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## State Water Resources Control Board

November 16, 2020

VIA ELECTRONIC MAIL

TO: [SERVICE LIST OF PARTIES & INTERESTED PERSONS LIST](#)

### **AMADOR WATER AGENCY HEARING: NOTICE OF PUBLIC HEARING UNDER DELEGATED AUTHORITY AND RULING ON EXHIBITS FOLLOWING SEPTEMBER 25, 2020 STATUS CONFERENCE**

In accordance with the September 23, 2020 [Notice of Postponement of Public Hearing and Notice of Status Conference](#), the State Water Resources Control Board (State Water Board or Board) held a status conference with hearing participants on September 25, 2020. The purpose of the status conference was to discuss options for moving forward with the hearing, including whether a trial-type hearing is necessary and how the hearing may be streamlined since all outstanding protests have been resolved by agreement.<sup>1</sup> All hearing parties and interested persons (which included a representative from Jackson Valley Irrigation District) participated in the status conference. I appreciate the participants' cooperation and efforts to reach agreement. I have taken under consideration comments made during the status conference as well as written comments submitted by Amador Water Agency (AWA) in its September 24, 2020 Status Conference Statement (Statement).

As explained below, it is no longer necessary to conduct a hearing on AWA's petition and application under the Administrative Procedure Act (APA) (Gov. Code, § 11400 et seq.). In the interests of efficiency, AWA's petition and application will continue to be processed under authority delegated to the Deputy Director for the Division of Water Rights (Deputy Director). This ruling provides direction on how a public hearing will be held in accordance with Water Code section 10504.1, and provides assurance that the parties will be given an opportunity to review and comment on a draft permit before the Deputy Director issues a decision on AWA's petition and application. This ruling also admits specified testimony and exhibits into the administrative record.

#### **A Hearing Under the APA Is No Longer Required**

As discussed at the status conference, section 1351 of the Water Code provides that the Board is not required to hold a hearing in order to issue a permit on an unprotested application to appropriate water, or if undisputed facts support the issuance of a permit and

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<sup>1</sup> On September 9, 2020, Amador Water Agency, Jackson Valley Irrigation District, and the East Bay Municipal Utility District filed a protest withdrawal agreement. On September 17, 2020, Amador Water Agency and the Department of Water Resources jointly filed a protest withdrawal agreement.

there are no disputed issues of material fact. Section 10504.1 of the Water Code requires the 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 regarding the petition, but section 10504.1 does not require an evidentiary or trial-type hearing. (See also Wat. Code, § 10504.01 [requiring the use of hearing procedures in accordance with Wat. Code, § 1340 et seq.] )

In this case, all outstanding protests have been resolved by agreement, and there are no longer any disputed issues of material fact. Accordingly, an evidentiary or trial-type hearing is no longer necessary. Although a public hearing on AWA's petition still must be held, Water Code section 10504.1 neither specifies the type of hearing to be held, nor requires the hearing to be held under the APA.

Consistent with the authority discussed above, AWA requested in its Statement that the Board dispense with a live hearing, and that the hearing be conducted via writing as an alternative. None of the other parties objected to conducting the hearing in writing, provided that they are afforded the opportunity to review and comment on a draft permit. In its Statement, AWA also requested that this proceeding be converted into an informal hearing under the APA pursuant to the State Water Board's regulations and Government Code section 11470.10. During the status conference, I stated that an informal hearing may not be necessary, and we could proceed as though the protests had been resolved before the hearing notice was issued. Although AWA maintained its position that converting this proceeding to an informal hearing under the APA would be most appropriate, neither AWA nor any of the other parties objected to the proposal not to hold a hearing under the APA.

If there were to be an informal hearing as AWA suggests, this matter would need to be decided by the full Board. It would instead be more efficient to hold a hearing that is not subject to the requirements of the APA because AWA's petition and application could be processed under delegated authority. The State Water Board has delegated to the Deputy Director the authority to act on water right applications in proceedings where no hearing is required in accordance with Water Code section 1351. ([State Water Board Resolution No. 2012-0029](#), ¶ 4.2.4.) In addition, the Board has delegated to the Executive Director the authority to conduct the activities of the State Water Board, which include holding public hearings in accordance with Water Code section 10504.1 and taking action on petitions for assignment of state-filed applications. ([State Water Board Resolution No. 2012-0061](#), ¶ 1.) This authority may be redelegated. (*Id.*, ¶ 10.) The option of moving forward under delegated authority would be more efficient and would save significant staff time and resources.

For the above reasons, this matter will be referred to the Deputy Director for further action. The Deputy Director has already been delegated the authority to act on AWA's application. In addition, I have conferred with the Executive Director, and she has agreed to redelegate to the Deputy Director her authority to hold a public hearing and take action on AWA's petition.

During the status conference, AWA's representative expressed concern that proceeding under delegated authority would preclude AWA from reviewing and commenting on a draft permit before the Deputy Director issues a decision on AWA's petition and application. The

other hearing participants also stated that they would like the opportunity to review a draft permit prior to permit issuance. I have conferred with the Deputy Director and he has agreed to provide the hearing participants an opportunity to review and provide comments on a draft permit to ensure that any concerns relating to the inclusion of protest dismissal terms have been addressed.

### **Notice of Public Hearing Under Delegated Authority**

As stated above, before acting on AWA's petition for assignment and accompanying application, the Deputy Director will hold a 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. For ease of reference, views and objections by interested persons will be considered policy statements.

**The upcoming proceeding will be a non-evidentiary public hearing and will be conducted entirely in writing, unless a request to present an oral policy statement is granted. Written policy statements must be submitted to the Deputy Director at [wr\\_hearing.unit@waterboards.ca.gov](mailto:wr_hearing.unit@waterboards.ca.gov) by 1:00 PM on January 5, 2021.** Any interested persons who wish to present an oral policy statement live via the Zoom online platform must submit a request to the Deputy Director at [wr\\_hearing.unit@waterboards.ca.gov](mailto:wr_hearing.unit@waterboards.ca.gov) and **provide justification** as to why presenting an oral policy statement is necessary and a written policy statement is insufficient by **1:00 PM on December 1, 2020**. Please include "Amador Water Agency Hearing" in the subject line.

### **Disposition of Testimony and Exhibits**

#### Amador Water Agency

By email dated October 14, 2020, I granted AWA's request to allow its witnesses to affirm their written testimony in writing by submitting declarations issued under penalty of perjury to the Board, rather than by live testimony, and directed AWA to submit those declarations by October 21, 2020. AWA timely submitted the appropriate declarations on October 20, 2020.

No parties objected to the admission of AWA's exhibits. The following exhibits are hereby admitted into the record:

AWA-01 through AWA-10, AWA-100 through AWA-108, AWA-200 through AWA-206, AWA-300, AWA-301, AWA-400 through AWA-402

#### State Water Board

State Water Board staff has offered exhibits, as identified in the July 7, 2020 [Notice of Public Hearing and Pre-Hearing Conference](#), into the record by reference. No parties have objected to the admission of any staff exhibits. However, any staff exhibits that are duplicative of AWA's exhibits will not be included in the record.

The following exhibits are hereby admitted into the record:

SWRCB-02 through SWRCB-05, SWRCB-08, SWRCB-10, SWRCB-11

Department of Water Resources

On September 2, 2020, the Department of Water Resources (DWR) submitted 16 exhibits, including the written testimony of one witness. Both AWA and El Dorado Irrigation District (EID) objected to the entirety of DWR's testimony and exhibits, and AWA submitted a motion to cancel DWR's protest. EID also supported AWA's motion. By email dated September 11, 2020, I directed DWR to submit a written response to AWA's and EID's objections and AWA's motion by September 17, 2020. However, on September 17, 2020, AWA and DWR jointly filed a protest withdrawal agreement and request for status conference. In accordance with this protest withdrawal agreement, DWR withdrew the entirety of its witness testimony and exhibits. Therefore, DWR's exhibits will not be included in the record and AWA's motion is now moot.

El Dorado Irrigation District

On September 1, 2020, EID submitted 22 exhibits and a request for official notice of those exhibits. All of EID's proposed exhibits are State Water Board documents or court records related to *El Dorado Irrigation District v. State Water Resources Control Board* (2006) 142 Cal.App.4th 937. During the status conference, EID clarified that it would be willing to leave its exhibits out of the record presuming that the record is limited to State Water Board staff exhibits and AWA's exhibits. Since I am admitting only those exhibits described above into the record, I consider EID's request for official notice to be withdrawn and EID's exhibits will not be included in the record.

Thank you for your continued cooperation and for your efforts to assist the State Water Board in conducting a fair and efficient hearing. Please note that because this proceeding is no longer subject to the APA, *ex parte* communication rules are no longer in effect. If you have any questions, please email the hearing team at [wr\\_hearing.unit@waterboards.ca.gov](mailto:wr_hearing.unit@waterboards.ca.gov).

Sincerely,

ORIGINAL SIGNED BY

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**Sean Maguire**

State Water Board Member  
Amador Water Agency Hearing Officer

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