFA 5647 and accompanying Application 5647B, as well as AWA's request for a partial reversion of JVID's rights under SFA 5648 (Permit 12167). (State Water Board Decision 1490 (1979).) In approving the petition and application, the Board assigned 1,150 afa under SFA 5647 to AWA. (*Id.*, pp. 12–13.) The Board also ordered a corresponding reversion to the State of 1,150 afa of the 5,000 afa originally authorized under JVID's Permit 12167. (*Ibid.*) Accordingly, the Board reduced the maximum diversion amount allowed under Permit 12167 to 3,850 afa. (*Id.*, p. 12.)

Pursuant to Decision 1490, the Board issued Permit 17579 to AWA on March 22, 1979. 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. (AWA-8.)

Figure 1 below generally depicts the history of SFAs 5647 and 5648 and how water has been assigned to AWA and JVID under those state filed applications.

² Permit 12167 authorizes direct diversion from March 1 to November 1 for irrigation and year-round direct diversion for incidental domestic and stockwatering purposes.

Figure 1. Flowchart Showing the Assignment of Water Under SFAs 5647 and 5648



2.2.4 Operation of the Existing CAWP

AWA owns and operates the CAWP, which provides water for municipal purposes to communities within central Amador County. (AWA-108, p. 2-1.) AWA currently operates the CAWP pursuant to its existing water right License 13899 (Application 5647B), which authorizes AWA to directly divert up to 1,150 afa from the North Fork Mokelumne River and Bear River, and to divert up to 1,600 afa from the Bear River to storage in Lower Bear River Reservoir. (AWA-8.)

The CAWP utilizes multiple facilities owned and operated by Pacific Gas and Electric Company (PG&E) pursuant to an agreement between AWA and PG&E. (AWA-108, p. 2-1.) AWA currently leases 1,600 acre-feet of capacity in PG&E's Lower Bear River Reservoir for storage of water diverted from the Bear River. (*Id.*, p. 2-8.) Water that is either released from storage at Lower Bear River Reservoir or directly diverted from the North Fork Mokelumne River is conveyed to PG&E's Tiger Creek Regulator Reservoir. (AWA-100, p. 4.) Water is rediverted and conveyed by gravity through AWA's Gravity Supply Pipeline (GSP) from Tiger Creek Regulator Reservoir to AWA's Buckhorn Water Treatment Plant for treatment prior to distribution to the CAWP service area. (*Ibid.*) Before the GSP became operational, AWA pumped water uphill approximately 1,200

feet to the Buckhorn Water Treatment Plant from PG&E's Tiger Creek Afterbay. (AWA-100, p. 2; AWA-1, p. 3.) Tiger Creek Afterbay now serves as a standby point of diversion and rediversion in the event AWA is unable to redivert water at Tiger Creek Regulator Reservoir through the GSP. (AWA-100, p. 4.)

2.3 Subject Petition, Application, and Reversion Request

2.3.1 AWA's Pending Petition, Application 5647X03, and Request for Reversion of Rights

On October 7, 2004, AWA filed its second petition for partial assignment of SFA 5647, together with Application 5647X03 to expand the CAWP. (AWA-5; AWA-203.)³ Under Application 5647X03, AWA seeks to directly divert up to 5 cfs year-round from the North Fork Mokelumne River and the Bear River, not to exceed 1,050 afa, 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. (AWA-203, pp. 1, 5–6.) The total maximum amount of water to be put to beneficial use under this application, whether from direct diversion or rediversion from storage, is 1,050 afa. (*Id.*, p. 6.) The combined total amount of water to be directly diverted or rediverted from storage for beneficial use under AWA's existing License 13899 and any permit issued pursuant to Application 5647X03 is 2,200 afa. (*Ibid.*)

In its petition, AWA also requested a reversion to the State of 1,050 afa of water currently assigned to JVID under SFA 5648 (Permit 12167). (AWA-5.) This is the same amount of water AWA proposes to put to beneficial use under the partial assignment of SFA 5647.

AWA seeks to expand the CAWP because it expects water demand in the CAWP service area to increase beyond the amount authorized under License 13899. (AWA-108, pp. 2-5–2-6.) The CAWP expansion would utilize existing infrastructure owned by AWA and PG&E.

2.3.2 Public Notice and Subsequent Protests

The State Water Board publicly noticed AWA's petition for partial assignment of SFA 5647 and accompanying Application 5647X03 on March 24, 2006. JVID, EBMUD, DWR, and the U.S. Bureau of Reclamation (Reclamation) each filed protests with the

³ By letter dated April 11, 2013, AWA identified proposed minor changes to Application 5647X03. Board staff requested that AWA submit a revised copy of Application 5647X03 consistent with the changes included in the April 2013 letter to accurately reflect AWA's current project. AWA submitted a copy of revised Application 5647X03 as Exhibit AWA-203.

Board against the subject petition and application on the grounds that approval of Application 5647X03 would result in injury to their rights.

EBMUD and JVID withdrew their protests in 2007 and 2013, respectively, subject to certain terms. However, EBMUD and JVID did not execute agreements with AWA formalizing those terms until September 2020. (See section 2.3.3.)

Protests filed by DWR and Reclamation alleged that approval of AWA's application and petition would result in injury to Reclamation's Central Valley Project and DWR's State Water Project (collectively, Projects) because AWA could potentially divert water at times when the Projects are releasing supplemental water to meet water quality and environmental requirements within the Sacramento-San Joaquin Delta imposed by state and federal law. To avoid injury, DWR and Reclamation asserted that any permit issued pursuant to Application 5647X03 should be conditioned with standard permit terms 80, 90, and 91.⁴ In letters to DWR and Reclamation, dated November 30, 2018, AWA stated that it had no objection to the inclusion of standard permit terms 80 and 90 in any permit issued by the State Water Board; however, AWA objected to the inclusion of standard permit term 91 (Term 91), citing *El Dorado Irrigation District v. State Water Resources Control Board* (2006) 142 Cal.App.4th 937 (*El Dorado*).⁵ On April 28, 2020, Reclamation withdrew its protest without conditions. However, DWR's protest remained unresolved at that time.

2.3.3 Evidentiary Hearing Process

As DWR's protest remained unresolved, on July 7, 2020, the State Water Board issued a Hearing Notice for an evidentiary hearing before the Board on AWA's petition and application. AWA, DWR, EBMUD, and El Dorado Irrigation District (EID) submitted Notices of Intent to Appear as parties to the evidentiary hearing. The California Sportfishing Protection Alliance, California Water Impact Network, and AquAlliance (collectively, CSPA et al.) also submitted a Notice of Intent to Appear as parties to the evidentiary proceeding. JVID submitted a Notice of Intent to Appear as an interested person.

⁴ Standard permit term 80 reserves jurisdiction to change the season of diversion to conform to later findings of the Board concerning availability of water and protection of beneficial uses in the Sacramento-San Joaquin Delta and San Francisco Bay. Standard permit term 90 subjects permits to prior rights and in any year of water scarcity, the season of diversion authorized under the permit may be reduced or completely eliminated by order of the Board. Standard permit term 91 is discussed in more detail in section 3.3.2.

⁵ *El Dorado* is discussed in greater detail in sections 3.3.2.1 and 3.3.2.2.

After the Hearing Notice was issued, however, and before the scheduled hearing dates, AWA entered into formal protest withdrawal agreements with remaining protestants EBMUD, JVID, and DWR. On September 9, 2020, EBMUD filed a fully executed three-party protest withdrawal agreement among AWA, JVID, and EBMUD. The agreement included terms for incorporation into any permit issued to AWA under Application 5647X03 to resolve JVID's and EBMUD's protests. (AWA-10; Letter and enclosed Fully Executed Protest Withdrawal Agreement from EBMUD, September 9, 2020.) On September 17, 2020, AWA and DWR jointly filed a protest withdrawal agreement in which DWR withdrew its protest to Application 5647X03 in accordance with the terms of the agreement. AWA and DWR requested that the State Water Board incorporate a term set forth in the agreement, as well as standard permit terms 80 and 90, into any permit issued to AWA pursuant to Application 5647X03. (Letter and enclosed Protest Withdrawal Agreement from AWA and DWR, September 17, 2020.)

2.3.4 Non-Evidentiary Hearing Under Delegated Authority

After all protests had been resolved, an evidentiary hearing was no longer required on AWA's petition and application. Water Code section 1351 provides that "[n]o hearing is necessary in order to issue a permit on an unopposed application [to appropriate water], or if undisputed facts support the issuance of a permit and there is no disputed issue of material fact." In general, petitions for assignment of state filed applications and their companion applications are processed in the same manner as regular applications. (Wat. Code, § 10504.01.) Water Code section 10504.1 requires the State Water Board to hold a public hearing before approving a petition for assignment of a state filed application to allow interested persons to present their views and objections, but does not require the Board to hold an evidentiary hearing.

In a ruling dated November 16, 2020, the Board's hearing officer for this matter explained that it was no longer necessary to conduct an evidentiary hearing on AWA's petition and application under administrative adjudication provisions of the Administrative Procedure Act (Gov. Code, § 11400 et seq.). In the interests of efficiency, the hearing officer ruled that AWA's petition and application would continue to be processed under authority delegated to the Deputy Director for Water Rights (Deputy Director). The November ruling also provided notice that the Deputy Director would hold a non-evidentiary public hearing to allow any interested persons the opportunity to present their views and objections, as required by Water Code section 10504.1, as well as any policy statements that would have been presented at the previously scheduled hearing. (Ruling regarding Notice of Public Hearing Under Delegated Authority and Exhibits Following September 25, 2020 Status Conference, November 16, 2020.)

Pursuant to State Water Board Resolution 2012-0029, paragraph 4.2.4, the Deputy Director had authority to act on AWA's application. On December 17, 2020, the

Executive Director of the State Water Board delegated to the Deputy Director the authority to: (1) hold a public hearing and take action on AWA's pending petition for assignment of SFA 5647; and (2) order a partial reversion of the right to divert water under JVID's Permit 12167 (SFA 5648).

The non-evidentiary public hearing was conducted entirely in writing, with views, objections, and any other policy statements due on January 5, 2021. The Board received a single policy statement on January 5, 2021 from EBMUD in support of AWA's petition and application, provided that the permit issued to AWA under Application 5647X03 includes the condition contained in the September 9, 2020 three-party protest withdrawal agreement among AWA, JVID, and EBMUD. (AWA-10; EBMUD Statement Regarding Three-Party Protest Withdrawal Agreement, September 2, 2020; EBMUD Policy Statement, January 5, 2021.) JVID had previously submitted a policy statement on September 1, 2020, in support of AWA and the pending protest withdrawal agreement among JVID, AWA, and EBMUD. (JVID Policy Statement, September 1, 2020.)

3.0 DISCUSSION AND FINDINGS

3.1 Partial Reversion of JVID's Right Pursuant to Permit 12167

As described in section 2.2.2, the 1959 partial assignment of SFA 5648 to JVID provides for a reversion of rights to the State in any amount determined by the State Water Board to be required for use upstream in Amador County for irrigation, domestic, or municipal purposes. (AWA-107, p. 3.) Any upstream user is required to provide JVID with a substitute water supply as a condition precedent to the reversion of more than 2,200 afa. (*Id.*, pp. 3–4.)

AWA seeks a reversion of 1,050 afa of water currently assigned to JVID under SFA 5648 (Permit 12167). (AWA-5.) AWA indicates that additional water supply is necessary to meet the needs of its existing customers and to accommodate for future planned growth in the CAWP service area. (AWA-108, p. 2-5.) AWA's proposed points of diversion and rediversion are upstream from JVID's authorized point of diversion at Pardee Reservoir. (AWA-108, p. 2-6.)

The Division finds that AWA proposes to use the water for municipal purposes, that the proposed place of use is within Amador County upstream of JVID's point of diversion, and that the water is needed within said place of use. Accordingly, AWA has established the facts necessary for a reversion to the State of 1,050 afa of the maximum 3,850 afa authorized under JVID's Permit 12167. AWA is not required by the terms of the reversion provision to provide JVID with a substitute water supply because the

subject reversion request, when combined with the partial reversion of the right to divert 1,150 afa approved in Decision 1490, results in a total reversion of 2,200 afa.

3.2 Petition for Partial Assignment of SFA 5647

3.2.1 Consistency with a General or Coordinated Plan and with Water Quality Objectives

Water Code section 10504 authorizes the State Water Board to approve a petition for partial assignment of a state filed application when the purpose of the proposed project is not in conflict with a general or coordinated plan for the development, utilization, or conservation of the State's water resources, or with water quality objectives established pursuant to law.

The California Water Plan, first issued in 1957, is the strategic state-wide plan "for the orderly and coordinated control, protection, conservation, development, and utilization of the water resources of the state" (Wat. Code, § 10004.) State filed applications remain valid and retain their status and priority notwithstanding any updates to the California Water Plan. (Wat. Code, § 10007.)

The proposed project is not in conflict with the 1957 California Water Plan. The objectives of the 1957 California Water Plan for the basin in which the proposed project is located are to develop and distribute local water supplies for all beneficial purposes, including irrigation, municipal, industrial, fish and wildlife, recreation, and power generation; protect urban and agricultural areas from damaging floods; convey and distribute the imported water supplies necessary to satisfy fully the ultimate water requirements for all beneficial purposes; and protect the quality of water by adequate drainage and removal of unsuitable waters. (Cal. Dept. of Wat. Resources, Bulletin No. 3, The California Water Plan (May 1957) p. 119.) The proposed project will distribute local water supplies for municipal purposes within a county in which the water originates.⁶

The proposed project is also not in conflict with the California Water Plan Update 2013 (Update 2013).⁷ One goal identified in Update 2013 is to ensure sufficient firm yield

⁶ The county of origin is discussed in greater detail in section 3.2.2.

⁷ The most recent state-wide plan is the California Water Plan Update 2018 (Update 2018). (Cal. Dept. of Wat. Resources, California Water Plan, Update 2018 (June 2019).) Review of the pertinent portions of Update 2018 did not reveal any specific goals related to the use of water from SFA 5647. Update 2018 expands on the detailed and comprehensive California Water Plan Update 2013.

water supply⁸ in the region that includes Amador County. (Cal. Dept. of Wat. Resources, California Water Plan, Update 2013, vol. 2, San Joaquin River Hydrologic Region (Oct. 2014) pp. SJR-136–SJR-137.)⁹ The project and appropriation proposed by AWA are consistent with that objective because the right to store an additional 1,400 afa in Lower Bear River Reservoir will provide water supply reliability during dry years.

Additionally, the proposed appropriation is generally consistent with the purpose for which SFA 5647 was initially filed. SFA 5647 reserved water for future appropriation from tributaries of the Mokelumne River system for irrigation and domestic use within Amador County. Under the subject application and petition, AWA seeks to appropriate water for beneficial use in Amador County for municipal purposes. Although municipal is not listed as a purpose of use in SFA 5647, the provision that JVID's permit is subject to provides for the reversion of rights when an upstream user requires water for municipal purposes in Amador County. (AWA-105, p. 1; AWA-106, p. 32; AWA 107, pp. 3–4.) The proposed appropriation supports the State's longstanding intent to allow for development and use within Amador County for irrigation, domestic, and municipal purposes, consistent with the 20,000 afa Amador County reservation and the reversion provision to which JVID's Permit 12167 is subject. (See sections 2.2.1 and 2.2.2; AWA-6, p. 4; AWA-107, pp. 3–4.)

Finally, the proposed project is not in conflict with water quality objectives. As described in section 3.1 of AWA's Final Environmental Impact Report (FEIR), the proposed project does not require any new construction and will not result in any discharge to surface waters. (AWA-108, p. 3.1-5.) Although AWA's proposed diversions may result in an incremental reduction in river flows above Pardee Dam when flows are above the required minimum, PG&E will continue to operate its facilities to maintain minimum flows in the Bear River and North Fork Mokelumne River, as required by PG&E's Relicensing Settlement Agreement for its Mokelumne River Project. (AWA-108, pp. 2-6, 2-8; see also section 3.3.1.) Therefore, the proposed project does not have the potential to violate any applicable water quality objectives.

The Division finds that approval of the petition for partial assignment of SFA 5647 is not in conflict with a general or coordinated plan looking toward the development, utilization,

⁸ A "firm-yield approach" is to deliver the same amount of water every year regardless of water supply conditions. (Cal. Dept. of Wat. Resources, California Water Plan, Update 2013, vol. 4, Reference Guide (Oct. 2014) p. 13.)

⁹ The Deputy Director takes official notice of the 1957 California Water Plan, California Water Plan Update 2013, and California Water Plan Update 2018 pursuant to California Code of Regulations, title 23, section 648.2 (authorizing presiding officers to take official notice of matters that may be judicially noticed) and Evidence Code section 452, subdivision (c) (authorizing judicial notice of the official acts of administrative agencies).

or conservation of the water resources of the State, or with water quality objectives established by law.

3.2.2 Will Not Deprive County of Origin of Water

The State Water Board may not release from priority or assign a state filed application if the county in which the water originates would be deprived of water necessary for its development. (Wat. Code, §§ 10505, 10505.5.) The California Attorney General opined that “originates” in the context of Water Code section 10505 means “falls in the form of precipitation.” (25 Ops.Cal.Atty.Gen. 8, 17 (1955).)

The water that AWA seeks to divert from the North Fork Mokelumne River and Bear River originates in Amador County¹⁰ and AWA intends to provide water for municipal purposes to communities within central Amador County. Since the subject partial assignment is for the purpose of developing a water supply for a portion of a county in which the water originates, the approval of the partial assignment will not deprive any county in which the water originates of any water necessary for its development.

3.3 Application 5647X03

3.3.1 Water Availability

When considering whether to approve an application to appropriate water, the State Water Board must determine whether unappropriated water is available to supply the applicant in the amount requested in the application. (Wat. Code, § 1375, subd. (d); Cal. Code Regs., tit. 23, § 695.) In determining the amount of water available for appropriation, the State Water Board must take into account the amount of water required to support instream beneficial uses when it is in the public interest and to protect public trust resources. (Wat. Code, §§ 1243, 1243.5.)

AWA did not perform a standard water availability analysis for the subject application. Instead, AWA submitted testimony and evidence that argues the State has already determined that water is available for appropriation by AWA under Application 5647X03 in previous water right decisions. AWA also performed a supplemental hydrologic analysis to show that water would be physically available at its points of diversion and to assess impacts of AWA’s proposed diversions on hydrology.

AWA seeks a partial reversion to the State of JVID’s right pursuant to Permit 12167. Therefore, a key finding of water availability for Application 5647X03 occurred when the State found that unappropriated water was available to supply JVID when it originally

¹⁰ The water in the North Fork Mokelumne River also originates in Calaveras County, as the river defines the border between the two counties.

approved the partial assignment of SFA 5648 and subsequently issued Permit 12167 on Application 5648B. When approving AWA's Application 5647B and the first partial reversion of JVID's right, the Board determined that water was available to AWA because the Board had previously found water to be available to JVID when approving JVID's application. (Decision 1490, pp. 8–9.) The Board relied on its previous finding of water availability for JVID when finding whether water was available to AWA. Because of the unique reversion provision, the Board treated AWA's application as essentially a change in the authorized point of diversion to an upstream location and a change in the entity which was authorized to divert the water. (*Ibid.*)

Consistent with Decision 1490, the Division finds that the subject application simply proposes to change the point of diversion to an upstream location and change the entity which is entitled to divert the water, and that unappropriated water was previously found to be available to supply AWA when the State issued Permit 12167 to JVID. Since 2010, except for periods when drought curtailments were in effect, JVID has diverted at or near the maximum diversion amount of 3,850 afa currently authorized under Permit 12167. (AWA-204.) Since JVID has exercised full use of its permit, approval of a partial reversion to the State of 1,050 afa of JVID's right pursuant to Permit 12167 and subsequent partial assignment of SFA 5647 to AWA will not cause a net increase in the amount of surface water applied to beneficial use in any given year.

Although approval of AWA's application and petition would not cause a net increase in the amount of water applied to beneficial use in any given year, the approval could result in an increase in diversions during certain periods because JVID's permit only authorizes direct diversion, whereas AWA's application seeks authorization to directly divert and divert to storage. Of the amount of water covered by the reversion that would become available to AWA, JVID is authorized to divert up to 1,050 afa by direct diversion. Under AWA's Application 5647X03, AWA seeks authorization to divert up to 2,450 afa by direct diversion or collection to storage. Due to the additional diversion to storage component under AWA's application, the potential exists for an increase in overall surface water diversions from the watershed. However, JVID typically directly diverts during the dry season, whereas water diverted by AWA under any right issued pursuant to Application 5647X03 may be diverted to storage during the wet season for later use. This may result in an increased reliance on stored water and a decrease in direct diversions during dry periods.

It is also important to consider that the water sought by AWA under Application 5647X03 is covered by the 20,000 afa Amador County reservation. As such, a finding of unappropriated water must be consistent with the reservation, which provides for such quantity of water to be directly diverted for beneficial use and diverted to storage to later be applied to beneficial use as is required to produce a safe yield. (AWA-06, p. 4.) According to AWA's witness, Nicholas Bonsignore, safe yield should be considered the total amount of water that AWA can directly divert and divert to storage in order to

reliably provide 1,050 afa for beneficial use, and should not be quantified as a summation of individual diversion amounts. (AWA-200, p. 4.) To reliably provide 1,050 afa for beneficial use, AWA requested a right to directly divert up to 1,050 afa and divert up to 1,400 afa to storage. In this case, the Division agrees with Mr. Bonsignore's characterization of a safe yield and that the diversion amounts requested by AWA are consistent with the nature of the reservation.

In addition, AWA performed an analysis to show that water would be physically available at its points of diversion. Using the Mokelumne Calaveras Amador Simulation (MOCASIM) model, AWA evaluated 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. (AWA-108, Appendix C.) AWA determined that there may be incremental reductions in flow in the Bear River and North Fork 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 flow downstream of Pardee Dam. (AWA 108, p. 2-6.) Modeling results indicate that any reductions in flow would not exceed 2 cfs in any water year type and would be less than 0.3 percent of average baseflow. (*Id.*, pp. 3.1-5–3.1-6.) Reductions in flow of this magnitude are not expected to negatively impact instream beneficial uses or other legal users of water between AWA's points of diversion and Pardee Dam where the potential reductions in flow may occur.

For the foregoing reasons, the Division concludes that sufficient water is available to supply AWA's Application 5647X03 and that the amount requested will not impact the water required for instream beneficial uses or public trust resources (see section 3.3.5).

3.3.2 Exclusion of Term 91

As discussed in section 2.3.2, DWR and Reclamation originally protested on the grounds that approval of Application 5647X03 without standard permit Term 91 would result in injury to the Projects. AWA objected to the inclusion of Term 91 in any permit issued on Application 5647X03, asserting it would be contrary to current legal precedent. This argument and related background is discussed further in the sections below.

3.3.2.1 Description and Purpose of Term 91

Term 91 prohibits certain permittees and licensees from diverting water during periods when natural and abandoned flows are insufficient to meet in-basin entitlements and

flow-dependent water quality objectives in the Sacramento-San Joaquin Delta (Delta).¹¹ Specifically, Term 91 prohibits diversions when the Delta is in “balanced conditions”¹² and the Projects are releasing Supplemental Project Water in order to satisfy inbasin entitlements.¹³

Term 91 is intended to protect water previously stored or imported by the Projects, and has been included in water right permits within the Delta watershed with a priority date of approximately 1965 or later.¹⁴ Term 91 was developed in response to previous Board decisions that conditioned the water rights of DWR and Reclamation to require the Projects to curtail diversions or release stored water to the extent necessary to meet flow-dependent water quality objectives for the Delta. Subsequently, DWR and Reclamation protested numerous applications to appropriate water within the Delta watershed, claiming that diversions by new applicants at certain times would force the Projects to release more stored water to meet the Delta water quality objectives. (See State Water Board Decision 1594 (1983), p. 8.) Including Term 91 as a permit term has enabled resolution of most of DWR’s and Reclamation’s protests based on injury against new applications in the Delta watershed. (*Id.*, p. 8.) Without Term 91, other permittees could potentially divert the Projects’ imported or stored water,¹⁵ or natural and abandoned flows contributing to meeting downstream objectives. Thus, Term 91

¹¹ Term 91 defines inbasin entitlements as “all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the State Water Board for maintenance of water quality and fish and wildlife. Export diversions and Project carriage water are specifically excluded from the definition of inbasin entitlements.”

¹² Balanced conditions exist when DWR and Reclamation mutually agree that releases from upstream reservoirs plus unregulated flows approximately equal the water supply needed to meet Sacramento Valley in-basin uses plus exports. (State Water Board Decision 1641, p. 155, fn. 85.)

¹³ Supplemental Project Water is defined as that water imported to the basin (i.e., the Delta watershed) by the Projects plus water released from Project storage which is in excess of export diversions, Project carriage water, and Project inbasin deliveries.

¹⁴ Term 91 applies to permits of 1 cfs or more or 100 afa of storage or more within the Sacramento, Cosumnes, Mokelumne, Calaveras, or San Joaquin River Basins or the Delta when hydraulic continuity with the Delta exists, or is likely to exist, during the requested diversion season. Exceptions are the Putah Creek, Stony Creek, and Cache Creek watersheds.

¹⁵ “No riparian or appropriator has a right to use water that was previously stored or imported by another upstream and then released into the watercourse for use downstream.” (*El Dorado, supra*, 142 Cal.App.4th at p. 962 [citing Wat. Code, §§ 1201, 7075; *Lindblom v. Round Valley Water Co.* (1918) 178 Cal. 450].)

requires junior appropriators to share in the responsibility of meeting Delta water quality objectives by curtailing diversions under certain hydrologic conditions.

3.3.2.2 State Filed Applications and Term 91

SFA 5647 has a 1927 priority date and, therefore, including Term 91 in any permit issued to AWA pursuant to SFA 5647 would present the same issue litigated in *El Dorado*. In that case, EID and El Dorado County Water Agency successfully challenged the inclusion of Term 91 in a permit issued on a state filed application with a 1927 priority date that had been assigned to EID et al.¹⁶ 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*, supra, 142 Cal.App.4th at pp. 963–965.)¹⁷

The holding in the *El Dorado* case complicates the Board's ability to process petitions for assignment of state filed applications, which may have a priority date as early as 1927. State filed applications can adversely affect the Projects if those state filed applications are not subject to Term 91 because, irrespective of the priority dates of the applications, the Projects would need to increase storage releases upstream to compensate for the impacts of those additional diversions. Approving new appropriations in the Delta watershed without Term 91 could exacerbate existing water supply shortages, impair the Projects' ability to meet existing water quality objectives, and potentially frustrate the Board's efforts to implement updated flow objectives as part of the ongoing Bay-Delta Plan update process. The Projects' ability to meet water quality objectives, particularly in drier years, has been and will continue to be impacted by additional diversions from the watershed that are not limited by Term 91. Thus, as a general rule, the Board is unlikely to approve applications to appropriate water from the Delta watershed or its tributaries without the inclusion of Term 91.

The circumstances of this case, however, are unique. As mentioned previously, DWR and Reclamation originally protested on the grounds that approval of Application 5647X03 without Term 91 would result in injury to the Projects. However, Reclamation withdrew its protest without conditions and DWR withdrew its protest as part of a settlement agreement with AWA. The settlement agreement between DWR and AWA included a protest dismissal term that the parties agreed to include in AWA's permit

¹⁶ See Order WR 2001-22, pp. 7–14.

¹⁷ 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 EID et al.'s permit was subject to Term 91. (*Id.*, pp. 967–968.).

instead of Term 91. The settlement agreement also served to resolve the concerns of EID and CSPA et al. Under these unique circumstances, approving Application 5647X03 without including Term 91 as a condition of the permit will satisfy all of the hearing parties, provided the Board includes a term consistent with the settlement agreement between AWA and DWR.

The Division finds that making an exception in this case and approving AWA's application without Term 91 would be appropriate because of the unique nature of the JVID reversion provision. JVID has already been diverting the water that AWA seeks to appropriate during the time of year when Term 91 applies. Moreover, AWA would be authorized to divert to storage under Application 5647X03 during the wetter months for future use during drier months, whereas JVID directly diverts for irrigation purposes, which has added to demands during the hotter and drier months when Term 91 is more likely to be in effect. As such, it is likely that AWA may divert less water than JVID would have diverted during the months when Term 91 typically applies.

For the foregoing reasons, the Division will not include Term 91 in the permit issued to AWA under Application 5647X03 and will instead include a permit term consistent with the protest withdrawal agreement between AWA and DWR. The Board will also reserve jurisdiction, via the language of standard permit term 96, to reduce the season when water is available for diversion and the amount of water available for diversion under the permit to implement existing or revised water quality and flow objectives included in the Bay-Delta Plan. The permit will also be subject to senior rights, and the Board will reserve jurisdiction to modify the terms and conditions of the permit, if necessary, to prevent injury to senior right holders.

3.3.3 Injury to Other Legal Users of Water

Application 5647X03 has a priority date of July 30, 1927, which is senior in priority to EBMUD's Applications 13156 and 15201, but equal in priority to JVID's Permit 12167. Although EBMUD was granted a release from priority of SFAs 5647 and 5648 in favor of its applications, AWA's Application 5647X03 has priority over EBMUD's applications because of the 20,000 afa Amador County reservation to which EBMUD's applications are subject. To prevent any possible injury to JVID, AWA entered into an agreement with JVID and EBMUD to establish that the right to beneficially use a portion of the 1,050 afa authorized under any permit issued pursuant to Application 5647X03 will remain available for diversion and use by JVID under Permit 12167 until AWA requires the full 1,050 afa to meet demand.

Additionally, the Board has publicly noticed Application 5647X03. All protests on the application have been resolved. Protest dismissal terms resulting from protest withdrawal agreements have been incorporated into the terms and conditions of the permit on Application 5647X03.

For the above reasons, the Division finds that the proposed project will not injure other legal users of water.

3.3.4 Public Trust Resources

The State Water Board has an independent obligation to consider the effect of AWA's proposed project on public trust resources and to protect those resources whenever feasible and in the public interest. (*National Audubon Society, supra*, 33 Cal.3d 419, 434–435, 446–447.) Public trust resources include wildlife, fish and other aquatic dependent species, riparian and aquatic habitat, fishing, and recreation.

In the upper Mokelumne River watershed, the Bear River and North Fork Mokelumne River provide habitat for fish and other aquatic species, including wild and hatchery produced rainbow trout, brown trout, dace, and hitch. (AWA-108, p. 3.2-1.) The lower Mokelumne River below Camanche Dam supports fall-run Chinook salmon and steelhead. (*Ibid.*) The lower Mokelumne River watershed also provides habitat for other native and non-native species, including rainbow trout, prickly sculpin, Sacramento sucker, mosquitofish, largemouth bass, bluegill, and striped bass. (*Ibid.*)

AWA's evaluation of impacts to public trust resources was limited to operational effects associated with AWA's increased diversions since the proposed project does not require any new construction. (AWA-108, p. 3.2-2.) Without construction activities, there would be no construction impacts to wildlife habitat or terrestrial species of concern. (*Id.*, p. 3.2-3.) In its evaluation of aquatic biological resources, AWA concluded that any impacts to fish and aquatic habitat would result from minor reductions in flow and would be less than significant. (AWA-108, p. 3.2-2.)

AWA prepared a technical memorandum that uses hydrologic modeling results to assess whether the changes in river flows resulting from the proposed diversions would have any adverse effect on aquatic species and habitat in the Bear River and North Fork Mokelumne River. (AWA-108, Appendix D, p. 2.) As described in section 3.3.1, hydrologic modeling results indicate that reductions in flow in the Bear River and North Fork Mokelumne River between AWA's points of diversion and JVID's point of diversion at Pardee Reservoir would not exceed 2 cfs. (AWA-108, p. 3.2-3.) AWA concluded that such minimal reductions in flow are within the range of natural variability within the watershed and would not be expected to have any detectable effect on aquatic habitat quality or availability, water velocities, channel depth, channel wetted width, or water temperatures. (*Ibid.*) Additionally, the proposed diversions are not expected to adversely affect fish or aquatic habitat downstream of Pardee Reservoir. (*Ibid.*) According to David Richardson, AWA's engineering consultant responsible for preparing the FEIR, there would be no net change in river flows downstream of Pardee Reservoir since the increased diversions by AWA would be balanced by the reduction in diversions by JVID. (AWA-300, p. 4.) Therefore, there would be no effect on aquatic

species and habitat in Camanche Reservoir or the lower Mokelumne River watershed. (*Id.*, p. 5.)

The Division has reviewed AWA's analysis of impacts to biological resources and has determined that approval of the proposed project will not cause any adverse impacts to fish, wildlife, or other public trust resources.

3.3.5 Beneficial Use and Public Interest

An appropriation of water must be for a useful or beneficial purpose. (Wat. Code, § 1240.) The State Water Board will allow the appropriation for beneficial purposes of unappropriated water under such terms and conditions as in its judgment will best develop, conserve, and utilize in the public interest the water sought to be appropriated. (Wat. Code, §§ 1253, 1257; see also Wat. Code, § 1255 [requiring Board to reject application that would not best conserve the public interest].) In acting upon applications to appropriate water, the Board also must consider the state goal of providing a decent home and suitable living environment for every Californian. (Wat. Code, § 1259.)

AWA relies on surface water from the Mokelumne River system for sources of supply for the CAWP because Amador County has limited options for reliable municipal water supplies. (AWA-1, p. 3; AWA-100, p. 4.) AWA indicates that the amount currently authorized under its existing License 13899 is insufficient to provide for the planned development in the CAWP service area. (AWA-100, p.8.) Therefore, AWA filed the subject petition and application to secure an additional water supply to meet the needs of existing customers, accommodate for future planned growth, and increase water supply reliability. (AWA-108, p. 2-5.) The additional water supply sought under Application 5647X03 will provide for expected demand increases in connection with the planned growth allowed under the Amador County General Plan. (*Ibid.*) In addition to securing a water supply for existing and future customers, the additional 1,400 afa of storage authorized under Application 5647X03 will provide water supply reliability during dry years. (AWA-108, p. 2-6.)

Richard Farrington, a member of the AWA Board of Directors, testified that securing an additional water supply is also necessary to help further the economic development of disadvantaged communities served by the CAWP. (AWA-1, pp. 3–4.) According to AWA, a majority of the communities within the CAWP service area are considered to be disadvantaged under the State's standards. (AWA-1, p. 3.) A disadvantaged community refers to a community with an annual median household income that is less than 80 percent of the statewide annual median household income. (Wat. Code, § 79505.5.) The evidence in the record indicates that water diverted and stored under Application 5647X03 will be put to beneficial use in accordance with California Code of Regulations, title 23, sections 659 and 663. There is no evidence in the record that

suggests that approval of the subject petition and application will not be in the public interest. Thus, the Division finds the proposed appropriation to be in the public interest by securing a reliable water supply for existing and future communities served by the CAWP.

3.3.6 Other Terms and Conditions

On January 12, 2022, the State Water Board issued an administrative draft order and an administrative draft permit to hearing participants for review and comment. In its written comments, dated March 11, 2022, AWA accepted the draft permit as written with the exception of inclusion of standard permit term 43BP, stating that AWA could not legally or practically comply with the term because it does not own or operate many of the diversion and storage facilities. To resolve AWA's concerns but still maintain the purpose and intent of standard permit term 43BP, a special term in place of standard permit term 43BP was included in the permit on Application 5647X03 as Term 20. (See condition 17 of the attached Order.)

In the protest withdrawal agreement among AWA, JVID, and EBMUD, the parties agreed that the right to beneficially use a portion of the 1,050 afa authorized under any permit issued pursuant to Application 5647X03 will remain available for diversion and use by JVID under Permit 12167 until AWA requires the full 1,050 afa to meet demand. This agreement has been incorporated as Term 15 in the permit on Application 5647X03 and as amendments to JVID's Permit 12167. (See conditions 12 and 25 of the attached Order.) An additional term was added to the permit on Application 5647X03 and as an amendment to JVID's Permit 12167 that requires both parties to jointly file a report to the Deputy Director describing compliance with the diversion and use limits applicable to both rights. (See conditions 13 and 26 of the attached Order.)

In the protest withdrawal agreement between AWA and DWR, the parties proposed a term in lieu of Term 91 that would resolve DWR's protest. The proposed term, with minor changes from State Water Board staff, was accepted by the parties and included in the permit on Application 5647X03 as Term 17. (See condition 14 of the attached Order.)

3.4 Compliance with the California Environmental Quality Act

AWA is the lead agency under the California Environmental Quality Act (CEQA) and prepared an EIR analyzing the proposed project. By resolution dated October 26, 2017, AWA certified the FEIR, approved the project, and adopted a Statement of Findings and Overriding Considerations. (Resolution No. 2017-18 A Resolution of the Board of Directors of the Amador Water Agency Concerning the Central Amador Water Project Water Right Application, October 26, 2017.)

For the purpose of considering whether to approve AWA's petition for partial assignment of SFA 5647 and Application 5647X03, the State Water Board is a responsible agency under CEQA. The State Water Board is required to consider the FEIR prepared by AWA and reach its own conclusions on whether and how to approve the project involved. (Cal. Code Regs., tit. 14, § 15096, subd. (a).) As a responsible agency, the State Water Board must presume that an EIR is adequate unless (1) the EIR is finally adjudicated in a legal proceeding to be inadequate, or (2) a subsequent EIR is necessary pursuant to section 15162 of the CEQA Guidelines. (Cal. Code Regs., tit. 14, § 15231; see Pub. Resources Code, § 21167.2.) The FEIR has not been adjudged to be inadequate and no circumstances exist to require a subsequent EIR. Therefore, the State Water Board is required to presume that the FEIR is adequate.

3.4.1 Significant Impacts

For each significant environmental effect identified in the FEIR, the State Water Board must make one or more of the following findings: (1) changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR; (2) such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding, and such changes have been adopted by such other agency or can and should be adopted by such other agency; or (3) specific economic, legal, social, technological, or other considerations, make the mitigation measures or project alternatives identified in the FEIR infeasible. (Pub. Resources Code, §§ 21002.1, 21081; Cal. Code Regs, tit. 14, §§ 15091, 15093.)

The FEIR identifies the following significant and unavoidable impact: potential to directly or indirectly induce population growth or development of the built environment (GRO-1). AWA found that the proposed project is not intended to directly induce population growth since there would be no development within the CAWP service area, but that the project would remove a constraint to growth by providing an additional water supply and may indirectly induce population growth. (AWA-108, pp. 3.3-1–3.3-2.) The FEIR concludes that the project would accommodate growth that may result in the following significant indirect impacts: conflicts with existing agricultural uses and conversion of forestland; exposure to toxic air contaminants; impacts to sensitive species; impacts associated with construction of new water and wastewater infrastructure; reduction in Levels of Service on roadways and highways within the CAWP service area; disruption of existing communities through new development; and accommodation of population growth. (AWA-108, pp. 3.3-10–3.3-11.)

As lead agency, AWA relied on Amador County's General Plan EIR (Amador County 2016) to identify the indirect impacts associated with growth that may result from implementation of the proposed project. The Amador County General Plan EIR identifies environmental impacts related to future development within the county as

approved under the recently adopted General Plan. (AWA-108, p. 3.3-6.) The FEIR for the proposed project summarizes and evaluates the significant impacts identified in the Amador County General Plan EIR specifically as they relate to future growth within the CAWP service area. (*Ibid.*)

Amador County is the primary agency responsible for land use planning and for approving development consistent with the General Plan. Therefore, pursuant to title 14, section 15091, subdivision (a)(2) of the California Code of Regulations, the Division finds that Amador County is the primary agency with the responsibility and jurisdiction to implement any mitigation measures to lessen the significant impacts identified in the FEIR. Mitigation measures have already been adopted by Amador County as part of a Mitigation Monitoring and Reporting Program for the implementation of its General Plan.

The only significant effects identified in the FEIR are indirect impacts associated with growth inducement. The FEIR does not identify any direct significant impacts to resources within the State Water Board's purview as a responsible agency, such as water quality, biological resources, and public trust resources. Thus, the FEIR does not propose any mitigation measures for the Board to consider. The Division has reviewed and considered the FEIR and other relevant evidence in the record in deciding whether and under what conditions to approve the subject application and petition.

4.0 CONCLUSION

The Division finds that approval of the partial assignment of SFA 5647 will not conflict with a general or coordinated plan or with water quality objectives, nor deprive the counties in which the water originates. The Division further finds that water under Application 5647X03 is available to be put to beneficial use and that the appropriation is in the public interest. Approval of the petition for partial assignment of SFA 5647 and Application 5647X03 will not cause injury to other legal users of water nor result in adverse impacts to public trust resources.

For the reasons stated above, AWA's petition for partial assignment of SFA 5647 and accompanying Application 5647X03, and request for a partial reversion to the State of rights previously assigned under SFA 5648, should be approved, subject to the terms and conditions set forth in the following Order.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT Amador Water Agency's petition for partial assignment of State Filed Application 5647 and Application 5647X03 are approved and a permit shall be issued subject to prior rights and the following terms and conditions:

1. The authorized sources of water; points of direct diversion, collection to storage, and rediversion; purpose of use; and place of use are as follows:
 - a. Point of Diversion (Direct Diversion and Collection to Storage) and Place of Storage (1): Permittee is authorized to directly divert and store water from the Bear River at Lower Bear River Dam and Reservoir, located within SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 18, Township 8N, Range 16E, Mount Diablo Base and Meridian (MDBM); California Coordinate System of 1983, Zone 2, North 1,962,600 feet and East 7,060,500 feet.
 - b. Point of Direct Diversion (2): Permittee is authorized to directly divert water from the North Fork Mokelumne River at Salt Springs Reservoir Dam, located within NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 33, Township 8N, Range 16E, MDBM; California Coordinate System of 1983, Zone 2, North 1,948,300 feet and East 7,072,400 feet.
 - c. Point of Direct Diversion and Rediversion (3): Permittee is authorized to directly divert water from the North Fork Mokelumne River and redivert water from the Bear River at Tiger Creek Afterbay Dam, located within SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 23, Township 7N, Range 13E, MDBM; California Coordinate System of 1983, Zone 2, North 1,926,000 feet and East 6,989,700 feet.
 - d. Point of Rediversion (4): Permittee is authorized to redivert water from the Bear River and North Fork Mokelumne River at Tiger Creek Regulator Reservoir Dam, located within SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 8, Township 7N, Range 14E, MDBM; California Coordinate System of 1983, Zone 2, North 1,939,300 feet and East 7,004,900 feet.
 - e. The purpose of use shall be Municipal.
 - f. The place of use shall be within the service area boundary of the Central Amador Water Project, located within Township 6N Range 12E, Township 7N Range 12E, and Township 7N Range 13E, MDBM, as shown on the map filed on March 11, 2022 with the State Water Board.

2. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 5 cubic feet per second by direct diversion to be diverted from January 1 to December 31 of each year from Bear River and North Fork Mokelumne River combined and not to exceed a combined maximum diversion of 1,050 acre-feet per year, and 1,400 acre-feet per year by storage to be collected from October 1 of each year to July 15 of the succeeding year from Bear River. The total amount of water to be taken from all sources (direct diversion plus collection to storage) shall not exceed 2,450 acre-feet per water year from October 1 to September 30.

The total amount of water to be placed to beneficial use (direct diversion plus rediversion from storage) shall not exceed 1,050 acre-feet per water year from October 1 to September 30.

3. No water shall be collected to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.
4. The total amount of water diverted under this right and the right pursuant to Application 5647B shall not exceed 5,200 acre-feet per water year from October 1 to September 30.
5. The total amount of water collected to storage under this right and the right pursuant to Application 5647B shall not exceed 3,000 acre-feet per year.
6. The maximum simultaneous rate of direct diversion under this right and the right pursuant to Application 5647B shall not exceed 5 cubic feet per second. The total amount of water directly diverted under this right and the right pursuant to Application 5647B shall not exceed 2,200 acre-feet per year from January 1 to December 31.
7. The total amount of water to be taken from all sources and placed to beneficial use (direct diversion plus rediversion from storage) under this right and the right pursuant to Application 5647B shall not exceed 2,200 acre-feet per water year from October 1 to September 30.
8. The total amount of water to be taken from all sources and placed to beneficial use (direct diversion plus rediversion from storage) under this right and the right pursuant to Application 5648B shall not exceed 3,850 acre-feet per year from January 1 to December 31.
9. The total amount of water to be taken from all sources and placed to beneficial use (direct diversion plus rediversion from storage) under this right and the rights pursuant to Applications 5647B and 5648B shall not exceed 5,000 acre-feet per year from January 1 to December 31.

10. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2057.
11. Based on the information in the Division's files, water has not been used under a claimed existing right on the place of use. If right holder exercises a claimed existing right on the place of use authorized by this right without prior approval from the State Water Board, right holder shall forfeit this water right.
12. The 1,050 acre-feet of direct diversion per year authorized under this right shall remain available to Jackson Valley Irrigation District or its successor in interest under the right pursuant to Application 5648B until right holder requires use of any portion thereof, subject to the terms and conditions of the right pursuant to Application 5648B, and the following terms and conditions derived from the agreement among Amador Water Agency, East Bay Municipal Utility District, and Jackson Valley Irrigation District, dated September 9, 2020, and filed with the State Water Board:
 - a. Within thirty days of the date this right is issued, right holder shall provide written notice to Jackson Valley Irrigation District or its successor in interest specifying the portion of the 1,050 acre-feet of water that it intends to directly divert during the remainder of the calendar year and the portion of the 1,050 acre-feet of water available for direct diversion and use under the right pursuant to Application 5648B. The amounts specified in written notice shall take into account the year-to-date direct diversions exercised by Jackson Valley Irrigation District or its successor in interest under the right pursuant to Application 5648B. On or before December 15 of each year until right holder has directly diverted the full 1,050 acre-feet authorized under this right, or until a license has been issued on Application 5647X03, right holder shall provide written notice to Jackson Valley Irrigation District or its successor in interest specifying the portion of the 1,050 acre-feet of water that it intends to directly divert during the upcoming calendar year, and the portion of the 1,050 acre-feet of water that will be available for direct diversion and use under the right pursuant to Application 5648B. Right holder shall promptly provide copies of such written notices to the Deputy Director for Water Rights and East Bay Municipal Utility District.
 - b. Neither right holder nor Jackson Valley Irrigation District or its successor in interest under the right pursuant to Application 5648B shall directly divert more of the 1,050 acre-feet of water authorized under this right than the amounts specified in written notices issued by right holder. Any direct diversion of the 1,050 acre-feet of water authorized under this right in

excess of the amounts specified therein is unauthorized and may result in enforcement action by the State Water Board.

- c. No portion of the 1,050 acre-feet of direct diversion authorized under this right shall remain available to Jackson Valley Irrigation District or its successor in interest under the right pursuant to Application 5648B, effective on January 1 of the year following the date that right holder issues written notice that it intends to directly divert the full 1,050 acre-feet of water in the upcoming calendar year (Final Notice).
- d. Any portion of the 1,050 acre-feet of direct diversion not exercised by right holder shall remain available to Jackson Valley Irrigation District or its successor in interest under the right pursuant to Application 5648B until right holder has issued Final Notice or a license has been issued on Application 5647X03.
- e. Any portion of the 1,050 acre-feet of direct diversion that is not licensed under Application 5647X03 shall remain available to Jackson Valley Irrigation District or its successor in interest under the right pursuant to Application 5648B, subject to the individual and combined beneficial use limits included in this right and the right pursuant to Application 5648B.

Inclusion in this water right of certain provisions of the referenced agreement shall not be construed as disapproval of other provisions of the agreement or as affecting the enforceability, as among the parties, of such other provisions insofar as they are not inconsistent with the terms of this water right.

- 13. On or before October 31 of each year after the year this right is issued, and whenever requested by the Division of Water Rights, right holder and Jackson Valley Irrigation District or its successor in interest shall jointly submit a letter report (Joint Compliance Report) to the Deputy Director for Water Rights describing compliance with the direct diversion limits established in written notices issued by right holder pursuant to condition 12 of this order, the individual and combined diversion and use limits established by conditions 2, 4, 5, 6, 7, 8, and 9 of this order using the respective calendar year (January 1 to December 31) or water year (October 1 to September 30) time basis or bases established by each of these terms. At a minimum, each Joint Compliance Report shall include:
 - a. A description of the calendar year and corresponding water years covered by each report;
 - b. A statement describing whether the direct diversion limits established in written notice issued by right holder, and the individual and combined

diversion and use limits established by other conditions of this order (conditions 2, 4, 5, 6, 7, 8, and 9) were exceeded during the calendar year and corresponding water years covered by each report;

- c. A statement describing the cause of each exceedance and the measures that will be implemented by right holder and/or Jackson Valley Irrigation District or its successor in interest to avoid similar exceedances in future years;
- d. Supporting diversion and use data for this right and the rights pursuant to Applications 5647B and 5648B. Supporting data shall be of sufficient scope and detail that Division of Water Rights staff can independently evaluate compliance with the limits established in each written notice, and the individual and combined diversion and use limits established by conditions 2, 4, 5, 6, 7, 8, and 9.

The final Joint Compliance Report shall be submitted by October 31 of the calendar year following the earlier of (1) the date right holder issues Final Notice, or (2) the date a license is issued on Application 5647X03. A copy of the report shall be provided to East Bay Municipal Utility District at the time it is filed.

14. Right holder shall comply with the following provisions which are derived from the agreement between right holder and the Department of Water Resources dated September 17, 2020, and filed with the State Water Board:

The season of diversion authorized under this right is subject to modification by the State Water Board if, after notice to interested parties and an opportunity for hearing, the State Water Board finds that such modification is necessary to adequately supply fish and wildlife beneficial uses within the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta) or to implement existing or revised water quality and flow objectives included in the Water Quality Control Plan for the Bay-Delta. Any action by the State Water Board under this term shall reflect the priority of this right relative to other rights in the Bay-Delta watershed. The State Water Board may find, in some years, that modification of the season of diversion authorized under this right is necessary where it is determined water will not be available for diversion during portions or all of the season authorized herein in order to adequately supply the fish and wildlife beneficial uses within the Bay-Delta. Provided that, if right holder protects for fish and wildlife beneficial uses in the Bay-Delta through contributions of water or other equivalent protective actions pursuant to a voluntary agreement during a period in which the State Water Board is considering modification of the season of diversion authorized under this right, those contributions shall be considered in any determination of modification of this right.

Inclusion in this water right of certain provisions of the referenced agreement shall not be construed as disapproval of other provisions of the agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this water right.

15. The equivalent of the authorized continuous flow allowance for any 30 day period may be diverted in a shorter time, provided there is no interference with other water rights and instream beneficial uses, and provided further that all terms and conditions protecting instream beneficial uses are observed.
16. If it is determined that the as-built conditions of the project are not correctly represented by the map(s) prepared to accompany the application, right holder shall, at their expense have the subject map(s) updated or replaced with equivalent as-built map(s). Said revision(s) or new map(s) shall be prepared by a civil engineer or land surveyor registered or licensed in the State of California and shall meet the requirements prescribed in California Code of Regulations, title 23, section 715 et seq. Said revision(s) or map(s) shall be furnished upon request of the Deputy Director for Water Rights.
17. Right holder shall specify in the compliance plan required by Term H of this right the measures that will be implemented to ensure, to the best of right holder's ability, that water diversion and storage facilities owned and operated by Pacific Gas and Electric Company to store and convey right holder's water supplies are maintained and operated such that water not authorized for appropriation under this right can be released or bypassed. Right holder shall, to the best of its ability, provide additional evidence upon request by the Deputy Director for Water Rights that Pacific Gas and Electric Company is maintaining and operating its water diversion and storage facilities such that water not authorized for appropriation under this right can be released or bypassed.
18. Right holder shall comply with the measuring and monitoring requirements as specified in the terms of this right or any reporting requirements by statute, order, policy, regulation, decision, judgment or probationary designation. The more stringent requirement shall control in each instance where there is a conflict or inconsistency between the requirements. Right holder shall comply with the measuring and monitoring requirements of chapter 2.8, title 23, California Code of Regulations.
19. The State Water Resources Control Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the SWRCB concerning availability of water and the protection of beneficial uses of water in the Sacramento-San Joaquin Delta and San Francisco Bay. Any action to

change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing.

20. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Mokelumne River Basin are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the SWRCB, made after notice to interested parties and opportunity for hearing.
21. The State Water Board is currently in the process of amending the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) to establish new and modified Delta tributary inflow and cold water habitat and Delta outflow objectives that may significantly reduce the season when water is available for diversion and the amount of water available for diversion under this permit. Subject to appropriate procedure, the season of diversion and the maximum amount authorized to be diverted may be reduced to implement existing or revised water quality and flow objectives included in the Bay-Delta Plan.
22. This permit does not and shall not authorize the use of any water outside of Amador County (county of origin) which is necessary for the development of Amador County. Before making any change in the project determined by the State Water Resources Control Board to be substantial, permittee shall submit such change to the Board for its approval in compliance with Water Code section 10504.5(a).
23. No water shall be diverted or used under this right for commercial and applicable personal medical use cannabis cultivation unless the water right holder is in compliance with all applicable conditions, including the numeric and narrative instream flow requirements, of the current version of the State Water Board's *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation*, which is available online at:

https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy.pdf
24. The permit issued pursuant to Application 5647X03 is also subject to the following mandatory terms and conditions: A (0000016), B (0000017), C (0000018), D (0000019), E (0000006), F (0000015), G (0000010), H (0000070), I (0000011), J (0000022), K (0000025), L (0000212), M (0000203), N (0000029D), O (0000012), P (0000013), and Q (0000014).

IT IS FURTHER ORDERED THAT Amador Water Agency's request for a partial reversion to the State of the right to divert 1,050 acre-feet per year pursuant to the right previously assigned to Jackson Valley Irrigation District under State Filed Application 5648 is approved. The 1,050 acre-feet per year of water authorized to be directly diverted by Amador Water Agency under the right pursuant to Application 5647X03 shall remain available to Jackson Valley Irrigation District or its successor in interest under Permit 12167 (Application 5648B) until Amador Water Agency or its successor in interest requires the diversion and use of any portion thereof. Permit 12167 (Application 5648B) of Jackson Valley Irrigation District shall be amended by adding the following terms and conditions:

25. The annual amount that right holder may directly divert under this right shall be reduced by the annual amount of water directly diverted by Amador Water Agency or its successor in interest under the right pursuant to Application 5647X03, provided that Amador Water Agency provides timely notices to right holder in accordance with condition 12 of this order, and subject to the following terms and conditions derived from the agreement among Amador Water Agency, East Bay Municipal Utility District, and Jackson Valley Irrigation District, dated September 9, 2020, and filed with the State Water Board:
 - a. For the first calendar year when the right pursuant to Application 5647X03 is issued to Amador Water Agency, right holder's obligation to reduce its diversions in accordance with this term is contingent on Amador Water Agency or its successor in interest providing written notice to right holder within 30 days of issuance of the right pursuant to Application 5647X03 specifying the portion of the 1,050 acre-feet of water that Amador Water Agency intends to directly divert during the remainder of the calendar year, and the portion of the 1,050 acre-feet of water that will be available for diversion and use under this right. In subsequent years, and until Amador Water Agency or its successor in interest has provided notice that it intends to directly divert the full 1,050 acre-feet of water authorized under the right pursuant to Application 5647X03, or the right pursuant to Application 5647X03 has been licensed, right holder's obligation to reduce its diversions in accordance with this term is contingent on Amador Water Agency or its successor in interest providing written notice on or before December 15 of each year specifying the portion of the 1,050 acre-feet of water that Amador Water Agency intends to directly divert during the upcoming calendar year, and the portion of the 1,050 acre-feet of water that will be available for diversion and use under this right. Right holder shall promptly provide a written response to Amador Water Agency or its successor in interest confirming receipt of such written notices and the direct diversion limits specified therein with copies to the Deputy Director for Water Rights and East Bay Municipal Utility District.

- b. Neither right holder nor Amador Water Agency or its successor in interest under the right pursuant to Application 5647X03 shall directly divert more of the 1,050 acre-feet of water authorized under the right pursuant to Application 5647X03 than the amounts specified in written notices issued by Amador Water Agency or its successor in interest. Any direct diversion of the 1,050 acre-feet of water authorized under the right pursuant to Application 5647X03 in excess of the amounts specified therein is unauthorized and may result in enforcement action by the State Water Board.
- c. No portion of the 1,050 acre-feet of direct diversion authorized under the right pursuant to Application 5647X03 shall remain available to right holder, effective on January 1 of the year following the date that Amador Water Agency or its successor in interest issues written notice that it intends to directly divert the full 1,050 acre-feet of water in the upcoming calendar year (Final Notice).
- d. Any portion of the 1,050 acre-feet of direct diversion not exercised by Amador Water Agency or its successor in interest under the right pursuant to Application 5647X03 shall remain available to right holder until Amador Water Agency or its successor in interest has issued Final Notice or a license has been issued on Application 5647X03.
- e. Any portion of the 1,050 acre-feet of direct diversion that is not licensed under Application 5647X03 shall remain available to right holder, subject to the individual and combined beneficial use limits included in this right and the right pursuant to Application 5647X03.

Inclusion in this water right of certain provisions of the referenced agreement shall not be construed as disapproval of other provisions of the agreement or as affecting the enforceability, as among the parties, of such other provisions insofar as they are not inconsistent with the terms of this water right.

- 26. On or before October 31 of each year after the year the right pursuant to Application 5647X03 is issued, and whenever requested by the Division of Water Rights, right holder and Amador Water Agency or its successor in interest shall jointly submit a letter report (Joint Compliance Report) to the Deputy Director for Water Rights describing compliance with the direct diversion limits established in written notices issued by Amador Water Agency or its successor in interest pursuant to condition 12 of this order, and the individual and combined diversion

and use limits established by conditions 2, 4, 5, 6, 7, 8, and 9 of this order. At a minimum, each Joint Compliance Report shall include:

- a. A description of the calendar year and corresponding water years covered by each report;
- b. A statement describing whether the direct diversion limits established in written notice issued by Amador Water Agency or its successor in interest, and the individual and combined diversion and use limits established by other conditions of this order (conditions 2, 4, 5, 6, 7, 8, and 9) were exceeded during the calendar year and corresponding water years covered by each report;
- c. A statement describing the cause of any exceedance and the measures that will be implemented by right holder and/or Amador Water Agency or its successor in interest to avoid similar exceedances in future years;
- d. Supporting diversion and use data for this right and the rights pursuant to Applications 5647B and 5647X03. Supporting data shall be of sufficient scope and detail that Division of Water Rights staff can independently evaluate compliance with the limits established in each written notice, and the individual and combined diversion and use limits established by conditions 2, 4, 5, 6, 7, 8, and 9 of this order.

The final Joint Compliance Report shall be submitted on October 31 of the calendar year following the earlier of (1) the date Amador Water Agency or its successor in interest issues Final Notice, or (2) the date a license is issued on Application 5647X03. A copy of the report shall be provided to East Bay Municipal Utility District at the time it is filed.

27. The total amount of water to be taken from all sources and placed to beneficial use (direct diversion plus rediversion from storage) under this right and the right pursuant to Application 5647X03 shall not exceed 3,850 acre-feet per year from January 1 to December 31.
28. The total amount of water to be placed to beneficial use (direct diversion plus rediversion from storage) under this right and the rights pursuant to Applications 5647B and 5647X03 shall not exceed 5,000 acre-feet per year from January 1 to December 31.

STATE WATER RESOURCES CONTROL BOARD

A handwritten signature in black ink, appearing to read "Erik Ekdahl", with a long, sweeping horizontal stroke extending to the right.

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: June 14, 2024