AMADOR WATER AGENCY
Board of Directors
Regular Meeting
12800 Ridge Road, Sutter Creek, CA 95685
April 28, 2016
9:00 a.m.
Website Address: www.amadorwater.org

Please Note: Members of the public will have the opportunity to directly address the Agency Board of Directors concerning any item listed on the Agenda below before or during consideration of that item. There is a three minute time limit per person

In order to better accommodate members of the public, specific times above for Agenda Items will be heard at the specified time or soon thereafter. Agenda Items without specific times may be rearranged to accommodate the Board’s schedule.

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

2. ADDITIONS TO AGENDA
   a. Items added to the agenda must be approved by the Board pursuant to Government Code Section 54954.2.

3. PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA
   A. Discussion items only, no action to be taken. Any person may address the Board at this time upon any subject within the jurisdiction of Amador Water Agency; however, any matter that requires action will be referred to Staff for a report and action at a subsequent Board meeting. Please note there is a three (3) minute time limit per person

4. CONSENT AGENDA
   Items listed on the consent agenda (see attached) are considered routine and may be enacted by one motion. Any item may be removed for discussion and made a part of the regular agenda at the request of a Board member(s).

5. WATER SYSTEMS
   A. Rabb Park Community Services District
      1. Discussion and possible action to enter into an Operations and Maintenance Agreement to provide services to the District
      2. Discussion and possible action regarding RABB Park’s request for the Agency to acquire ownership of and operate the District’s water system

   B. Water Conservation Monitoring Status Report
      1. Update regarding Water Conservation Efforts

   C. Reservoir Levels
      1. Report on current reservoir levels


BOARD OF DIRECTORS
Robert Manassero, President
Gary Thomas, Vice President
Paul Molinelli
Art Toy
Rich Farrington
D. Water Code Ordinance 2016-01
1. Discussion and possible action to adopt and enact Ordinance 2016-01- An ordinance of the Board of Directors of the Amador Water Agency establishing a code enforcement program

E. Small Diameter Pipeline Project
1. Discussion and possible action to authorize the General Manager to enter into a contract with Freeman, D’Aiuto, Pierce, Gurev, Keeling & Wolf to provide legal services for potential eminent domain proceedings associated with the Small Diameter Pipeline Project

6. PROJECT UPDATES

7. MANAGER'S REPORTS-General discussion of various items in progress within each area of responsibility. This is for informational and communication purposes. Discussion only, no formal action will be taken. Any matter requiring action will be placed on an upcoming agenda for consideration

8. BOARD OF DIRECTOR DISTRICT REPORTS - The Board Members may report on various activities, meetings, etc. that they have been involved in. Discussion only, no formal action will be taken. Any matter requiring action will be placed on an upcoming agenda for consideration.

9. FUTURE AGENDA TOPICS - This item is to provide the Board Members an opportunity to request items to be placed on future agendas.

10. CLOSED SESSION
A. Conference with Legal Counsel Pursuant to Government Code Sections 54956.9(a) and (d)(1) — Existing Litigation – Howard Jarvis Taxpayers Association, et al. v. Amador Water Agency, et al. (Amador Superior Court Case No. 16-CVC-09564).

B. Conference with Legal Counsel Pursuant to Government Code Section 54956.9(a) — Pending Litigation- Amador Water Agency v. Lazy Creek Family Trust, et al. (Amador Superior Court Case No. 15-CV-9203)
AMADOR WATER AGENCY
CONSENT AGENDA
April 28, 2016

Items listed on the consent agenda are considered routine and may be enacted by one motion. Any item may be removed for discussion and made a part of the regular agenda at the request of a Board member(s).

1. MINUTES
   A. Approval of minutes of the Regular Board Meeting of April 14, 2016

2. MISCELLANEOUS APPROVALS
   A. Approval of Accounts Payable for March, 2016
   B. Mace Meadows Report of Waste Discharge Requirements Amendment
      1. Notice of staff’s intent to file Notice of Exemption and other associated environmental documents necessary in association with this project
   C. Approval to send letter of Opposition to Senate Bill 885

3. RESOLUTIONS
   A. Adoption of Resolution No. 2016-06 – A Resolution declaring the Participation and Proportionate fee Agreement between AWA and Frederick W. Petersen is null and void and that the Agency has no obligation to any previous commitment of water service to the current owner(s).

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, then please contact Cris Thompson at (209) 223-3018 or (209) 257-5281 (fax). Requests must be made as early as possible, and at least two-full business days before the start of the meeting.

Documents and materials relating to an open session agenda item that are provided to the Amador Water Agency Board of Directors less than 72 hours prior to a regular meeting will be available for public inspection and copying at 12800 Ridge Rd, Sutter Creek CA 95685

BOARD OF DIRECTORS
Robert Manassero, President  Gary Thomas, Vice President  Paul Molinelli  Art Toy  Rich Farrington
AMADOR WATER AGENCY
Board of Directors
Regular Meeting
April 14, 2016

MINUTES

Directors Present: Robert Manassero, President
Gary Thomas, Vice President
Richard Farrington
Art Toy

Directors Absent: Paul Molinelli

Staff Present: Gene Mancebo, General Manager
Josh Horowitz, Agency Counsel
Cris Thompson, Assistant General Manager
Damon Wyckoff, Operations Manager

CALL TO ORDER- President Manassero called the meeting to order at 9:03 a.m.

ADDITIONS TO THE AGENDA – None

PUBLIC COMMENT: Mr. Ed Gonzales, JVID Board Member

CONSENT AGENDA ITEMS: 9:49- 10:25)

MOTION: It was moved by Director Thomas, seconded by Director Farrington , and unanimously carried to approve the consent agenda Minutes of March 24, 2016
Consent Agenda Item 2.A was placed in open session for discussion
Resolution No. 2016-05 Authorizing the General Manager to Grant Right of Way Easements on behalf of the Amador Water Agency

Ayes: Directors Thomas, Farrington, Toy and Manassero
Noes: None
Absent: Director Molinelli
Abstain: None

MOTION: It was moved by Director Toy, seconded by Director Thomas and carried to adopt Resolution No. 2016-05 Authorizing the General Manager to Grant Right of Way Easements on behalf of the Amador Water Agency

Ayes: Directors Thomas, Toy and Manassero
Noes: Director Farrington
Absent: Director Molinelli
Abstain: None

DEPARTMENT REPORTS (18:45-41:23)
Administration/Finance
Operations

WATER AND WASTEWATER SYSTEMS (41:23-1:25:48)
Water and Wastewater Participation Fee Study
Presentation of draft report by Bob Reed, of the Reed Group, Inc

Public Comment:
None

MOTION: It was moved by Director Toy, seconded by Director Thomas and carried to incorporate revisions as discussed and to bring back the final report for Board approval.

Ayes: Directors Thomas, Toy and Manassero
Noes: Director Farrington
Absent: Director Molinelli
Abstain: None

RECESS was called at 10:28 a.m. SESSION resumed at 10:43 a.m.

Ione Backwash Recycle Project (1:25:50-1:28:03)
Discussion and possible action to authorize the General Manager to execute Amendment number 1 to the contract between AWA and Peterson Brustad Inc for an increased cost not to exceed $32,500

MOTION: It was moved by Director Farrington, seconded by Director Thomas, and carried to authorize the General Manager to execute Amendment number 1 to the contract between AWA and Peterson Brustad Inc for an increased cost not to exceed $32,500

Ayes: Directors Thomas, Toy, Farrington, and Manassero
Noes: None
Absent: Director Molinelli

Regular Board Meeting
April 14, 2016
Page 2
Abstain: None

Community Development Block Grant (CDBG) Water Supply Rehabilitation Project (1:28:04-)

Discussion and possible action to Certify that ECORP Consulting, Inc., (ECORP) with a proposal for $124,343.78 with a contingency of $46,914.55, a total of $171,258.33 is the highest ranked environmental consultant whose proposal complies with the requirements of the Community Development Block Grant (CDBG) for the Central Amador Water Project (CAWP) Pioneer Water Rehabilitation Project and authorize the General Manager to execute a contract between AWA and ECORP for the environmental work associated with the project and issue the Notice of Award and execute a contract for these services.

MOTION: It was moved by Director Farrington, seconded by Director Thomas, and unanimously carried to Certify that ECORP Consulting, Inc., (ECORP) with a proposal for $124,343.78 with a contingency of $46,914.55, a total of $171,258.33 is the highest ranked environmental consultant whose proposal complies with the requirements of the Community Development Block Grant (CDBG) for the Central Amador Water Project (CAWP) Pioneer Water Rehabilitation Project and authorize the General Manager to execute a contract between AWA and ECORP for the environmental work associated with the project and issue the Notice of Award and execute a contract for these services.

Ayes: Directors Farrington, Thomas, Toy and Manassero
Noes: None
Absent: Director Molinelli
Abstain: None

Discussion and possible action to Certify that Bailey Civil Engineering (Bailey) with a proposal for $74,150.00 is the highest ranked engineering design consultant whose qualifications comply with the requirements of the Community Development Block Grant (CDBG) for the Central Amador Water Project (CAWP) Pioneer Water Rehabilitation Project authorize the General Manager to execute a contract between AWA and Bailey Civil Engineering for design work.

MOTION: It was moved by Director Farrington, seconded by Director Thomas, and unanimously carried to Certify that Bailey Civil Engineering (Bailey) with a proposal for $74,150.00 is the highest ranked engineering design consultant whose qualifications comply with the requirements of the Community Development Block Grant (CDBG) for the Central Amador Water Project (CAWP) Pioneer Water Rehabilitation Project authorize the General Manager to execute a contract between AWA and Bailey Civil Engineering for design work.

Regular Board Meeting
April 14, 2016
Page 3
Ayes: Directors Farrington, Thomas, Toy and Manassero
Noes: None
Absent: Director Molinelli
Abstain: None

RECESS was called at 12:15 p.m. SESSION resumed at 1:20 p.m.

AGENCY GENERAL

Water Code Amendments (1:48:20-1:53:05)
Introduction of Ordinance 2016-01, concerning amendments to the Water Code Section 5.01, and 5.16

MOTION: It was moved by Director Farrington, seconded by Director Toy, and carried to concur with the staff recommendation to introduce Ordinance 2016-01, concerning amendments to the Water Code Section 5.01, and 5.16 with suggested revisions, and to waive the reading.

Administrative Policy Manual Amendments (1:53:05-1:57:49)
Discussion and possible Adoption of Resolution No. 2016-04 a resolution approving an addition to the Administrative Policy Manual section 3060.1- Unclaimed Check Policy

MOTION: It was moved by Director Thomas, and seconded by Director Toy, and carried to Adopt Resolution No. 2016-04 a resolution approving an addition to the Administrative Policy Manual section 3060.1- Unclaimed Check Policy

Ayes: Directors Thomas, Toy, Farrington, Manassero
Noes: None
Absent: Director Molinelli
Abstain: None

Yorba Linda Water District Request for Amicus Letter (1:57:50-2:02:45)
Discussion and possible action to authorize General Manager and legal counsel to prepare and file an amicus letter in Ebinger v. Yorba Linda Water District, Orange County Superior Court Case No. 30-2016-00829548, supporting YLWD’s rejection of a referendum petition purporting to challenge water rates duly adopted under Proposition 218.

MOTION: It was moved by Director Thomas, and seconded by Director Toy, and unanimously carried to authorize General Manager and legal counsel to prepare and file an amicus letter in Ebinger v. Yorba Linda Water District, Orange County Superior Court Case No. 30-2016-00829548, supporting YLWD’s rejection of a referendum petition purporting to challenge water rates duly adopted under Proposition 218.

Ayes: Directors Thomas, Toy, Farrington, Manassero
Noes: None
Absent: Director Molinelli
Abstain:

AGENCY PROJECT UPDATES (2:02:45- 2:16:19)

AGENCY COUNSEL REPORTS (2:16:25- 2:45:03)
Legislative Report
Other Legal Matters

COMMITTEE REPORTS (2:45:13- 2:52:02)
Engineering Committee (04-05-16)

FUTURE AGENDA TOPICS (2:52:02- 2:52:17)

RECESS was called at 12:11 p.m. SESSION resumed at 1:23 p.m.

CLOSED SESSION was called at 1:24 p.m.

Conference with Legal Counsel Pursuant to Government Code Sections 54956.9(a) and (d)(1) -- Existing Litigation – Howard Jarvis Taxpayers Association, et al. v. Amador Water Agency, et al. (Amador Superior Court Case No. 16-CVC-09564).

Conference with Legal Counsel Pursuant to Government Code Section 54956.9(a) – Pending Litigation- Amador Water Agency v. Lazy Creek Family Trust, et al. (Amador Superior Court Case No. 15-CV-9203)

OPEN SESSION resumed at 2:38 p.m.

ADJOURNMENT
President Manassero adjourned the meeting at 2:39 p.m.

______________________________
Cris Thompson
Clerk of the Board of Directors
Approved: ________________________

Regular Board Meeting
April 14, 2016
Page 5
## Accounts Payable

### Checks by Date - Summary by Check Date

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Total for 3/16/2016: 54.07

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| 78113 | 3645      | Autozone Development Corp             | 03/17/2016   | 201.93       |
| 78114 | UB<em>00160  | JULIA BILBERRY                        | 03/17/2016   | 41.09        |
| 78115 | UB</em>00155  | ROBERT BISHOP                         | 03/17/2016   | 77.15        |
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78175  3944  General Fund of the State of California  03/21/2016  3,000.00

Total for 3/21/2016: 3,000.00
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Report Total (142 checks): 829,611.24
# Accounts Payable

**Computer Check Register**

**User:** dvonloehr  
**Printed:** 03/02/2016 - 11:02AM  
**Batch:** 00001.03.2016 - 302 GSL  
**Bank Account:** GSL CONS

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| 1132  | 3906      | Murphy Austin Adams Schoe | 3/2/2016 | 931291     | 3,245.00 |

Check 1132 Total: 3,245.00

Report Total: 33,335.00
Notice of Exemption

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

From: (Public Agency):
Amador Water Agency
12800 Ridge Rd
Sutter Creek, CA 95685

County Clerk
County of: Amador
810 Court Street
Jackson CA 95642

Project Title: Mace Meadow Golf and Country Club Inc. Buckhorn Water Treatment Plant and Reuse Site

Project Applicant: Amador Water Agency

Project Location - Specific:

Project Location - City: Project Location - County:

Description of Nature, Purpose and Beneficiaries of Project:

Name of Public Agency Approving Project: Amador Water Agency
Name of Person or Agency Carrying Out Project: Amador Water Agency

Exempt Status: (check one):
☐ Ministerial (Sec. 21080(b)(1); 15268);
☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
☐ Categorical Exemption. State type and section number: 15301(b)
☐ Statutory Exemptions. State code number:

Reasons why project is exempt:

Lead Agency
Contact Person: Damon Wyckoff
Area Code/Telephone/Extension: 209-257-5284

If filed by applicant:
1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: ______________________ Date: 4/20/2016 Title: Operations Manager

☒ Signed by Lead Agency ☐ Signed by Applicant

Authority cited: Sections 21063 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: 

Revised 2011
April __, 2016

The Honorable Hannah-Beth Jackson
Chair, Senate Judiciary Committee
State Capitol
Sacramento, CA 95814

Re: Senate Bill 885 (Wolk)—Oppose [As Introduced]

Dear Senator Jackson:

On behalf of the board members of the Amador Water Agency, I am writing to respectfully oppose Senate Bill 885 (Wolk), related to contract indemnity. The Agency serves over 17,000 people in Amador County, and is the primary provider of drinking water in the region. In addition to serving businesses and residents in the County’s incorporated areas, it sells water to the cities of Ione, Jackson, Plymouth, Sutter Creek, Amador City and several special districts. The Agency regularly undertakes public works projects relating to the operation, maintenance, and improvement of its water and wastewater facilities and, as a public agency, would be significantly impacted by SB 885.

Simply put, SB 885 eliminates the ability of a public agency to contract with engineers and architects, known as design professionals, for upfront legal defense costs against claims related to a project’s design work. When contracting with a design professional, the Agency, like other public agencies, often places a clause in the agreement requiring the design professional to legally defend the Agency if a claim or lawsuit directly related to the design services work is filed against it. This current practice fosters an environment of collaboration between the Agency and the design professional, who both have the same incentive to resolve the lawsuit or claim.

This bill instead imposes a "one size fits all" constraint on contractual negotiations by prohibiting a public agency from requiring the design professional to defend a claim directly connected to the work of the design professional. Requiring public agencies to defend the actions of the design professional creates a “reimbursement only” process that results in agencies defending the actions of the design professional and shouldering upfront all of the costs associated with such defense. The public agency would then have to seek reimbursement from the design professional, to the extent the design professional is found negligent. Thus, this process not only requires a public entity to front the costs for a private entity, but also creates conflict within the public-private partnership itself by effectively eliminating the incentive to work together towards a settlement, rather than the more costly process of litigation.

The Agency currently is negotiating professional services contracts with engineers, architects and other design professionals for its ____________________ [provide specific project name], a
SB 885 would adversely impact these discussions and undermine the Agency’s ability to protect its interests as well as the interests of its customers.

For the aforementioned reasons, the Amador Water Agency respectfully opposes SB 885. Thank you for your consideration of our concerns.

Sincerely,

Gene Mancebo  
General Manager  
Amador Water Agency

CC: The Honorable Tom Berryhill  
Assemblymember Frank Bigelow  
The Honorable Lois Wolk [fax: 916-651-4903]  
Tobias Halverson, Counsel, Senate Judiciary Committee [fax: 916-403-7394]  
California Special Districts Association [fax: 916-520-2466]
RESOLUTION NO. 2016-06
OF THE BOARD OF DIRECTORS OF THE AMADOR WATER AGENCY
DECLARING THE PARTICIPATION AND PROPORTIONATE FEES AGREEMENT
WITH FREDERICK W. PETERSEN OF PETERSEN RANCH SUBDIVISION NULL
AND VOID

WHEREAS, the Water Agency issued a Will Serve Commitment for water and entered into an agreement for the payment of Central Amador Water Project (“CAWP”) Participation and Proportionate Fees on August 29, 1995 (“Agreement”) with Frederick W. Petersen (“Developer”) of the Petersen Ranch Subdivision; and

WHEREAS, the Agreement requires the Developer to obtain written consent of the Water Agency prior to assignment, transfer, conveyance, or otherwise disposal of the Agreement; and

WHEREAS, the Developer no longer owns the property and no written consent was provided by the Water Agency for conveyance or transfer of the Agreement which includes the Will Serve Commitment for water.

NOW THEREFORE BE IT RESOLVED, by the Board of Directors of the Amador Water Agency find that the Agreement was not conveyed to the current property owner(s) of Petersen Ranch and except for those parcels which have already paid CAWP participation and proportionate fees, the Water Agency does not have an obligation to provide water service and any previous commitment of water service is null and void.

The foregoing resolution was duly passed and adopted by the Board of Directors of the Amador Water Agency at a meeting held on this 28th day of April, 2016, by the following vote:

Ayes:
Noes:
Absent:
Abstain:

Signed and approved by me after its passage this 28th day of April 2016.

ATTEST:

______________________________  _______________________________
Robert Manassero, President      Cris Thompson, Clerk of the Board
STAFF REPORT

Rabb Park CSD

Requested Action:
Direction to staff to begin the process for transition of Rabb Park CSD water facilities to the Water Agency for ownership and operation. Authorize the General Manager to execute an agreement with Rabb Park CSD for operation and maintenance support activities.

Background:
The Rabb Park CSD is considering the transfer of their water facilities to the Water Agency. The economy of scale associated with AWA operations is estimated to result in lower costs to the Rabb Park customers. In a recent Rabb Park CSD Board meeting, there was concurrence to initiate this process and further investigate any questions and concerns that might be expressed. Rabb Park CSD has a need for operations and maintenance support and would like to enter an agreement with the Water Agency.
The Rabb Park Board will be planning a public meeting in early May to receive questions of concerns from their customers on this transition. The Water Agency has a philosophy of supporting other local water purveyors as often as possible, and in some cases accept ownership and operations of facilities when it is of mutual benefit. During preliminary discussions, it was apparent that the Rabb Park customers would see a reduction in their water bills based on comparisons of current rate schedules. The Water Agency already operates and maintains facilities in the area, and the addition of the Rabb Park facilities appears would not have a negative impact for the Water Agency. Part of the process would include an evaluation of the facilities and identify needed improvements. Staff will discuss the transition process and answer questions the Board and public may have on this item.

Fiscal Impact:
Spreading cost over a greater customer base generally provides an economy of scale that saves costs overall. The specific action to initiate the transition process will only encumber staff time and the maintenance agreement will cover Agency expenses for any work performed pursuant to the agreement.

Reviewed by Committee: No

Recommendation: Direct the General Manager to execute a maintenance agreement with Rabb Park CSD and initiate transition activities.

Prepared by: Gene Mancebo, General Manager
STAFF REPORT

Water Conservation Monitoring
Status Report

Requested Action:
No action is requested, this is just an update for the Board.

Background:
The Water Agency is tasked with meeting a 24% reduction in water use. This criteria is based on residential use only and will be monitored on a cumulative basis through October 2016. The attached spreadsheet (Attachment 1) identifies the residential water use reductions for June 2015 to present in comparison to 2013 water use volumes. We are currently exceeding the conservation requirement and achieving a cumulative savings of 27%.

Attachment 2 shows the total treated water production for 2013 to present, which is representative of total treated water use by all customers. As you will see in March 2016 the Agency produced 21.03 MG less than March 2015, 12.23 MG less than March 2014, and 24.82 MG less than March 2013.

Fiscal Impact:
Water conservation has a direct financial impact to the Water Agency. Approximately half of the rate revenue is received from the usage portion of the water rates. Details of the projected fiscal impacts from water conservation are identified in the June 2015 Water Shortage Financial Strategy report by the Reed Group. The water shortage surcharge (drought surcharge) has reduced the financial impact, however the water shortage revenue is 5.0% below budget at the end of March. Currently, total water sales revenue is 10% below budget.

Reviewed by Committee: No

Recommendation: None

Prepared by: Cris Thompson, Assistant General Manager
## Attachment 1

### Cumulative Drought Savings

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<th>Nov</th>
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* Total Production means total production for all systems combined, less wholesale and less backwash water.

### Cumulative Drought Savings Graph

- **Total Production 2015/2016***
- **Total Production 2013***

The graph illustrates the cumulative drought savings, with bars representing total production for different months. The cumulative total for 2015/2016 is 720.73, with a savings rate of 27%, compared to 990.38 in 2013.
Attachment 2

All Treated Water Production (MG)

to see Individual Chart for All Water Production Combined

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Ave. Mth 247.55| 133.04| 141.40| 146.66| 127.04| 107.42| 19.16  

Total Treated Water Production All Systems

![Bar Chart](image-url)
ORDINANCE NO. 2016-01

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE AMADOR WATER AGENCY ESTABLISHING A CODE ENFORCEMENT PROGRAM

Be it ordained by the Board of Directors of the Amador Water Agency as follows:

SECTION ONE. PURPOSE AND AUTHORITY. The purpose of this ordinance is to amend the Amador Water Agency Water Code to establish an administrative citation program as an alternative means to enforce code violations. This ordinance is adopted pursuant to Government Code section 53069.4 and other applicable law.

SECTION TWO. ARTICLE 5 ADDED. Article 5, consisting of sections 5.01 to 5.16, concerning administrative citation policy and procedures, is hereby added to the Amador Water Agency Water Code to read as shown on Exhibit A, attached hereto and incorporated herein.

SECTION THREE. EFFECTIVE DATE. This ordinance shall take effect 30 days after its final passage.

SECTION FOUR. PUBLICATION. The Clerk of the Board of Directors is directed to publish this Ordinance once with the names of the members voting for and against the Ordinance, in a newspaper published in the Agency within 15 days after the adoption of this Ordinance. The Ordinance shall be published without Exhibit A, the Amador Water Agency Water Code, and Exhibit B, Article 4, concerning administrative citation policy and procedures. Complete copies of each exhibit are available for public inspection and copying at the Agency’s office in accordance with the California Public Records Act. (Government Code sections 6250 through 6276.48).

INTRODUCED by the Board of Directors of the Amador Water Agency on the 14th of April, 2016.

PASSED AND ADOPTED by the Board of Directors of the Amador Water Agency on the ___ day of ________, 2016, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Attest:

President, Board of Directors

Clerk of the Board of Directors
EXHIBIT A

Article 5.00

ADMINISTRATIVE CITATIONS

Sections:

Section 5.01 Definitions.
Section 5.02 Applicability.
Section 5.03 Preliminary Notice Procedures for Continuing Violations.
Section 5.04 Administrative Citation.
Section 5.05 Amount of Fines.
Section 5.06 Payment of the Fine.
Section 5.07 Request for Administrative Hearing.
Section 5.08 Advance Deposit Hardship Waiver.
Section 5.09 Hearing Officers.
Section 5.10 Administrative Hearing Procedure.
Section 5.11 Hearing Officer’s Decision.
Section 5.12 Appeal of Hearing Officer’s Decision
Section 5.13 Right to Judicial Review.
Section 5.14 Late Payment Charges and Interest.
Section 5.15 Collection of Fines, Late Charges, Interest and Costs.
Section 5.16 Notices

Section 5.01 Definitions. The following definitions apply to this article:

(a) “Cited Person” means a person who violates the Code or who is otherwise responsible for a Code violation and who is named in an administrative citation issued and served pursuant to this article.


(c) “Continuing Code Violation” means a violation of the Code of the type described at section 5.03(a).
Section 5.02 **Applicability.** This article provides for the issuance of administrative citations and collection of related fines to enforce any violation of this Code, as a remedy in addition to all other criminal and civil remedies which may be pursued by the Agency. Use of this article shall be at the sole discretion of the Agency.

Section 5.03 **Preliminary Notice Procedures for Continuing Violations.**

(a) In addition to the other provisions of this article, continuing violations of this Code that do not create an immediate danger to health or safety (a “Continuing Code Violation”), shall be subject to the procedures set forth in this section.

(b) Whenever the Agency determines that a Continuing Code Violation is occurring or exists, Agency Staff may issue and serve a written compliance order to any person responsible for the violation.

1. The compliance order shall state that the person responsible for the Continuing Code Violation has 30 days from the date of the compliance order, or such additional time as the Agency’s General Manager determines is reasonably necessary, to correct or otherwise remedy the violation.

2. A compliance order issued pursuant to this section shall contain the following information:

   i. The location of the violation;

   ii. The section(s) of this Code violated and a description of the violation;

   iii. The action(s) required to correct the violation;

   iv. The deadline to correct the violation, which also shall be the date after which an administrative citation may be issued and administrative penalties begin to accrue if compliance with the order has not been achieved; and
v. The amount of the applicable administrative citation fine in the event the violation is not timely corrected and a citation is issued.

3. In cases where the violation involves real property, a copy of the compliance order also shall be served on the owner of the subject real property, if the owner is different from the person who committed the violation or who is otherwise responsible for the violation.

4. If Agency Staff determines that all Continuing Code Violations have been corrected within the time specified in the compliance order, no further action shall be taken under this article.

5. If full compliance is not achieved within the period specified in the compliance order, then Agency Staff may then issue an administrative citation pursuant to section 5.04.

6. No administrative citation shall be issued by the Agency for a Continuing Code Violation subject to this section until after there is continued non-compliance beyond the deadline stated in a compliance order issued under this section.

Section 5.04 Administrative Citation.

(a) When the General Manager determines that a violation of this Code has occurred, or that a Continuing Code Violation continues after the deadline set forth in a compliance order issued pursuant to section 5.03, Agency Staff may issue and serve an administrative citation to any person who committed the violation or who is otherwise responsible for the violation.

(b) In cases where the violation involves real property, a copy of the administrative citation also shall be served on the owner of the subject real property, if the owner is different from the person who committed the violation or who is otherwise responsible for the violation.
(c) Each administrative citation shall contain the following information:

1. The date(s) of the violation (for Continuing Code Violations, the date of the expiration of the time period to remedy the violation);

2. The name of the person who violated the Code or who is otherwise responsible for the Code violation;

3. The address or a definite description of the location where the violation occurred;

4. The section(s) of this Code violated and a description of the violation;

5. The amount of the fine for the Code violation;

6. A description of the fine payment process, including a description of the time within which and the place at which the fine shall be paid;

7. An order prohibiting the continuation or repeated occurrence of the Code violation described in the administrative citation;

8. A statement of the increased fines for additional citations issued for the same violation within the following year;

9. A description of the administrative citation hearing process, including the time within which the administrative citation may be contested and the place from which the cited person may obtain a form to request a hearing to contest the administrative citation;

10. A statement that delinquent fines for a violation pertaining to real property may become a lien against that property; and

11. The name and signature of the citing staff member.
(d) Whenever the Cited Person is a person under the age of 18, the citing staff member shall provide copies of all notices and orders specified in this article to the parent(s) and/or legal guardian(s) of the Cited Person. Any fine levied pursuant to this article may be levied against the juvenile and the parent(s) and/or legal guardian(s) of the juvenile, and the juvenile and parent(s)/legal guardian(s) shall be jointly and severally liable for the fine and related costs. The parent(s) and/or legal guardian(s) shall have the right to a hearing and judicial review as set forth in this article.

Section 5.05 Amount of Fines.

(a) Code violations that would otherwise be infractions shall be subject to the following fines:

1. $____ (up to $100)*100.00 for a first violation;

2. $____ (up to $200)*200.00 for a second violation of the same Code provision within one year; and

3. $500.00 ______ ($up to $500) for each additional violation of the same Code provision that occurs within one year of the first violation.

(b) Code violations that are declared to be misdemeanors, such as theft of utility services under Penal Code section 498, shall be subject to $1,000.00 $____ (up to $1000)-fine in addition to any other available remedy.

(c) For purposes of determining the amount of fines imposed for administrative citations issued under this article, a separate violation occurs on each and every day during any portion of which a violation of any provision of this Code is committed, permitted or allowed to continue.

Section 5.06 Payment of the Fine.

(a) The fine shall be paid by the Cited Person to the Agency at the Agency’s office within 30 days from the date of the administrative citation.
(b) Any administrative citation fine paid pursuant to section 5.06(a) shall be refunded in accordance with section 5.11(d) if it is determined, after a hearing, that the Cited Person charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation.

(c) Payment of a fine under this article shall not excuse or discharge any continuation or repeated occurrence of the Code violation that is the subject of the administrative citation.

Section 5.07 Request for Administrative Hearing.

(a) Any Cited Person may contest that there was a violation of the Code or that he or she was the responsible party by completing a request-for-hearing form and returning it to the Agency's office within 30 days from the date of the administrative citation. Any Cited Person who requests an administrative hearing to contest an administrative citation must submit with the request-for-hearing form either an advance deposit of the fine stated in the administrative citation or a request for an advance deposit hardship waiver in accordance with section 5.08. A request-for-hearing form shall be made available at and may be obtained from the Agency's office.

(b) The Cited Person requesting an administrative hearing shall be notified of the time and place set for the hearing at least 10 days prior to the date of the hearing.

Section 5.08 Advance Deposit Hardship Waiver.

(a) Any Cited Person who intends to request an administrative hearing under section 5.07, and who is financially unable to make the advance deposit of the fine as required by section 5.07 (a), may file a request for an advance deposit hardship waiver. The request shall be filed with the Agency on an application form provided by the Agency on or before submitting the request-for-hearing form. The request shall be reviewed, and approved or disapproved by the General Manager. The requirement of depositing the full amount of the fine under section 5.07(a) shall be stayed until the General
Manager makes a determination not to issue the advance deposit hardship waiver.

(b) The General Manager may waive the requirement of an advance deposit set forth in section 5.07(a) and issue the advance deposit hardship waiver only if the Cited Person submits to the General Manager a sworn declaration or affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the General Manager the person's actual financial inability to deposit with the Agency the full amount of the fine in advance of the administrative hearing.

(c) The General Manager shall issue a written determination listing the reasons for his or her decision to issue or not issue the advance deposit hardship waiver. The written determination of the General Manager shall be final. The written determination of the General Manager shall be served upon the person who applied for the advance deposit hardship waiver.

(d) If the General Manager decides not to issue an advance deposit hardship waiver, the Cited Person shall remit the deposit to the Agency within ten days after the date of that decision or 30 days from the date of the administrative citation, whichever is later.

Section 5.09  Hearing Officers.

(a) Administrative review of administrative citations shall be conducted by a hearing officer. An administrative citation hearing officer shall be appointed by the Agency Board of Directors and shall serve at the pleasure of the Board.

(b) The Board of Directors may by resolution provide for compensation of the administrative citation hearing officer; provided, however, that the employment, performance evaluation, compensation or benefits of the officer shall not be directly or indirectly conditioned upon the amount of administrative citation fines upheld by the officer.

Section 5.10  Administrative Hearing Procedure.
(a) No administrative hearing to contest an administrative citation shall be held unless the fine has been deposited in advance in accordance with section 5.07(a) or an advance deposit hardship waiver has been issued by the General Manager in accordance with section 5.08.

(b) The administrative hearing before the hearing officer shall be conducted not less than 15 days and not more than 90 days from the date that the request for hearing is filed in accordance with this article.

(c) At the administrative hearing, the Cited Person and Agency Staff shall be given the opportunity to testify, to present evidence concerning the administrative citation and the related Code violation, and to cross-examine witnesses.

(d) The failure of any Cited Person to timely request an administrative hearing and appear at the hearing shall constitute a forfeiture of the fine and a failure to exhaust administrative remedies.

(e) The administrative citation and any additional report submitted by the citing staff member shall constitute prima facie evidence of the respective facts contained in those documents.

(f) The administrative citation hearing officer may continue the hearing and request additional information from the citing staff member or the recipient of the administrative citation prior to issuing a written decision.

Section 5.11 Hearing Officer’s Decision.

(a) After considering all of the testimony and evidence submitted at the administrative hearing, the hearing officer shall issue a written decision upholding or cancelling the administrative citation, including a brief explanation of the reason or reasons for the decision. The Cited Person shall be served with the hearing officer’s written decision.

(b) In cases where the violation involves real property, a copy of the
administrative hearing decision also shall be served on the owner of the subject real property, if the owner is different from the person who committed the violation or who is otherwise responsible for the violation.

(c) If the hearing officer upholds the administrative citation, then the fine amount on deposit with the Agency shall be retained by the Agency. If the hearing officer upholds the administrative citation and, pursuant to an advance deposit hardship waiver, the fine has not been deposited, the hearing officer shall set forth in the written determination a payment schedule for the fine.

(d) If the hearing officer cancels the administrative citation and the fine was deposited with the Agency, then the Agency shall refund promptly to the Cited Person the amount of the deposited fine.

[Section 5.12 Appeal of Hearing Officer's Decision]

(a) A Cited Person who receives an adverse decision under section 5.11 may appeal the hearing officer’s decision for review by the Agency Board of Directors by filing with the General Manager within 10 days of the service of such decision a written notice of appeal containing the challenged citation and the reason(s) for the appeal, together with any material facts supporting the contentions of the Cited Person.

(b) As soon as practical after receiving the written appeal, the General Manager shall set a date for hearing of the appeal by the Agency Board of Directors, which date shall not be less than seven days nor more than 35 days from the date the appeal was filed. The General Manager shall notify the Cited Person of the time and place of the hearing at least five days before the date of the hearing.

(c) The Cited Person shall be responsible for paying an appeal fee prior to the date of the hearing in an amount established from time to time by the Agency Board of Directors.

(d) The Agency Board of Directors shall review and consider the
evidence before and decision of the hearing officer and receive and consider arguments and new information, if any, from the Cited Person. Upon conclusion of the appeal hearing, the Agency Board of Directors by resolution shall do one of the following:

1. Terminate the proceeding and dismiss the citation;
2. Confirm the decision of the hearing officer; or
3. Modify the decision of the hearing officer.

(e) The decision of the Agency Board of Directors shall be final and conclusive. The General Manager shall serve a copy of the Board’s resolution on the Cited Person that a brief explanation of the reason or reasons for the decision.

(f) If the Agency Board of Directors upholds the administrative citation, then the fine amount on deposit with the Agency shall be retained by the Agency. If the Agency Board of Directors upholds the administrative citation and, pursuant to an advance deposit hardship waiver, the fine has not been deposited, the Agency Board of Directors shall set forth in its resolution a payment schedule for the fine. If the Agency Board of Directors modifies the administrative citation, then the fine shall be due and payable as provided in the Board’s resolution. If the Agency Board of Directors cancels the administrative citation and the fine was deposited with the Agency, then the Agency shall refund promptly to the Cited Person the amount of the deposited fine.

Section 5 13 Right to Judicial Review. Any Cited Person aggrieved by a hearing officer’s administrative decision on an administrative citation may seek judicial review of the administrative decision by filing a notice of appeal within 20 days after service of the hearing officer’s decision with the Amador County Superior Court in accordance with Government Code section 53069.4. If no notice of appeal is timely filed, then the hearing officer’s decision shall be deemed confirmed.

Section 5.14 Late Payment Charges and Interest. Any Cited Person who fails to pay to the Agency any fine imposed pursuant to this article on or before the date that the fine is due also shall be liable for the payment of penalties and interest consistent with the provisions in Schedule UN-3(a) of the Water Service Rates and Charges.
Section 5.15  Collection of Fines, Late Charges, Interest and Costs.

(a) The Agency may collect any past due administrative citation fines and applicable late payment penalties and interest by use of all available legal means. The Agency also may recover its costs incurred in securing payment of these amounts, which costs shall include, but are not limited to, administrative costs, attorney fees and litigation expenses.

(b) The Agency may seek collection of delinquent fines, late payment penalties, interest and costs as a personal obligation of the Cited Person.

(c) In cases where the violation relates to the use of real property, the Agency may record a lien against the subject real property to secure the payment of administrative citation fines, late payment penalties, interest and costs. A lien created by the Agency pursuant to this section shall remain in effect until all of the fines, late payment penalties, interest and costs are paid in full.

1. Prior to recording any lien, the General Manager shall prepare and file with the Agency Board of Directors a report stating the amounts due and owing. The Agency shall fix a time, date and place for the Agency Board to hear and consider the report and any protests or objections to it.

2. At least ten days before the time set for the hearing, the General Manager shall give written notice of the hearing to the owner of the subject real property.

3. Any person whose real property is subject to a lien pursuant to this section may file a written protest with the Agency and/or protest orally at the Agency Board hearing on the matter.

4. The Agency Board, after the hearing, shall either adopt a resolution confirming or modifying the amount of the lien, or decide not to impose the lien. The lien may carry such late payment penalties, interest and costs as authorized by this article and set forth in the resolution.
5. Within 30 days following the adoption of a resolution by the Agency Board of Directors imposing a lien, the General Manager shall file a lien certificate with the county recorder's office.

6. The lien shall have no force and effect until the lien certificate is recorded with the county recorder. Once recorded, the lien shall have the force, effect and priority of a judgment lien governed by Code of Civil Procedure section 697.340 and may be extended as provided in Code of Civil Procedure sections 683.110 to 683.220. Once a lien is recorded pursuant to this section, interest shall accrue on the principal amount remaining unsatisfied pursuant to law.

7. After the Agency receives full payment for the outstanding fines, late payment penalties, interest, costs and other charges set forth in the lien resolution, the Agency shall record a notice of release of lien discharging the Agency's lien.

Section 5.16 Notices.

(a) Service of compliance orders, administrative citations, administrative hearing decisions, lien notices and other documents under this article shall be as follows:

1. For service on the owner of real property that is the subject of a Code violation, the document shall be:

   i. Personally served on the property owner by hand-delivery or mailed to the property owner by prepaid, first class U.S. mail addressed to the owner's address as shown on the last equalized County assessment roll; and

   ii. Posted in a conspicuous location on the subject real property.

2. For service on other persons, the document shall be either served personally by hand-delivery or sent by prepaid, first class
U.S. mail addressed to the person's last known residence address.

(b) Failure to receive any notice or other document specified in this article shall not affect the validity of proceedings conducted under this article.
STAFF REPORT

Small Diameter Raw Water Pipeline Project
Right of Way Acquisition

Requested Action:
Authorize the General Manager to enter into a contract with Freeman, D’Aiuto, Pierce, Gurev, Keeling & Wolf to provide legal services for potential eminent domain proceedings associated with the Small Diameter Pipeline Project.

Background:
Staff in concert with consultants believe that the Water Agency will need to initiate eminent domain proceeding in order to obtain right of way over some parcels along the Small Diameter Pipeline project and recommend the services of Freeman, D’Aiuto, Pierce, Gurev, Keeling & Wolf to assist the Water Agency. Arnold J. Wolf of this firm has assisted the Agency in the past and has agreed to do so for this project.

Fiscal Impact:
Cost for these services will be on a time and material basis as it is unknown how may parcels and properties will be involved and the extent of the proceedings at this time. As such the total fiscal impact is not known at this time. The cost of this work will be paid from the grant proceeds to the extend funds are available.

Reviewed by Committee: No
Reviewed by Legal Counsel: Yes

Recommendation: Authorize the General Manager to enter into a contract with Freeman, D’Aiuto, Pierce, Gurev, Keeling & Wolf to provide legal services for potential eminent domain proceedings associated with the Small Diameter Pipeline Project.

Prepared by: Gene Mancebo, General Manager