

PUBLIC WORKS**AMADOR WATER AGENCY****INTRODUCTION:**

The 2011/2012 Amador County Civil Grand Jury conducted an investigation of the Amador Water Agency, (hereinafter referred to as AWA or the Agency) based on complaints received from ratepayers and citizens of Amador County. These complaints included:

- Financial mismanagement
- Lack of transparency and availability of information
- Lack of concern by the Board of Directors for the overall financial condition
- Long-term debt

BACKGROUND:

The Amador Water Agency is a Special District created in 1959 by the California State Legislature. The Agency is a Public, Non-Profit Special District. The purpose of the Amador Water Agency is to provide water, wastewater, and storm drain services to Amador County.

RESPONSIBLE AGENCY:

Amador Water Agency
12800 Ridge Road
Sutter Creek, CA 95685
Phone: 209-223-3018
Website: amadorwater.org (<http://www.amadorwater.org/>)

JUSTIFICATION/JURISDICTION:

“A Grand Jury may at any time examine the books and records of any special-purpose assessing or taxing district located wholly or partly in the county or the local agency formation commission in the county, and, in addition to any other investigatory powers granted by this chapter, may investigate and report upon the method or system of performing the duties of such district or commission”.

California Penal Code § 933.5

METHOD OF EVALUATION:

- Interviewed past and current members of the Agency's Board of Directors
- Interviewed ratepayers and citizens of Amador County
- Interviewed various personnel of the Agency
- Reviewed documentation and information posted on the Agency's website
- Reviewed other pertinent websites (see Reference Materials)
- Attended public meetings, including those of the Board of Directors and their various sub-committees
- Toured several agency facilities and inspected equipment

FACTS:

1. The Agency consists of four major water districts:
 - Central Amador Water Project (CAWP)
 - Amador Water System (AWS)
 - Lake Camanche (LVC)
 - La Mel Heights
2. The Agency serves both retail and wholesale customers.
 - Retail Customers include individual businesses and citizens.
 - Wholesale customers include cities of: Jackson, Pine Grove, and Sutter Creek.
3. The Agency has four water treatment plants:
 - Buckhorn
 - Tanner
 - Lake Camanche
 - Lone
4. The Agency is responsible for eleven wastewater districts.
5. The Agency's Mission Statement is, "To enhance the quality of life in Amador County by providing safe, reliable water, wastewater, conservation and reclamations services. We will accomplish this as a professional team dedicated to public transparency, community partnerships and excellent customer service."
6. The Agency is governed by a Board of Directors.
 - The Board consists of five members that represent the same geographical districts as the Board of Supervisors.
 - The Directors are elected to 4 year terms that overlap in order to ensure continuity.
 - The Directors are assigned to various committees.
 - Notice of committee meetings are posted on the Agency's website and are sent out by request via email notifications.
 - The Board of Directors meetings are scheduled for the second and fourth Thursday of each month. These meetings are open to the public.

7. The day-to-day operations of the Agency are directed by a General Manager.
 - The General Manager answers to the Board of Directors.
 - The General Manager oversees 39 employees, reduced from a high of 66 employees in 2005.
8. The Agency maintains a website.
 - The website is maintained by Agency staff.
 - The website includes a sample bill.
 - The website includes a single phone number for contact.
9. The current controller was hired by the Agency in 2011.
10. The operating budget for fiscal year 2011-2012 is \$10,196,450.00.
11. Restricted funds have been intermingled within other accounts.
 - Restricted funds are legally required to be used for a specific purpose.
12. Prior to 2010, interest bearing loans made between the Agency's water districts were not recorded.
(Reference item #1)
13. The Agency contracts with Leaf & Cole LLP, an independent auditor, to conduct a yearly audit.
14. According to the audit prepared by Leaf and Cole LLP for fiscal year 2010-2011, the Agency's long-term debt is \$35,716,330.00 and the total liabilities are \$38,314,288.00.
 - On March 22, 2012, the audit was rejected by the Board of Directors.
15. The Agency requested a one-hundred fifty thousand dollar grant from the Board of Supervisors for the Camanche Water District.
 - The Board of Supervisors made this grant contingent on a rate increase.
16. The Agency applied for a grant of over five million dollars and a low-interest loan exceeding eight million dollars from the United States Department of Agriculture (USDA) for the Gravity Supply Line (GSL) Project.
(Reference item #3)
 - There are conditions that must be met before the money can be released, according to a USDA Rural Development Letter of Conditions dated July 30, 2010.
 - The conditions must be completed by September 30, 2012.
 - On April 9, 2012, the Agency applied for and was granted an extension to September 30, 2013.
(Reference item #4)

17. On May 13, 2010, the Agency obtained a loan for the GSL Project of nine-hundred thousand dollars from the Amador County Board of Supervisors with a due date of December 31, 2010.
(Reference item #2)
- The recitals for the loan state the Agency intends to use the money from the loan to reimburse itself for past work and to complete certain tasks before a funding agreement can be completed with the USDA.
 - On November 30, 2010, the Board of Supervisors extended the due date for this loan to August 31, 2011.
 - The Board of Supervisors subsequently agreed to a second extension, moving the due date to September 30, 2012.
 - If the USDA grant is received, the Agency is required to use these funds to repay the loan to the Board of Supervisors.
 - If the USDA grant is not received, the loan will be in default, which will require the Agency to seek other funding sources.
(Reference item #2, section 5, "Repayment Obligations")
18. The funds expended for the GSL Project have come from interdepartmental loans, Agency general funds, and a nine-hundred thousand dollar loan from the Board of Supervisors.
- On April 30, 2012, the Board of Directors voted unanimously to give another fifty thousand dollars from general funds to the General Manager for the GSL Project.
19. The ratepayers have rejected GSL projects in the past.
20. Per Resolution No. 2012-04, the Agency modified how it would accept Proposition 218 rate protests from the rate payers.
(Reference item #5)
- The Howard Jarvis Taxpayers Association sent a letter protesting the Agency's Proposition 218 resolution.
(Reference item #6)
21. The Agency is in the process of creating two Community Facilities Districts (CFD).
- A CFD district must be approved by an election of two-thirds of the registered voters.
 - If the CFD has fewer than twelve registered voters, approval by two-thirds of property-owners is required.
 - The CFD for the AWS district will:
 - Provide immediate funds to decrease the Amador Transmission Pipeline (ATL) debt.
 - Provide immediate funds to assist in future upgrades of water treatment plants.
 - Guarantee developers who participate a future connection regardless of water system capacity.

- Be strictly voluntary.
- The CFD for the CAWP Water District will fund the GSL project and will be levied on all properties improved or unimproved located in the CAWP CFD boundaries.

22. Charges for water usage vary from district-to-district.

FINDINGS:

1. The Grand Jury finds the Agency does not demonstrate commitment to public transparency. (Facts # 5,11-13, 20-22)
2. Questions, concerns, and emergencies are all routed through a single phone number. (Fact # 8)
3. The Agency is in the process of developing a method to consolidate billing charges. (Facts# 8, 21, 22)
 - Current charges on billing statements include:
 - Service charge
 - Volumetric charge
 - New charges proposed are:
 - Service charge
 - Debt service charge
 - Volumetric charges
 - The CAWP district will have a pumping charge associated with their bill unless or until the GSL project is finished.
4. The Grand Jury finds that currently there is no contingency plan to manage any of the following:
 - Emergency Funds
 - Debt Service
 - Current Projects
 - Future Projects
 (Facts# 10-12, 14-18, 20,21)
5. The Grand Jury finds through direct observation during the Board of Directors meetings that a contentious and adversarial relationship frequently exists between the Board and the public. (Fact # 6)
6. Due to the complexity of the budget, the Grand Jury finds it difficult for the public to understand. (Facts # 10-14)
7. The independent auditor found that due to the difference in data between the Agency's budget and the audit, the Agency's bank accounts have not been "truly reconciled." (Facts # 13,14)

8. The practice of making interdepartmental loans increases the Agency's overall debt.
(Fact# 14)
9. The Grand Jury finds that cost-cutting measures, including the reduction of staff and the cancellation of Board meetings, have had little-to-no effect on the long-term debt or the total liabilities of the Agency.
(Facts# 7,14)
10. The Agency has been working on the GSL Project since at least the late 1980's.
(Facts# 16-19)
11. The Agency cannot give an accurate accounting of monies spent to date on the GSL Project and can only estimate it to be one million four-hundred thousand dollars.
(Facts# 17,18)
12. The USDA extension specifies that the CAWP CFD would be the boundaries of the CAWP service area. Both the Agency and its legal counsel have stated that the CAWP CFD boundaries are being worked on and will not necessarily conform to the CAWP service area as outlined in the USDA letter.
(Facts# 16, 21)
13. The Grand Jury finds that the Agency continues to make financial commitments to the GSL Project despite inadequate funding, ratepayers' objections, and a Proposition 218 defeat in May 2010.
(Facts# 16-19)
14. The CFD for the CAWP district may not be completed in time to have the grant funds available to repay the loan received from the Board of Supervisors, thus requiring a third extension of the loan's due date.
(Facts# 16, 21)
15. The Grand Jury finds that the Agency has not effectively managed finances.
 - The practice of making interdepartmental loans, borrowing money from the Board of Supervisors to repay those loans, and applying for grants from the USDA to repay the Board of Supervisors; creates a continuous cycle of borrowing and repayment without reducing the Agency's overall indebtedness.
(Facts# 15-18)
 - The Agency commits to projects without adequate funding in place and without consent of ratepayers, which is detrimental to the financial stability of the Agency.
(Facts# 16-19, 20)
 - The Agency's long-term debt is approaching a level that is unmanageable.
(Fact# 10, 14, 17, 18)
16. The CFD proposed for the AWS appears only to be beneficial to a select number of developers and may not make any substantial decrease in the ATL loan debt, contrary to Agency's claims.
(Fact # 21)

17. The Grand Jury finds the Agency employs hardworking personnel who are dedicated to the highest level of customer service.
(Fact #7)

RECOMMENDATIONS:

1. The Grand Jury recommends that the Agency strive for improved public relations and transparency with the ratepayers by providing clear and consistent information.
2. The Grand Jury recommends that the Agency cease the practice of lending money from one district to another.
3. The Grand Jury recommends that the Agency allocate additional resources to the website in order to enhance transparency.
4. The Grand Jury recommends that the Agency consider future projects only when there is adequate financing and funding available. This is critical to the stability of the Agency.
5. The Grand Jury recommends that the Agency focus on lowering long-term debt and liabilities before spending money they do not have.
6. The Grand Jury recommends that the Agency recognize its fiduciary responsibility to the ratepayer by standardizing its accounting and budgeting practices.
7. The Grand Jury recommends that the Agency develop a contingency plan for:
 - Emergency Funds
 - Debt Service
 - Current Projects
 - Future Projects

COMMENTS:

Due to the complexity of the budget and multiple ongoing projects, the current Grand Jury recommends that the 2012-2013 Grand Jury continue to investigate the Amador Water Agency.

RESPONSE REQUIRED:

Pursuant to California Penal Code §933 (c) a response to this report is required. No later than 90 days after the Grand Jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the Superior Court on the finding and recommendations.

REFERENCE MATERIALS:

1. <http://www.amadorwater.org>
2. <http://cgja.org>
3. <http://www.csda.net>
4. <http://amadorwatchdog.org>
5. Reference item #1 – Interdepartmental loans
6. Reference item #2 – \$900,000 loan from Board of Supervisors with 1st and 2nd amendments.
7. Reference item #3 - Original grant conditions from USDA
8. Reference item #4 - Extension agreement to USDA conditions
9. Reference item #5 - Resolution No. 2012-4
10. Reference item #6 - Howard Jarvis letter to the Agency

10/11 CONSOLIDATED DEBT SCHEDULE

	YEAR	BEGIN BALANCE	APPLIED TO PRINCIPAL	xx 56914.15 INTEREST	ANNUAL PAYMENT	ENDING BALANCE	ACCRUED INTEREST PAYABLE
		-				-	
WDF							
21231.06	CAWP 1980	10/11	-	-	-	-	-
21231.06	0656912.15 CAWP 1985	10/11	201,666.86	29,351.56	10,890.01	40,241.57	172,315.30
21231.06	0656912.15 GSL-Short Term	10/11	900,000.00	-	18,000.00	18,000.00	900,000.00
DWR/SWRCE							
21233.04	0456918.15 Ridge	10/11	1,661,031.71	70,593.85	49,825.67	120,419.52	1,590,437.86
21233.20	2056925.15 PineGroveWW	10/11	171,970.75	13,565.69	4,815.18	18,380.87	158,405.06
21234.04	0456917.15 Hillside	10/11	28,845.37	2,026.78	859.48	2,886.26	26,818.59
2006 COP							
21235.04	0456921.15 Series A	10/11	22,495,000.00	485,000.00	1,047,225.00	1,532,225.00	22,010,000.00
USDA							
21233.06	0656913.15 Buckhorn #1	10/11	4,670,000.00	65,000.00	197,093.75	262,093.75	4,605,000.00
21233.06	0656913.15 Buckhorn #2	10/11	794,000.00	10,000.00	34,518.75	44,518.75	784,000.00
21233.09	0956913.15 La Mel	10/11	202,679.85	2,551.46	8,360.54	10,912.00	200,128.39
21236.04	0456913.15 Plymouth #1	10/11	2,970,000.00	30,000.00	132,975.00	162,975.00	2,940,000.00
21236.04	0456913.15 Plymouth #2	10/11	1,980,000.00	20,000.00	81,262.50	101,262.50	1,960,000.00
			-				
		36,075,194.54	728,089.34	1,585,825.88	2,313,915.22	35,347,105.20	184,951.15

INTERFUND

21500.14	0112400.04	From AWS to CAWP Retail (Riverview)	10/11	32,817.07	7,629.15	1,640.85	9,270.00	25,187.92
21500.20	0112400.04	From AWS to PGWW (WWGen)	10/11	120,656.21	6,778.87	4,621.13	11,400.00	113,877.34
21501.09	0112400.04	From AWS to ID 3 (Lamel)	10/11	200,000.00	4,930.00	4,000.00	8,930.00	195,070.00
21501.13	0112400.04	From AWS to ID 7 (Camanche Water)	10/11	780,000.00	19,227.00	15,600.00	34,827.00	760,773.00
21501.14	0112400.04	From AWS to CAWP Retail	10/11	855,185.00	21,080.30	17,103.70	38,184.00	834,104.70
21501.20	0112400.04	From AWS to WWGen	10/11	500,000.00			-	500,000.00
21501.20	0112400.04	From AWS to WWID 1 (WWGen)	10/11	510,000.05	12,571.46	10,200.00	22,771.46	497,428.59
21501.20	0112400.04	From AWS to WWID 1 (WWGen)	10/11	160,000.00	3,943.00	3,200.00	7,143.00	156,057.00
21501.20	0112400.05	From AG to WWID 1 (WW Gen)	10/11	135,500.00			-	135,500.00
21501.21	0112400.22	From WWID 12 to WWID 11	10/11	545,000.00	13,434.00	10,900.00	24,334.00	531,566.00
21501.21	0112400.22	From WWID 12 to WWID 11	10/11	760,000.00			-	760,000.00
				4,599,158.33	89,593.78	67,265.68	156,859.46	4,509,564.55

09/10 CONSOLIDATED DEBT SCHEDULE

	YEAR	BEGIN BALANCE	APPLIED TO PRINCIPAL		INTEREST	ANNUAL PAYMENT	ENDING BALANCE		ACCRUED INTEREST PAYABLE		
WDF	21231.06 CAWP 1980	09/10	52,785.08	52,785.08		1,583.56	54,368.64	-	1,451.60		
	CAWP 1985	09/10	229,514.64	27,847.78	80,632.86	12,393.79	40,241.57	201,666.86	201,666.86	-	1,451.60
									-	-	
DWR/SWRCB	21233.04 RIDGE	09/10	1,729,533.21	68,501.50	68,501.50	51,918.02	120,419.52	1,661,031.71	1,661,031.71	14,614.55	14,614.55
	21233.20 PGWW	09/10	185,166.95	13,196.20	13,196.20	5,184.67	18,380.87	171,970.75	171,970.75	3,456.45	3,456.45
	21234.04 HILLSIDE	09/10	30,819.38	1,966.71	1,966.71	919.55	2,886.26	28,852.67	28,852.67	276.45	301.66
2006 COP	21235.04 SERIES A	09/10	22,965,000.00	470,000.00	470,000.00	1,066,025.00	1,536,025.00	22,495,000.00	22,495,000.00	89,752.08	89,752.08
USDA	21233.06 BUCKHORN #1	09/10	4,730,000.00	60,000.00		199,750.00	259,750.00	4,670,000.00		34,708.33	
	21233.06 BUCKHORN #2	09/10	804,000.00	10,000.00	70,000.00	34,956.25	44,956.25	794,000.00	5,464,000.00	6,066.67	40,775.00
	21233.09 LA MEL	09/10	205,227.15	2,446.38	2,446.38	8,465.62	10,912.00	202,780.77	202,780.77	2,186.25	2,186.25
	21236.04 PLYMOUTH # 1	09/10	3,000,000.00	-	-	30,259.00	-	3,000,000.00			
	21236.04 PLYMOUTH # 2	09/10	2,000,000.00	-	-	27,741.00	-	2,000,000.00	5,000,000.00		
INTER-COMP	21400.14 RIVERVIEW	09/10	40,082.92	7,265.85	7,265.85	2,004.15	9,270.00	32,817.07	32,817.07	1,169.09	1,169.09
	21400.20 PGWW FROM AWS	09/10	127,185.02	6,528.81	6,528.81	4,871.19	11,400.00	120,656.21		405.93	405.93
	21401.20 WWGEN FROM AWS	09/10	500,000.00	-		-	6,528.81	500,000.00	620,656.21	-	
			36,599,314.35	720,538.31	720,538.31	1,446,071.80	2,115,138.92	35,878,776.04	35,878,776.04	154,087.39	154,112.61
NOTES	22100.04 HWY 49/CALTR	09/10	445,827.70	-		-	-	445,827.70	445,827.70	-	-
	22100.05 La Salle 2006	09/10	105,140.93	105,140.93	105,140.93	2,155.37	107,296.30	-	-		
			445,827.70	825,679.24	825,679.24	1,448,227.17	2,222,435.22	36,324,603.74	36,324,603.74	154,087.39	-

08/09 CONSOLIDATED DEBT SCHEDULE

		YEAR	BEGIN BALANCE	APPLIED TO PRINCIPAL		INTEREST	ANNUAL PAYMENT	ENDING BALANCE
WDF	21231.06 CAWP 1980	08/09	104,032.56	51,247.48		4,613.63	55,861.11	52,785.08
	CAWP 1985	08/09	255,935.68	26,421.04	77,668.52	13,820.53	40,241.57	229,514.64
	21231.14 MLACRES	08/09	-	-		-	-	-
	NEW TANK	08/09	-	-		-	-	-
	PINE ACRES	08/09	-	-	-	-	-	-
CSDA	21232.05 CSDA Z	08/09	290,000.00	150,000.00	150,000.00	11,450.00	161,450.00	140,000.00
DWR/SWRCB	21233.04 RIDGE	08/09	1,796,113.55	66,580.34	66,580.34	53,839.18	120,419.52	1,729,533.21
	21233.20 PGWW	08/09	198,003.72	12,836.77	12,836.77	5,544.10	18,380.87	185,166.95
	21234.04 HILLSIDE	08/09	32,729.78	1,910.40	1,910.40	975.86	2,886.26	30,819.38
2006 COP	21235.04 SERIES A	08/09	23,240,000.00	275,000.00	275,000.00	1,077,025.00	1,352,025.00	22,965,000.00
USDA	21233.06 BUCKHORN #1	08/09	4,790,000.00	60,000.00		202,300.00	262,300.00	4,730,000.00
	21233.06 BUCKHORN #2	08/09	814,000.00	10,000.00	70,000.00	35,393.75	45,393.75	804,000.00
	21233.09 LA MEL	08/09	207,576.61	2,349.46	2,349.46	8,562.54	10,912.00	205,227.15
INTER-COMP	21400.14 RIVERVIEW	08/09	47,002.78	6,919.86	6,919.86	2,350.14	9,270.00	40,082.92
	21400.20 PGWW FROM AWS	08/09	133,473.00	6,287.98	6,287.98	5,112.02	11,400.00	127,185.02
	21401.20 WWGEN FROM AWS	08/09	500,000.00	-		-	6,287.98	500,000.00
				32,408,867.68	669,553.33	669,553.33	1,420,986.75	2,096,828.06
NOTES	22100.04 HWY 49/CALTR	08/09	445,827.70	-		-	-	445,827.70
	22100.05 La Salle 2006	08/09	309,128.91	203,987.98	203,987.98	10,604.62	214,592.60	105,140.93
			-					
			445,827.70	873,541.31	873,541.31	1,431,591.37	2,311,420.66	32,290,282.98

07/08 CONSOLIDATED DEBT SCHEDULE

		YEAR	BEGIN BALANCE	APPLIED TO PRINCIPAL		INTEREST	ANNUAL PAYMENT	ENDING BALANCE		ACCRUED INTEREST PAYABLE	
WDF	21231.06 CAWP 1980	07/08	153,787.39	48,305.66		6,062.80	54,368.46	105,481.73		5,557.57	
		07/08	281,003.08	23,783.12	72,088.78	16,458.45	40,241.57	257,219.96	362,701.69	-	5,557.57
	21231.14 MLACRES NEW TANK PINE ACRES	07/08	-	-		-	-	-		-	
		07/08	3,880.16	3,767.17		229.42	3,996.59	112.99		57.36	
		07/08	2,734.55	2,652.46	6,419.63	161.73	2,814.19	82.09	195.08	40.43	97.79
								362,896.77			
CSDA	21232.04 CSDA Z	07/08	175,707.00	47,250.00	47,250.00	10,383.75	57,633.75	128,457.00	128,457.00	2,192.02	2,192.02
	21232.14 CSDA Z	07/08	214,293.00	57,750.00	57,750.00	12,691.25	70,441.25	156,543.00	156,543.00	4,818.75	4,818.75
									285,000.00		
DWR/SWRCB	21233.04 RIDGE	07/08	1,860,493.03	62,589.35	62,589.35	57,830.02	120,419.37	1,797,903.68	1,797,903.68	14,614.55	14,614.55
	21233.20 PGWW	07/08	210,490.85	12,147.01	12,147.01	6,233.86	18,380.87	198,343.84	198,343.84	4,155.91	4,155.91
	21234.04 HILLSIDE	07/08	34,572.23	1,796.07	1,796.07	1,089.05	2,885.12	32,776.16	32,776.16	276.45	301.66
2006 COP	21235.04 SERIES A	07/08	23,240,000.00	-	-	1,077,025.00	1,077,025.00	23,240,000.00	23,240,000.00	89,752.08	89,752.08
USDA	21233.06 BUCKHORN #1	07/08	4,845,000.00	55,000.00		207,081.25	262,081.25	4,790,000.00		34,708.33	
	21233.06 BUCKHORN #2	07/08	823,000.00	9,000.00	64,000.00	36,203.13	45,203.13	814,000.00	5,604,000.00	6,066.67	40,775.00
	21233.09 LA MEL	07/08	209,833.00	2,167.00	2,167.00	8,745.00	10,912.00	207,666.00	207,666.00	2,186.25	2,186.25
									31,080,689.68		
									31,728,586.45		
INTER-COMP	21400.07 RIVERVIEW	07/08	53,593.12	6,276.52	6,276.52	2,993.48	9,270.00	47,316.60	47,316.60	1,746.20	1,746.20
	21400.20 PGWW FROM AWS	07/08	139,529.03	5,832.65	-	5,567.35	11,400.00	133,696.38		463.95	
	21401.20 WWGEN FROM AWS	07/08	500,000.00	-	5,832.65	-	-	500,000.00	633,696.38	-	463.95
			693,122.15						681,012.98		
		32,747,916.44	338,317.01	338,317.01	1,448,755.54	1,787,072.55	32,409,599.43	32,409,599.43	166,636.50	166,661.71	
NOTES	22100.04 HWY 49/CALTR	07/08	445,827.70	-	-	-	-	445,827.70	445,827.70	-	-
	22100.05 La Salle 2006	07/08	-	-	-	-	-	-	-	-	-
			445,827.70	338,317.01	338,317.01	1,448,755.54	1,787,072.55	32,855,427.13	32,855,427.13	166,636.50	-

06/07 CONSOLIDATED DEBT SCHEDULE

	YEAR	BEGIN BALANCE	APPLIED TO PRINCIPAL		INTEREST	ANNUAL PAYMENT	ENDING BALANCE		ACCRUED INTEREST PAYABLE		
WDF	21231.06 CAWP 1980	06/07	202,093.05	48,305.66		6,062.80	54,368.46	153,787.39		5,557.57	
	CAWP 1985	06/07	304,786.20	23,783.12	72,088.78	16,458.45	40,241.57	281,003.08	434,790.47	16,458.45	22,016.02 *
	21231.14 MLACRES	06/07	7,013.69	7,013.69		237.04	7,250.73	-		118.52	
	NEW TANK	06/07	7,647.33	3,767.17		229.42	3,996.59	3,880.16		57.36	
	PINE ACRES	06/07	5,387.01	2,652.46	13,433.32	161.73	2,814.19	2,734.55	6,614.71	40.43	216.31 *
CSDA	21232.04 CSDA Z	06/07	222,957.00	47,250.00	47,250.00	10,383.75	57,633.75	175,707.00	175,707.00	4,672.69	4,672.69
	21232.08 CSDA Z	06/07	272,043.00	57,750.00	57,750.00	12,691.25	70,441.25	214,293.00	214,293.00	6,980.19	6,980.19
DWR/SWRCB	21233.04 RIDGE	06/07	1,923,089.92	62,589.35	62,589.35	57,830.17	120,419.52	1,860,500.57	1,860,500.57	15,079.68	15,079.68
	21233.20 PGWW	06/07	222,637.86	12,147.01	12,147.01	6,233.86	18,380.87	210,490.85	210,490.85	4,156.11	4,156.11
	21234.04 HILLSIDE	06/07	36,368.30	1,796.07	1,796.07	1,089.05	2,885.12	34,572.23	34,572.23	289.63	289.63
2006 COP	21235.04 SERIES A	06/07	23,240,000.00	-	-	1,077,025.00	1,077,025.00	23,240,000.00	23,240,000.00	-	-
USDA	21233.06 BUCKHORN #1	06/07	4,900,000.00	55,000.00		207,081.25	262,081.25	4,845,000.00		49,542.55	
	21233.06 BUCKHORN #2	06/07	832,000.00	9,000.00	64,000.00	36,203.13	45,203.13	823,000.00	5,668,000.00	8,663.11	58,205.65
	21231.09 LA MEL	06/07	212,000.00	2,167.00	2,167.00	8,745.00	10,912.00	209,833.00	209,833.00	3,643.75	3,643.75
INTER-COMP	21400.07 RIVERVIEW	06/07	59,869.64	6,276.52	6,276.52	2,993.48	9,270.00	53,593.12	53,593.12	1,920.55	1,920.55
	21400.20 PGWW FROM AWS	06/07	145,361.68	5,832.65	-	5,567.35	5,567.35	139,529.03		445.33	
	21400.20 WWGEN FROM AWS	06/07	500,000.00	-	5,832.65	-	5,832.65	500,000.00	639,529.03	-	445.33
			33,093,254.68	345,330.70	345,330.70	1,448,992.73	1,794,323.43	32,747,923.98	32,747,923.98	117,625.90	117,625.90
NOTES	22100.04 HWY 49/CALTR	06/07	445,827.70	-		-	-	445,827.70	445,827.70	-	-
	22100.05 La Salle 2006	06/07	600,000.00	94,996.30	94,996.30	12,300.00	107,296.30	505,003.70	505,003.70	7,175.00	7,175.00
			-								
			34,139,082.38	440,327.00	440,327.00	1,461,292.73	1,901,619.73	33,698,755.38	33,698,755.38	124,800.90	124,800.90

AGREEMENT FOR REPAYMENT OF LOAN

THIS AGREEMENT FOR REPAYMENT OF LOAN (this "Agreement") is entered into as of May 13, 2010 by and between the COUNTY OF AMADOR, a political subdivision of the State of California ("County") and AMADOR WATER AGENCY, a public agency created by the Amador Water Agency Act (Chapter 95 of the California Water Code-Appendix), a special act of the Legislature of the State of California ("AWA").

RECITALS

A. AWA, a public agency created by the California Legislature, has applied for a grant (the "Grant") from the United States Department of Agriculture for the purpose of construction of a gravity supply line (the "Project").

B. In order to continue progress on the Project before receiving funds from the Grant, AWA desires to obtain money to reimburse AWA for past work and to complete certain tasks before a funding agreement can be completed with the USDA. Those tasks include without limitation such items as engineering, design, surveying, right of way acquisition, and environmental review (the "Preliminary Tasks"). Costs to AWA of performing the Preliminary Tasks is anticipated to be reimbursed by the USDA from Grant funds when a funding agreement with the USDA is signed.

C. AWA desires to receive a loan from County to reimburse AWA for past work and to perform the Preliminary Tasks pending receipt of Grant funds, and County desires to make such a loan to AWA, in accordance with the terms more particularly set forth below.

NOW, THEREFOR, for valuable consideration, receipt of which is acknowledged, the parties agree as follows:

1. LOAN. County hereby agrees to loan to AWA an amount not to exceed Nine Hundred Thousand and No/100ths Dollars (\$900,000) (the "Loan"). County will provide the Loan to AWA upon execution of this Agreement by both parties.
2. INTEREST. The Loan shall bear interest at two percent (2%) per annum or the County pooled rate, whichever is greater, compounded annually, from the date of disbursement until repaid.
3. USE OF FUNDS. The funds provided by the Loan shall be used for the sole purpose of reimbursing AWA for past performance of and paying for additional Preliminary Tasks, and for no other purpose.
4. TERM OF LOAN. AWA shall repay to County the entire amount of the Loan (including without limitation principal and accrued but unpaid interest)

upon receipt of funds from the Grant sufficient to retire the debt contemplated herein, but in no event later than December 31, 2010 (the "Maturity Date").

5. REPAYMENT OBLIGATION. The parties acknowledge as follows:

(a) This Agreement for Repayment of Loan and extension of the Loan contemplated hereunder is entered into by the parties with the expectation that the Loan will be repaid with funds from the Grant; however, AWA's obligation to repay the Loan is in no way limited by or conditioned upon receipt of the Grant.

(b) AWA as a whole is obligated to repay the Loan, notwithstanding failure to receive the Grant or any individual default by AWA's constituents or others in the payment to AWA of taxes, assessments, tolls, or other charges levied by AWA, and the Board of Directors of AWA shall provide for the punctual payment to County of all amounts as they become due under this Agreement.

(c) The Board of Directors of AWA shall, if necessary, levy upon all property in the district not exempt from taxation a tax, assessment, toll or charge, or combination thereof, sufficient to provide for all payments due under this Agreement, and shall enforce and collect all taxes, assessments, tolls, or charges levied and/or assessed for the purpose of providing such payments, in the event of non-receipt of the Grant.

(d) In the event of failure, neglect, or refusal of any officer of AWA to levy any tax, assessment, toll, or charge, or combination thereof, necessary to provide for payment of amounts due under this Agreement, to enforce or to collect such taxes, assessments, tolls, or charges, or to pay over to County any money collected on such taxes, assessments, tolls or charges necessary to satisfy any amounts due under this Agreement, County may take such action in a court of competent jurisdiction as it deems necessary to compel the performance in their proper sequence of all duties relating to the levying and collection of the taxes, assessments, tolls or charges, and the payment of the money collected therefrom to the County. Action taken pursuant to this paragraph shall not deprive County of, or limit the application of, any other remedy provided by law or by this Agreement.

6. INCORPORATION OF AGREEMENTS AND AMENDMENTS. This Agreement contains all agreements of the parties with respect to any matter mentioned herein. No other agreement or understanding pertaining to any such matter shall be effective, unless in writing signed by the party to be charged.

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7. CONSTRUED PURSUANT TO CALIFORNIA LAW. The parties hereto agree that the provisions of this Agreement shall be construed pursuant to the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF AMADOR

AMADOR WATER AGENCY

BY: _____
Chairman, Board of Supervisors

BY:  _____
Title: General Manager

ATTEST:
JENNIFER BURNS, Clerk of the Board of Supervisors

ATTEST:
Clerk of the Board of Directors

BY: _____

BY:  _____

APPROVED AS TO FORM:
Office of the County Counsel

APPROVED AS TO FORM:
Counsel for Amador Water Agency

BY: _____
Martha J. Shaver

BY:  _____

FIRST AMENDMENT TO AGREEMENT FOR REPAYMENT OF LOAN

THIS FIRST AMENDMENT TO AGREEMENT FOR REPAYMENT OF LOAN (this "First Amendment") is made as of 11/13/10, 2010 by and between COUNTY OF AMADOR, a political subdivision of the State of California ("County") and AMADOR WATER AGENCY, a public agency created by the Amador Water Agency Act (Chapter 95 of the California Water Code-Appendix), a special act of the Legislature of the State of California ("AWA").

RECITALS

A. County and AWA executed an agreement (the "Agreement") dated as of May 13, 2010 whereby County agreed to loan the sum of \$900,000 (the "Loan") to AWA to continue work on construction of a gravity supply line (the "Project"), and AWA agreed to repay the Loan upon the terms and conditions set forth in the Agreement.

B. County and AWA desire to modify the Agreement as set forth in this First Amendment.

NOW, THEREFOR, the parties agree as follows:

1. Section 4, TERM OF LOAN, shall be modified to read as follows:

4. TERM OF LOAN. AWA shall repay to County the entire amount of the Loan (including without limitation principal and accrued but unpaid interest) upon receipt of funds from the Grant sufficient to retire the debt contemplated herein, but in no event later than August 31, 2011 (the "Maturity Date"). Notwithstanding the foregoing, the Maturity Date shall be advanced at the option of County to the date that is 75 days after the occurrence of any of the following:

- a. The AWA Board of Directors takes any action to delay or terminate the Project in any fashion; or
- b. County determines in its sole discretion that AWA has elected to delay or terminate the Project, or cease to pursue obtaining the Grant for the Project; or
- c. County determines in its sole discretion that any other act has occurred that will prevent AWA from receiving funds from the Grant, including any acts or

omissions occurring prior to the execution of this First Amendment.

2. Capitalized terms not defined in this First Amendment shall have the meaning given to them in the Agreement.

3. Except as set forth in this First Amendment, the Agreement shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the date first set forth above.

COUNTY:
COUNTY OF AMADOR

AWA:
AMADOR WATER AGENCY

BY: Brian Chute
Chairman

BY: Rid W/M 11/23/2010
President

ATTEST:
CLERK OF THE BOARD OF
SUPERVISORS, COUNTY OF AMADOR

ATTEST:
CLERK OF THE BOARD OF
DIRECTORS, AMADOR WATER AGENCY

BY: Sheri Robinson
Deputy

BY: Wooty

APPROVED AS TO FORM:
OFFICE OF THE COUNTY COUNSEL
COUNTY OF AMADOR

APPROVED AS TO FORM:
COUNSEL FOR AMADOR WATER
AGENCY

BY: Martin J. Phauer
~~Deputy~~

BY: _____

SECOND AMENDMENT TO
AGREEMENT FOR REPAYMENT OF LOAN

THIS SECOND AMENDMENT TO AGREEMENT FOR REPAYMENT OF LOAN (this "Second Amendment") is made as of August 25, 2011 by and between COUNTY OF AMADOR, a political subdivision of the State of California ("County") and AMADOR WATER AGENCY, a public agency created by the Amador Water Agency Act (Chapter 95 of the California Water Code-Appendix), a special act of the Legislature of the State of California ("AWA").

RECITALS

A. County and AWA executed an agreement (the "Agreement") dated as of May 13, 2010 whereby County agreed to loan the sum of \$900,000 (the "Loan") to AWA to continue work on construction of a gravity supply line (the "Project"), and AWA agreed to repay the Loan upon the terms and conditions set forth in the Agreement. The Agreement was modified by that certain First Amendment to Agreement for Repayment of Loan dated as of November 30, 2010.

B. County and AWA desire to further modify the Agreement as set forth in this Second Amendment.

NOW, THEREFOR, the parties agree as follows:

1. Section 2, INTEREST, shall be modified to read as follows:

2. INTEREST.

a. The Loan shall bear interest at two percent (2%) per annum or the County pooled rate, whichever is greater, compounded annually, from the date of disbursement until repaid.

b. AWA shall pay all accrued but unpaid interest on June 30, 2012 and on each June 30 thereafter until the Maturity Date (defined below).

2. Section 4, TERM OF LOAN, shall be modified to read as follows:

4. TERM OF LOAN. AWA shall repay to County the entire amount of the Loan (including without limitation principal and accrued but unpaid

interest) forthwith upon receipt of funds from the Grant sufficient to retire the debt contemplated herein without impeding the progress of the work funded by the Grant, but in no event later than September 30, 2012 (the "Maturity Date"). Notwithstanding the foregoing, the Maturity Date shall be advanced at the option of County to the date that is 75 days after the occurrence of any of the following:

- a. The AWA Board of Directors takes any action to delay or terminate the Project in any fashion; or
- b. County determines in its sole discretion that AWA has elected to delay or terminate the Project, or cease to pursue obtaining the Grant for the Project; or
- c. County determines in its sole discretion that any other act has occurred that will prevent AWA from receiving funds from the Grant, including any acts or omissions occurring prior to the execution of this Second Amendment.

3. Capitalized terms not defined in this Second Amendment shall have the meaning given to them in the Agreement.

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4. Except as set forth in this Second Amendment, the Agreement shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the date first set forth above.

COUNTY:
COUNTY OF AMADOR

AWA:
AMADOR WATER AGENCY

BY: 
Chairman

BY: 
President

ATTEST:
CLERK OF THE BOARD OF
SUPERVISORS, COUNTY OF AMADOR

ATTEST:
CLERK OF THE BOARD OF
DIRECTORS, AMADOR WATER AGENCY

BY: 
Deputy

BY: 

APPROVED AS TO FORM:
OFFICE OF THE COUNTY COUNSEL
COUNTY OF AMADOR

APPROVED AS TO FORM:
COUNSEL FOR AMADOR WATER
AGENCY

BY: 

BY: 



Committed to the future of rural communities

United States Department of Agriculture
Rural Development
California
www.rurdev.usda.gov/ca

6.P.1

Original letter

LETTER OF CONDITIONS

ATTN. GENE MANCEBO
GENERAL MANAGER
AMADOR WATER AGENCY
12800 RIDGE ROAD
SUTTER CREEK CALIFORNIA 95685-9630

July 30, 2010

SUBJECT: Application for USDA Rural Development's Water and Waste Disposal Program
For Funding To Design And Construct The Central Amador Water Project Gravity
Supply Line Project.

Dear Gene:

This letter, with attachments, establishes conditions that must be understood and agreed to by the applicant before further consideration may be given to their application. Any changes in project cost, source of funds, scope of services or any other significant change in the project or applicant must be reported to and approved by USDA Rural Development by written amendment to this letter. Any change not approved by USDA Rural Development will be cause for discontinuing processing of the application.

This letter is not to be considered as loan/grant approval or as representation to the availability of funds. The application can be processed on the basis of a **USDA Rural Development loan not to exceed \$8,330,000.00 and grant not to exceed \$5,070,000.00**. Funds for this project are provided by the Rural Utilities Service (RUS). The loan and grant will be considered approved on the date Form RD 1940-1, "Request for Obligation of Funds," is mailed by USDA Rural Development. This is also the date that the interest rate is established.

Please complete and return the attached Form RD 1942-46, "Letter of Intent to Meet Conditions," and Form RD 1940-1, "Request for Obligation of Funds," within the next ten (10) days, if you desire that we give further consideration to your application. The execution of these and all other documents required by USDA Rural Development must be authorized by appropriate resolutions of the applicant's governing body.

The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing, whichever is less, unless you choose otherwise.

855 Nordic Place, Manteca, California 95336-3774
Phone: (916) 425-4768 • Fax: (209) 823-0248 • TDD: (530) 792-5848

Committed to the future of rural communities

Rural Development is an Equal Opportunity Lender, Provider, and Employer. Complaints of discrimination should be sent to USDA, Director, Office of Civil Rights, Washington, D. C. 20250-9410

The loan will be repayable over a period not to exceed 40 years from the date of loan closing at the **intermediate interest rate**. The first interest installment will be due no later than six months from the date of loan closing. The first combined principal and interest payment will be due no later than one (1) year following loan closing.

You may be required to refinance (graduate) the unpaid balance of the RD loan, in whole or in part, if at any time RD determines your entity is able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time.

Based on Standard Form 424, "Application for Federal Assistance," the project cost and funding will be as follows:

a. **Project Cost**

Geotechnical Ser. & Testing	\$	210,000.00
Engineering & Planning	\$	900,000.00
Engineering-Survey/Staking	\$	150,000.00
Construction Inspection	\$	410,000.00
Construction Management	\$	550,000.00
Land & Rights	\$	250,000.00
Environmental	\$	210,000.00
Construction	\$	9,280,000.00
Legal Services	\$	100,000.00
Contingencies	\$	1,340,000.00
TOTAL:	\$	<u>13,400,000.00</u>

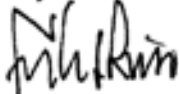
b. **Source of Funds**

USDA Loan	\$	8,330,000.00
USDA Grant	\$	5,070,000.00
TOTAL:	\$	<u>13,400,000.00</u>

Section I of the attached conditions Items 1-18 will be satisfied prior to loan & grant closing or before construction begins, whichever occurs first, in either case not later than one (1) year from the date of this letter. **In the event the project has not advanced to the point of construction within one (1) year, USDA Rural Development reserves the right to discontinue the processing of the application.**

If you have any questions, feel free to call me at 916-425-4768.

Sincerely,



FRANK J RISSO
Community Programs Specialist

cc: Janice Waddell, Community Programs Director, USDA Rural Development, Davis, CA.
w/o attachments
Dave Hartwell, Community Programs Specialist, USDA Rural Development, Davis, CA.
w/o attachments
Erik Christenson, P.E., Interim Manager of Engineering & Planning, Amador Water Agency,
Sutter Creek, CA. w/o attachments
Michael Lee, Financial Services Manager, Amador Water Agency, Sutter Creek, CA. w/o
attachments
Stephen Kronick, Agency's Legal Counsel, Bartkiewicz, Kronick, & Shanhan, Sacramento,
CA. w/o attachments
James Boyd, Bond Counsel, Bartkiewicz, Kronick, & Shanahan, Sacramento, CA. w/o
attachments
Steven Northcore, Leaf & Cole, LLP, Certified Public Accountants, San Diego, CA. w/o
attachments

I. CONDITIONS TO BE SATISFIED PRIOR TO LOAN/GRANT CLOSING OR BEFORE CONSTRUCTION BEGINS, WHICHEVER OCCURS FIRST

1. **Reserves**—The applicant will establish a separate debt service reserve in an amount at least equal to an average annual loan installment. This reserve will be accumulated at the rate of at least one-tenth of that average installment each year until the required level is reached, which is one average annual loan installment.

In addition, you must fund a depreciation reserve for short-lived assets by depositing a minimum sum of \$21,975.00 annually. This amount should be evaluated each year and budgeted for based on the need to provide for timely replacement of short-lived assets.

2. **Disbursement of Funds**

- a. Interim loan financing during construction **will not be required**. USDA Rural Development funds will not be provided before the execution of a construction contract.
- b. You must establish a separate account, to be known and hereafter referred to as the Construction Account. All project funds will be deposited into this account and must be in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage. The account shall be used solely for the purpose of paying authorized costs of the project as outlined in the project budget. Once the funds are deposited into the Construction Account, they become your responsibility.

3. **Security Requirements**

- a. At loan closing the applicant will execute the attached RUS Bulletin 1780-27, "Loan Resolution (Public Bodies)". Please note the refinancing provision in paragraph 2. Also, on page 3 there is a certification to be executed at loan closing.
- b. The applicant will be required to execute a completed RUS Bulletin 1780-12, "Water Or Waste System Grant Agreement", United States Department of Agriculture, Rural Utilities Service at the time of loan and grant closing.
- c. The applicant is a legally organized Public Body pursuant to the laws/requirements of the State of California within the Government Code of the State of California. The loan will be secured by a first lien and pledge of revenues. The Security Instrument(s) must be prepared in accordance with RUS Instruction 1780 Subpart D, and State law. The assistance and opinion of a recognized bond counsel must be obtained.
- d. The loan will be secured by a first lien and pledge of revenues generated from the CAWP water system. **The proposed loan must be on parity with all outstanding loans secured by revenues generated from the CAWP domestic water enterprise.**

4. **Applicant Certifications**

- a. The applicant will certify that 2,984 EDU's (Equivalent Dwelling Unit's) are currently connected to the system.
 - b. The Amador Water Agency, Board of Directors is to provide a binding authorization/resolution identifying which individual (s) are authorized to sign on behalf of the Amador Water Agency all USDA Utility Program documents, and any other required documents to properly close and secure the USDA loan and grant financing.
 - c. The applicant's attorney will provide his opinion that rate increases required for this project have been adopted in accordance with Section 6 of Article XIII D of the California Constitution as well as other requirements of California law. The applicant will provide a copy of the minutes from the public meeting. All voter approval requirements under state law must be obtained before the issuance of the USDA Offer to Purchase Certificates of Participation (COP's).
6. **Insurance and Bonding Requirements**—The applicant must provide evidence of adequate insurance and fidelity bond coverage by loan closing or start of construction, whichever occurs first. Adequate coverage, in accordance with USDA Rural Development's regulations must then be maintained for the life of the loan. It is the responsibility of the applicant and not that of USDA Rural Development to assure that adequate insurance and fidelity bond coverage is maintained. Applicants are encouraged to review coverage amounts and deductible provisions with their attorney, consulting engineer, and/or insurance provider(s).
- a. **Property Insurance**—Fire and extended coverage will be required on all above-ground structures, including applicant-owned equipment and machinery housed therein. This requirement does not apply to water reservoirs, stand pipes and elevated tanks. Provide USDA Rural Development with proof of coverage and attach Lender's Loss Payable Endorsement (438 BFU or equivalent) naming the UNITED STATES OF AMERICA as lender.
 - b. **Workers' Compensation Insurance**—The applicant will be required to carry Workers' compensation insurance for all employees in accordance with California law. Provide USDA Rural Development with proof of coverage.
 - c. **General liability and vehicular coverage must be maintained**—Provide USDA Rural Development with proof of coverage

Insurance and Bonding Requirements—(Continued)

- d. Fidelity Bond—Persons who have access to the funds and custody to any property will be covered by a fidelity bond. Coverage may be provided either for all individual positions or persons, or through “blanket” coverage providing protection for all appropriate employees and/or officials. The amount of coverage required by USDA Rural Development will be sufficient to cover the total annual debt and reserve service requirements for the loan. The United States of America will be named as co-obligee on the bond. A certified power-of-attorney with effective date will be attached to each bond. Provide USDA Rural Development with a copy of the bond and the power of attorney.
7. **Civil Rights & Equal Opportunity**—You should be aware of and will be required to comply with other Federal statute requirements including but not limited to:
 - a. Section 504 of the Rehabilitation Act of 1973.
 - b. Civil Rights Act of 1964.
 - c. The Americans with Disabilities Act (ADA) of 1990.
 - d. Age Discrimination Act of 1975.

Rural Development financial programs must be extended without regard to race, color, religion, sex, national origin, martial status, age, or physical or mental handicap.

The applicant is subject to a pre-loan closing civil rights compliance review by USDA Rural Development.

8. Written Agreements for Professional Services

- a. A bond counsel services agreement must be submitted to USDA for review and approval and be determined satisfactory to USDA Rural Development.
- b. A legal service agreement must be submitted to USDA by your legal counsel and determined to be satisfactory to USDA Rural Development. An example of an acceptable Legal Services Agreement can be provided to you by USDA.
- c. The required format of the USDA engineering agreement will have to be submitted and approved by USDA Rural Development.

9. **Land and Rights-of-Way**—The applicant must present satisfactory evidence that they have obtained, or can obtain, any and all lands, rights-of-way, easements, permits and franchises which are required by the engineering plan. Acquisitions of necessary land and rights must be accomplished in accordance with the Uniform Relocation and Real Property Acquisition Act. The following forms, copies of which are attached, may be used for these purposes:
 - a. Form RD 442-21, "Right-of-Way Certificate" (with map attached)
 - b. Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way"

10. **Permits**—All permits involving/required by Federal, State, and/or local agencies must be obtained and evidence thereof must be provided to USDA Rural Development as soon as permit is obtained. Provide written approval and a copy of the appropriate permit(s) issued by the U. S. Army Corps of Engineers, Sacramento District pertaining to wetlands delineation for the proposed pipeline project and for any construction that would have impacts to wetland. Provide documentation of payment for any wetland disturbance "in-lieu" fee that may be required to be paid by the U. S. Army Corps of Engineers.

11. **Environmental Reviews**—USDA Rural Development projects are subject to NEPA environmental reviews. **During any stage of project development, including construction, should environmental issue(s) develop which require mitigation measures, USDA Rural Development applicants are required to notify USDA Rural Development and comply with such mitigation measure(s). Failure by an applicant to implement mitigation measures may disqualify the project from Agency funding.** Mitigation measures identified or prepared by you as part of the CEQA and NEPA environmental process must be implemented. **The preparer of the USDA Rural Development's Environmental Report listed the project mitigation measures affecting the proposed project and are attached as Attachment A.**

12. **Engineering and Construction**
 - a. USDA Rural Development must approve any agreements or modifications to agreements for professional design services. The agreement for engineering services should consist of the EJCDC documents as indicated in RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Standard Documents on Water and Waste Projects with USDA Financial Assistance" or other approved form of agreement
 - b. All construction will be completed under contract. The planning, bidding, contracting, and construction must comply with RUS Instruction 1780 Subpart C, and any additional requirements of California law and the requirements of other County, State, or Federal agencies.

Engineering and Construction (Continued)

- c. The following must be reviewed and approved by USDA Rural Development in the sequence indicated:
 - i. Preliminary Engineering Report
 - ii. Agreement for Engineering Services
 - iii. Final Plans and Specifications for the project
 - iv. Bid Award Information.
 - v. Executed Contract Documents
 - d. Affirmative steps should be taken to assure that small, minority, and women businesses are utilized as a source of supplies, equipment, construction, and services.
 - e. The Plans & Specifications must be reviewed and approved, when applicable, by any regulatory or other agencies that are required to review these documents.
 - f. A representative of USDA Rural Development will attend all pre-construction conferences in connection with this project. These conferences must be held prior to the issuance of the Notice to Proceed to the contractors. **The applicant's engineering representative will conduct the conference and document the discussions and agreements.**
13. **Electronic Funds Transfer**—All loan funds will be transferred to borrowers via Electronic Funds Transfer/Automated Clearinghouse Systems (EFT/ACH). Normal transfers will be ACH; with money being placed in Borrower's account two days after the USDA processing office approves the pay request. The applicant must submit the Electronic Funds Transfer Form containing the banking (ACH) information to the USDA Servicing Office at least 30 days prior to the date of loan closing. Failure to do so could delay loan closing.
14. **Automatic Payments**—The applicant is required to participate in the Pre-Authorized Debit (PAD) payment process for all new and existing indebtedness to USDA Rural Development. It will allow for the applicant's payment to be electronically debited from its account on the date their payment is due. **Completion of Form RD 3550-28, "Authorization Agreement for Pre-Authorized Payments," is required.** Please fill out and sign your "Individual/Company Information" section, then have your financial institution/bank fill out the bottom portion prior to submitting the form to the USDA Rural Development service office.

15. **Loan Closing**—All applicable bond closing documents must be submitted to the following persons, by the Bond Counsel, at least 30 days prior to the planned closing date: Dave Hartwell, Community Programs Specialist, Davis, CA. dave.hartwell@ca.usda.gov; and to Frank J. Risso, Community Programs Specialist, 855 Nordic Place, Manteca, CA. 95336, frank.risso@ca.usda.gov.

16. **Operating Budget**

- a. Any change in the present rate structure required to balance the USDA Rural Development approved Operating Budget the rate schedule must be in effect at the time of loan closing. Once the rate structure has been approved by Amador Water Agency's governing body, provide USDA Rural Development with a copy of the adopted ordinance.

17. **Vulnerability Assessments (VA) and Emergency Response Plans (ERP)**—Rural Development requires all financed water and wastewater systems to have a vulnerability assessment (VA) and an emergency response plan (ERP) in place. New water or wastewater systems must provide a certification that an ERP is complete prior to the start of operations. A certification that a VA is complete must be submitted within one year of the start of operations. All other borrowers must provide a certification that a VA and ERP are completed prior to bid authorization. DO NOT SUBMIT COPIES OF THE ACTUAL VA OR ERP DOCUMENTS TO USDA RURAL DEVELOPMENT.

USDA Rural Development staff has arranged for the California Rural Water Association (CRWA) or the Rural Community Assistance Corporation (RCAC) to assist borrowers with the preparation of their VA and ERP. CRWA or RCAC should be contacted to obtain more information and their technical assistance in the preparation of the VA & ERP, so that the required CERTIFICATION STATEMENT can be provided to USDA. Please contact Dustin Hardwick (CRWA) at (760) 920-0842 or Jean Thompson at RCAC (916) 447-9832.

18. **Provide the following documents to USDA Rural Development prior to closing:**

- RD Instruction 1940-Q Exhibit A-1 OR SF-LLL, Disclosure of Lobbying Activities"
- Form AD-1047 "Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions"
- Form AD-1049 "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I-For Grantees Other Than Individuals"
- Form RD 1910-11 "Applicant Certification Federal Collection Policies For Consumer Or Commercial Debts"

The applicant is subject to the provisions of the Civil Rights Act and must execute:

- Form RD 400-1 "Equal Opportunity Agreement"
- Form RD 400-4 "Assurance Agreement"

II. LOAN & GRANT CONDITIONS TO BE SATISFIED DURING CONSTRUCTION

1. **Disbursement of Grant Funds**—USDA Rural Development funds will be advanced as they are needed in the amount(s) necessary to cover the Rural Development proportionate share of obligation due and payable to the Grantee. Interest earned on grant funds in excess of \$250 for Nonprofits and \$100 for Public Bodies per year will be submitted to Rural Development at least quarterly, as required in 7CFR3019 / 7CFR3016 as applicable.
2. **Inspections**—A resident inspector is required during construction. The inspection reports must be available to USDA Rural Development for review at any time. These reports must be kept at the project site or borrower's office, if near by.
3. **Monthly Reporting**—The applicant must monitor and provide a monthly report to USDA Rural Development on actual performance during construction for each project financed, or to be financed, in whole or in part with USDA Rural Development funds, to include Forms RD 1924-18, "Partial Payment Estimate"; RD 1924-7, "Contract Change Order"; SF-271, "Outlay Report and Request for Reimbursement for Construction Programs"; and Project Daily Inspection Reports.
4. **Final Inspection**—A final inspection will be made by USDA Rural Development on the component USDA is financing before final payment is made.
5. **Excess Funds**—Any remaining funds must be utilized for approved purposes within 60 days following the final inspection or the funds will be canceled without further notification from USDA Rural Development.

III. LOAN CONDITIONS TO BE SATISFIED AFTER PROJECT COMPLETION

1. **Financial Statements**—To be submitted on an annual basis in accordance with generally accepted accounting principles (GAAP) and shall comply with the following:
 - a. OMB Circular A-133 annual audits are required when Federal Financial Assistance of \$500,000 or more per year is expended. An audit per OMB Circular A-133 must be provided to the USDA Rural Development on an annual basis.
 - b. An audit, in accordance with State or local law or regulation or regulatory agency and Water and Waste audit requirements, must be submitted when you expend less than \$500,000 in Federal financial assistance per fiscal year and the unpaid loan balance is \$1,000,000 or more.
 - c. A management report, in lieu of an audit report, may be submitted with the USDA Rural Development approval when you expend less than \$500,000 in Federal financial assistance per fiscal year and the unpaid loan balance is less than \$1,000,000.
2. **Audit agreement**—If you are required to obtain the services of a licensed Certified Public Accountant (CPA), you must enter into a written audit agreement with the auditor. The audit agreement may include terms and conditions that you and auditor deem appropriate; however, the agreement should include the following:
 - a. A statement that the auditor will perform and document the audit work in accordance with GAGAS and the professional standards of the AICPA;
 - b. A statement that the auditor will submit the completed audit and accompanying letters to the borrower's governing body 30 days prior to the date the audit is due to USDA Rural Development;
 - c. A statement that the auditor will make all audit-related documents, including work papers, available to the Agency Rural Development or its representatives, upon request; and
 - d. A statement that the auditor will immediately report, in writing, all irregularities and illegal acts to the borrower's governing body and the Agency Rural Development.

3. **Compliance Reviews**—Rural Development will be required to periodically conduct compliance review of this facility and operation. You will need to provide the local office the statistical information as requested.
4. **Pacific Gas & Electric Rebate**- Rural Development must be notified of any rebate or reimbursement paid by Pacific Gas & Electric paid to the Amador Water Agency pertaining to the Gravity Supply project are to be used to pay project design and/or construction costs of the Gravity Supply Line Project. The rebate/reimbursement monies are to be deposited into the construction account for the Gravity Supply Line Project and verification of deposit provided to Rural Development. Any rebate/reimbursement is to be shown on the USDA Monthly Outlay Report.
5. **Security Inspections**—Rural Development is required to conduct an inspection of the facility a minimum of once every three years.
6. **VA/ERP**—You will also be required to provide a **certification that the VA and ERP is complete and is current every three years after the start of operations.** RD does not require or want a copy of the VA or ERP. The requested certification will be sufficient to meet our needs.



Committed to the future of rural communities.

**United States Department of Agriculture
Rural Development
California
www.rurdev.usda.gov/ca**

SECOND AMENDED LETTER OF CONDITIONS

ATTN GENE MANCEBO, PE
GENERAL MANAGER
AMADOR WATER AGENCY
12800 RIDGE ROAD
SUTTER CREEK CALIFORNIA 95685-9630

April 11, 2012

Subject: Gravity Supply Line Project
Second Amended USDA Rural Development Letter Of Conditions

Dear Gene,

The sole purpose of this letter is to amend, add, or delete only the sections referenced below, all other conditions contained in the initial USDA Rural Development Letter Of Conditions dated July 30, 2010 remain in effect. The primary purpose of USDA Rural Development's Letter Of Conditions is to establish conditions that must be satisfied prior to closing of loan and/or grant financing provided by USDA Rural Development and prior to the start of construction of the above referenced project.

Your request for an extension in time to meet the conditions contained in the initial USDA Rural Development Letter Of Conditions dated July 30, 2010, on behalf of the Amador Water Agency in your letter dated April 9, 2012 pertaining to the Gravity Supply Line Project has been approved. **The time to meet the conditions listed in the initial USDA Rural Development Letter Of Conditions dated July 30, 2010 is hereby extended through September 30, 2013.** In addition to the extension in the time to meet conditions, the following are additional reasons that require that revisions/modifications, additions and/or deletions be made to the initial USDA Rural Development Letter of Conditions. They are 1) security and repayment of the Rural Development Loan is to be by a special tax levied in connection with the formation of a Community Facilities District (CSD) and 2) recent program instructions require that USDA Rural Development Letters Of Conditions include requirements pertaining to Central Contractor Registration (CCR) and Universal Identifier Requirements (DUNS).

855 Nordic Place, Manteca, California 95336-3774
Phone: (916) 425-4768 • Fax: (209) 823-0248 • TDD: (530) 792-5848

Committed to the future of rural communities

Rural Development is an Equal Opportunity Lender, Provider, and Employer. Complaints of discrimination should be sent to USDA, Director, Office of Civil Rights, Washington, D. C. 20250-9410

The following conditions contained in the initial USDA Rural Development Letter Of Conditions dated July 30, 2010 are hereby revised/amended, added, or removed/deleted as follows:

The last paragraph on page 2, "Letter Of Conditions" is hereby changed as follows: Section I of the attached conditions Items 1-19 are to be satisfied prior to loan and grant closing or on or before the start of construction, whichever occurs first, in either case not later than September 30, 2013. In the event the proposed project has not advanced to the point of construction by the date of September 30, 2013, USDA Rural Development reserves the right to discontinue the processing of the application.

Letter of Conditions – Attachment No. 1A

Section I. 3. Security Requirements

- c. The applicant is a legally organized Public Body pursuant to the laws/requirements of the State of California within the Government Code of the State of California. The loan will be secured by a lien and pledge of the revenues collected by the special tax levied in connection with the formation of a Community Facilities District covering the existing Central Amador Water Project (CWAP) water rights service area. Security Instruments must be prepared in accordance with State Law and RUS Instruction 1780 Subpart D. The assistance and opinion of appropriate consultants is to be obtained.
- d. The loan is to be secured by a first lien and pledge of revenues collected by the special tax levied in connection with the formation of a Community Facilities District covering the existing CAWP water rights service area. The proposed USDA loan must be on a parity position with all outstanding loans that would be paid from the revenue generated by the special tax.
- e. Repayment of the USDA Rural Development loan is to be secured by a special tax levied in connection with the formation of a Community Facilities District covering the existing CAWP water rights service area (CAWP CFD). The CAWP CFD is to be formed pursuant to the California Government Code sections 53311, et seq. The AWA must provide documentation that the special tax was approved by at least two-thirds of the registered voters within the CAWP CFD casting votes on the question of the levy of the special tax (Government Code Section 53328). The special tax, if approved, is to be imposed on all land within the CAWP CFD, including improved and unimproved lands. The lien of the special tax is to have the same priority as that of County real property taxes and will be collected in the same manner as such taxes per the Government Code Section 53340(e.). Rural Development must review and approve the final CFD document.

Section I 4. Applicant Certifications

- c. Removed/Deleted

Letter of Conditions - Attachment No. 1A (Continued)

Section L 19 (ADDED)

19. Central Contractor Registration and Universal Identifier Requirements

Requirement for Central Contractor Registration (CCR)

You as the recipient must ensure and maintain that your information is current in the CCR data base until you submit the final financial report required under this award and all grant funds under this award have been disbursed or de-obligated, whichever is later.

This requires that you review and update the information at least annually after the initial registration and more frequently if required by changes in your information or another award term. Recipients can register on-line at (<https://www.bpn.gov/ccr/>).

You as the recipient may not make a sub-award to an entity unless the entity has provided its Data Universal Numbering System (DUNS) number to you. Sub-recipients with sub-awards of \$25,000.00 or more must also have and maintain current CCR registration.

Recipient Reporting –

You as the recipient must report each first tier sub-awards of \$25,000.00 or more in non-Recovery Act funds to <http://www.fsrs.gov> no later than the end of the month following the month the obligation was made.

As part of your registration profile at <http://www.ccr.gov>, you must report the total compensation of the 5 most highly compensated executives (if the award was \$25,000.00 or more, 80% or more of annual gross revenues subject to Transparency Act, and \$25 Million of annual gross revenues subject to Transparency Act) by end of month following the month in which award was made.

This requirement also pertains to sub-recipients (if the award was \$25,000 or more, 80% or more of annual gross revenues subject to Transparency Act, and \$25 Million of annual gross revenues subject to the Transparency Act).

There are no other revisions/amendments to any other portions of the initial USDA Letter of Conditions dated July 30, 2010 and all other parts of that letter remain unchanged.

If you have any questions, please do not hesitate to call me at (916) 425-4768.

Sincerely,

/s/

FRANK J RISSO
Community Program Specialist

cc: Janice L. Waddell, Community Programs Director/Native American Coordinator,
USDA Rural Development, Davis, CA.
Dave Hartwell, Community Programs Specialist, USDA Rural Development, Davis, CA.
Anita Lopez, Community Programs State Office Specialist, USDA Rural Development,
Davis, CA.
Mike Starinsky, Civil Engineer, USDA Rural Development, Davis, CA.
Stephen Kronick, Amador Water Agency Legal Counsel, Bartkiewicz, Kronick, & Shanhan,
Sacramento, CA.

RESOLUTION NO. 2012-04

**A RESOLUTION OF THE BOARD OF DIRECTORS OF
THE AMADOR WATER AGENCY ADOPTING NOTICE,
HEARING, AND PROTEST PROCEDURES FOR
COMPLIANCE WITH PROPOSITION 218**

WHEREAS, California Constitution Article XIII D, Section 6, added by Proposition 218, sets forth the procedural and substantive requirements relating to the adoption and increase of property-related fees and charges ("Section 6");

WHEREAS, the water and sewer rates and charges of the Amador Water Agency ("Agency") are property-related fees or charges subject to certain procedural and substantive requirements set forth in Section 6;

WHEREAS, the notice, hearing, and protest requirements set forth in Section 6 do not provide sufficient detail regarding the provision of such notice and the conduct of such hearing and protest;

WHEREAS, the Agency Board of Directors ("Board") desires to implement notice, hearing, and protest procedures pursuant to Section 6 to provide greater clarity regarding Section 6's requirements, inform property owners and Agency water and sewer customers of the proper procedures relating to the imposition and increase of water and sewer rates and charges, and protect the integrity of the Agency's rate-setting processes.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Amador Water Agency as follows:

1. Adoption of Procedures. The Board hereby adopts these notice, hearing and protest procedures to govern Agency proceedings for the consideration and approval of water and sewer rates and charges imposed on Agency water and sewer service customers. In adopting this resolution, it is the Board's intention to adopt procedures that are consistent with and fairly implement Section 6. It is not the intention of the Board to vary in any way the requirements of the California Constitution, the Proposition 218 Omnibus Implementation Act (commencing with West's Annotated Water Code section 53750), the Amador Water Agency Act (commencing with Water Code Appendix section 95-1), or any other federal or state law. If there is any inconsistency between a provision of this resolution and a requirement of federal or state law, the federal or state law shall govern.

2. Notice, Hearing, and Protest Procedures. These notice, hearing and protest procedures are adopted for the purpose of assuring compliance with the requirements of Section 6 and in furtherance of providing notice to interested persons as to the procedures the Board intends to follow with respect to the (i) identification of parcels required to receive the public hearing notice; (ii) mailing of the public hearing notice; (iii)

filing of written protests; (iii) conduct of the public hearing; and (iv) counting of written protest forms following the close of the public hearing to determine whether a majority protest exists.

(a) Identified Parcels Subject to Water and Sewer Rates and Charges. Section 6(a)(1) requires the Agency to identify "the parcels upon which a fee or charge is proposed for imposition" (the "Identified Parcels"). Section 6 does not provide further guidance as to whether "parcels upon which a fee or charge is proposed for imposition" means only those parcels currently receiving water and/or sewer service from the Agency, or includes all parcels within the Agency's service area to which water and/or sewer charges may be applied in the future. The California Supreme Court stated in *Bighorn Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 217 that "once a property owner or resident has paid the connection charges and has become a customer of a public water agency, all charges for water delivery incurred thereafter are charges for a property-related service" For purposes of identifying parcels on which a property-related service charge is proposed for imposition, this language suggests that only parcels actually receiving water and/or sewer service from the Agency currently should be identified. With respect to a parcel that may receive water and/or sewer service in the future, the owner of that parcel may voluntarily accept the water and/or sewer charges as they then exist when the owner or the tenant of that parcel begins receiving water and/or sewer service from the Agency. Further, Government Code section 53755 authorizes an agency to provide notice of a proposed increase of an existing charge for a property-related service being provided to a parcel by including the charge in the agency's regular billing statement to the address to which the agency customarily mails the billing statement (i.e., mailed only to current water and/or sewer users). Section 53755 thus supports the conclusion that the only persons entitled to notice are owners and tenants of the parcels that currently receive water and/or sewer service from the Agency or have informed the Agency that they wish to receive any such service. Therefore, for purposes of Section 6(a)(1), the Identified Parcels shall include (i) parcels that currently receive the service to which the proposed rates and charges apply, plus (ii) any additional parcels that, at the time of mailing the notice described in subsection (b) below, have applied for such service.

(b) Recipients of the Section 6 Notice.

(1) Section 6(a)(1) provides that the Agency "shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition." Government Code section 53750(j) defines "record owner" to mean "the owner of a parcel whose name and address appears on the last equalized secured property tax assessment roll, or in the case of any public entity, the State of California, or the United States, means the representative of that public entity at the address of that entity known to the agency." Therefore, the written notice required under Section 6(a)(1) ("Section 6 Notice") shall be provided by mail to the owner of an Identified Parcel, described in subsection (a) above, whose name and address appears on the last equalized secured county property tax assessment roll (the "Assessment Roll") or, in the case of a government-owned parcel,

to the representative of that government agency at the address of that entity known to the Agency.

(2) California Constitution article XIID, section 2(g) defines "property ownership" to include "tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question." Such definition raises the issue of whether tenants also are entitled to receive the Section 6 Notice. In tenant situations, the water and/or sewer charge billing statement may be, and often is, paid by the tenant even though the property owner remains primarily liable for the water and/or sewer charges. The Agency intends to continue this practice. Tenants that are listed as customers of the Agency may be directly liable to pay the water and/or sewer charges. Therefore, tenants of Identified Parcels, if they are customers, shall receive the Section 6 Notice. In addition to mailing the Section 6 Notice to the record owner of each Identified Parcel, such notice shall be mailed by the Agency to the tenant or customer address to which the Agency customarily mails the billing statement as shown on the Agency's billing records.

(c) Contents of the Section 6 Notice. Each mailed Section 6 Notice shall contain all of the following:

(1) A protest form bearing the name of the record owner and/or tenant of the Identified Parcel and that parcel's Assessor Parcel Number ("APN"), as described in section (e) below.

(2) A reference to the filing of any rate study with the Board and information about where any such rate study and related materials may be reviewed and obtained.

(3) The date, time and place of a public hearing before the Board at which the Board shall consider the proposed water or sewer rates and charges, receive and consider public comments and protests, and consider adoption of the proposed water or sewer rates and charges ("Public Hearing").

(4) The amount of the proposed water or sewer rates and charges to be imposed upon the Identified Parcel covered by the Section 6 Notice with the rates and charges presented so as to allow the property owner or tenant to determine the expected or estimated amount chargeable to the owner's particular Identified Parcel.

(5) The basis upon which the amount of the proposed water or sewer rates and charges were calculated; and an explanation of the reasons for the proposed rates and charges.

(6) Such other information as determined by the General Manager.

(d) Mailing of Section 6 Notice. The General Manager or his or her designee shall mail the Section 6 Notice in accordance with this resolution at least 45 days prior to the Public Hearing date. A Section 6 Notice also shall be mailed to any interested party

who has filed a written request with the Agency for mailed notice of Board hearings on new or increased fees and charges. The General Manager or his or her designee shall certify the proper mailing of the Section 6 Notice by declaration, which shall constitute conclusive proof of mailing in the absence of fraud. Failure of any person to receive such notice shall not invalidate the proceedings with respect to the adoption and imposition of the proposed water or sewer rates and charges.

(e) Filing a Written Protest. Section 6(a)(2) provides that: "At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge." The following rules shall govern the Agency in accepting and evaluating written protests:

(1) The Agency shall provide with the mailed Section 6 Notice a protest form bearing the name of the record owner and the tenant, if the tenant is the customer, of the Identified Parcel and that parcel's APN. The Agency shall provide a copy of the protest form for each Identified Parcel to the owner and the tenant, if the customer, of the Identified Parcel. For purposes of determining the existence of a majority protest, however, only one completed protest form for each Identified Parcel that complies with the requirements of section (g) below shall be counted. Any property owner or tenant of an Identified Parcel who objects to the Board's adoption of the proposed water or sewer rates and charges and the imposition of such charge on the Identified Parcel must complete the protest form and return it to the Agency prior to the close of the Public Hearing. If the protest form provided by the Agency is lost or misplaced, the owner or tenant, if the customer, of the Identified Parcel may contact the Agency for a replacement form.

(2) The Assessment Roll shall be presumptive evidence of ownership of an Identified Parcel for written protest purposes. If a person asserts that he, she or it is the owner of an Identified Parcel but is not shown as the owner on the Assessment Roll, then such person may seek to establish eligibility to file a written protest for such parcel by filing with the General Manager evidence of ownership. If the submitted evidence of ownership is satisfactory to the General Manager, then the Agency shall provide the person with a protest form showing the person's name and address and the parcel's APN. Any such evidence must be received by the General Manager prior to the close of the Public Hearing.

(3) When an Identified Parcel is held by a partnership, as community property, in joint tenancy, or as a tenancy in common, any partner, spouse, joint tenant, or tenant in common, as the case may be, may file the written protest for such parcel by completing the Agency-provided protest form.

(4) When an Identified Parcel is held by a corporation, company, unincorporated association, or local government agency, a written protest may be filed by resolution of the board of directors or other governing board, by the chief executive officer of the entity, or by any other person authorized in writing by the board of directors or trustees

or other governing board to take such actions. If the protest is filed by a person other than the chief executive officer on behalf of the entity, then the corporation, unincorporated association or local government agency must file written authorization satisfactory to the General Manager. Any such written authorization must be filed with the General Manager prior to the close of the Public Hearing.

(5) Government Code section 53755(b) states that "[o]ne written protest per parcel, filed by an owner or tenant of the parcel, shall be counted in calculating a majority protest to a proposed new or increased fee or charge subject to the requirements of Section 6" Based on this section, the Agency shall accept a protest form completed by an owner or a tenant, if the customer, of an Identified Parcel. The owner or tenant must use the protest form provided by the Agency for the Identified Parcel. If the tenant is other than a natural person, then the rules above shall apply to determine the authority of a person to act on behalf of the tenant.

(6) Each completed protest form returned to the Agency must bear the original signature of the property owner or tenant or authorized representative. The completed protest form may be mailed or sent by other courier or delivery service to the General Manager (Amador Water Agency, 12800 Ridge Road, Sutter Creek, CA 95685), hand-delivered to the same address, or hand-delivered at the Public Hearing. A protest form delivered via e-mail or fax shall not be counted as a written protest for purposes of determining whether a majority protest exists. However, the Board may consider such e-mail or fax comment in determining whether to approve the proposed water or sewer rates and charges.

(7) No completed protest form received by the Agency after the close of the Public Hearing shall be counted in determining the existence of a majority protest.

(8) A written protest may be withdrawn in writing at any time prior to the close of the Public Hearing by the person who completed the Agency-provided protest form.

(9) All completed protest forms received by the Agency and not withdrawn prior to the close of the Public Hearing shall be considered public records.

(f) Conduct of the Public Hearing.

(1) At the time, date and place fixed for the Public Hearing, the Board shall hear a staff presentation pertaining to any applicable rate study and the proposed water or sewer rates and charges, hear all persons interested in the matter or any aspect of any such rate study or the proposed rates and charges, and receive all completed protest forms and other comments regarding the rate study and the proposed rates and charges. The Public Hearing may be continued from time to time as determined by the Board. If it is not possible to tabulate all of the protests on the day of the Public Hearing, then the Public Hearing may be closed but action on the proposed water or sewer rates and charges shall be continued until after tabulation of the written protests is finished.

(2) If the Board determines, after the close of the Public Hearing, that written protests have been presented, and not withdrawn, by owners, tenants or authorized representatives of a majority of the Identified Parcels (i.e., there is a majority protest as determined pursuant to subsection (g)), the proposed water or sewer rates and charges shall not be approved.

(3) If the Board determines, after the close of the Public Hearing, that no majority protest exists, the Board may adopt the proposed water or sewer rates and charges or rates and charges that are lower than those proposed.

(g) Counting of Written Protests; Determination of Majority Protest.

(1) Written protests (as evidenced by completed Agency-provided protest forms) shall be reviewed and tabulated by the General Manager or his or her designee. The review and tabulation shall be in an open and public setting. Any interested member of the public may observe the tabulation process.

(2) The Agency shall not count a protest that (i) is not on the Agency-provided protest form; (ii) is not signed by the property owner, tenant or authorized representative; and (iii) is not from an owner or tenant of an Identified Parcel. The cause for the rejection of a written protest shall be written on the face of the protest form.

(3) For purposes of determining whether a majority protest exists, only one completed Agency-provided protest form per Identified Parcel shall be counted in accordance with Government Code section 53755(b). In order to be counted in determining whether a majority protest exists, a completed protest form must be timely received by the Agency in accordance with subsection (e).

(4) A completed protest form from any person having an ownership or tenancy interest or representing a person having such an interest in an Identified Parcel will result in having that Identified Parcel counted among the Identified Parcels for which a written protest has been received, irrespective of the possibility that one or more other persons having an ownership or tenancy interest in the same Identified Parcel do not join in such written protest.

(5) In calculating the majority protest, the numerator shall be the number of proper and timely written protests (one protest per Identified Parcel) and the denominator shall be the total number of Identified Parcels (determined pursuant to subsection (a).) If the calculated percentage is greater than fifty percent (50%), then a majority protest exists. If the calculated percentage is fifty percent (50%) or less, then there shall not be a majority protest.

3. **Effective Date of Resolution; Amendment.** This resolution shall take effect immediately upon its adoption. These procedures may be amended from time to time by subsequent resolution of the Board.

4. **Severability.** If any provision of this resolution or application thereof to any person or circumstances is held invalid, no other provision of this resolution shall be affected thereby.

5. **Inconsistency.** To the extent that the terms and provisions of this resolution may be inconsistent or in conflict with the terms or conditions of any prior ordinance, resolution, rule or regulation, the terms of this resolution shall prevail and any such inconsistent and conflicting provisions of prior ordinances, resolutions, rules or regulations are hereby repealed.

The foregoing Resolution was duly passed and adopted by the Board of Directors of the Amador Water Agency at a regular Board meeting held this 8th day of March, 2012, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Gary Thomas, President
Board of Directors

Attest: _____
Cris L. Thompson
Clerk of the Board of Directors

HOWARD JARVIS
TAXPAYERS
ASSOCIATION



HOWARD JARVIS, Founder (1903-1986)
ESTELLE JARVIS, Honorary Chairwoman
TON COUZAL, President
TREVOR CRÉMIE, General Counsel
MARTIN BITTLE, Director of Legal Affairs

March 20, 2012

Board of Directors
Amador Water Agency
12800 Ridge Road
Sutter Creek, CA 95685

Re: Resolution 2012-04

Dear Directors,

One of our members sent us a copy of Resolution 2012-04, the procedures your Board adopted for a proposed water and sewer rate increase. She asked, "Can AWA lawfully refuse to count written protests that do not appear on its official form?"

We believe the answer to that question is no. A signed written protest that contains information sufficient to identify the signer as an affected property owner or tenant subscriber must be counted whether it appears on an official form or not.

Proposition 218's article 13D, section 6(a)(2) states: "At the public hearing, the agency shall consider *all protests* against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge."

When construing the term "all protests," to determine whether it means "all protests" or "all protests presented on an official form," a court will be influenced by Proposition 218's Findings and Declarations Clause and its Liberal Construction Clause which provide in turn, "This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent," and "The provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent."

The interpretation which enhances taxpayers' ability to grant or withhold their consent, and which is therefore the preferred interpretation, is the one that does not limit protesters to use of the official form.

There may be individuals in your district who, because they cannot afford the proposed increases, are motivated to ask relatives, friends and neighbors to help them defeat the proposal. They have a constitutional right to petition; that is, to solicit signed protests from others to add to their own protest. Requiring each person to use only the form that was mailed to him by the Agency places an unreasonable burden on the right to petition.

Board of Directors
March 20, 2012
Page 2 of 2

Moreover, there may be individuals in your district who cannot read, or cannot read English. A letter from you in English instructing them to use your form cannot be the basis for denying them their right under article 13D, section 6(a)(2) to have their protest counted if they submit it by ~~some other means~~.

The purpose of this letter is twofold: (1) To put the Board on notice that the Howard Jarvis Taxpayers Association expects every valid protest to be counted, whether it is presented on an "official" form or not; and (2) To request, under the California Public Records Act, copies of all records produced during and after the hearing at which protests are counted, showing whether any protests were not counted, and why.

Thank you for your cooperation. If you have any questions, you may call me at the Sacramento telephone number above.

Sincerely,



Timothy A. Bittle
Director of Legal Affairs