

PERSONNEL COMMITTEE
(Directors Dunn and Thomas)
September 18, 2009
8:00 a.m.
12800 Ridge Road, Sutter Creek, CA

A G E N D A

1. AGENCY GENERAL
 - ❖ Review Draft Interim General Manager Job Description
 - ❖ Discuss Expectations for Interim General Manager

2. ADJOURNMENT

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.

AMADOR WATER AGENCY

Job Title: INTERIM GENERAL MANAGER
Department: Executive
Approved By: Board of Directors
Approved Date:
FLSA Status: Exempt - Contract

SUMMARY

Under policy direction of a five-member elected Board of Directors, provides executive direction of all functions, services, and activities of the Agency. Directs the development of overall goals, objectives and policies. Oversees the operating and capital improvement budgets. Serves as the primary liaison for the Agency with a variety of city, county, state and federal agencies.

ESSENTIAL DUTIES AND RESPONSIBILITIES include, but are not limited to, the following. Other duties may be assigned.

- Provides overall executive direction of day-to-day and long-term operations and activities of the Agency, organizing and assigning responsibilities, and directing and overseeing the management provided by subordinate manager.**
- Within guidelines established by the Board, directs the establishment of overall strategic plans, long-term goals and objectives.**
- Keeps the Board of Directors advised of Agency activities and laws, issues or problems that may affect Agency operations; making appropriate decisions or recommendations for Board of Directors consideration and adoption.**
- Represents the Board of Directors and the Agency with various federal, state and local government agencies, community groups and businesses, and other professional organizations.**
- Negotiates a variety of contracts and agreements on the Agency's behalf.**
- Provides general direction on the design, construction, operations and maintenance of Agency facilities.**

- Oversees preparation and implementation of the annual Agency budget. Directs the forecast of additional funds needed for staffing, equipment, materials and supplies; monitors and approves expenditures; implements mid-year adjustments.
- Monitors and implements all personnel rules and regulations; maintaining discipline and high standards necessary for the efficient and professional operation of the Agency.
- Responds to and resolves difficult and sensitive customer inquiries and complaints.
- Prepares and submits reports of financial, administrative and operational activities to the Board of Directors; keeping them advised of financial conditions, program progress, regulatory issues and present and future needs of the Agency.
- Monitors and provides direction, as needed, for media and public relations; ensuring the Agency's interests are represented with customers, stakeholders, governmental agencies; the financial community and the public.
- Coordinate with Counsel on legal issues affecting the Agency.
- Builds and maintains positive working relationships with the Board of directors, co-workers, other Agency employees and the public using principles of good customer service.

SUPERVISORY RESPONSIBILITIES

Policy direction is provided by the Board of Directors. Responsibilities include management authority over a large and diverse group of management, supervisory, professional, technical and support positions whose incumbents perform the full range of administrative and operations activities for the Agency.

QUALIFICATIONS

To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

EDUCATION and/or EXPERIENCE

Minimum of 7 years of administrative and management experience that involved planning, organizing, implementing, and supervising varied programs, preferably within a public agency; 2 years experience working with a Board of Directors. Equivalent to a Bachelor's degree from an accredited college or university with major course work in business or public administration, engineering, science or a related field.

CERTIFICATES, LICENSES, REGISTRATIONS

Possession of a valid California driver's license, a continuing acceptable driving record and proof of current automobile insurance.

OTHER SKILLS AND ABILITIES

Knowledge of:

- **Principles and practices of executive management and leadership, including planning and organizing responsibilities, motivation and delegation of authority.**
- **Functions, authorities and responsibilities of water agencies.**
- **Applicable federal, state, local laws, codes and regulations relative to water treatment and distribution, and wastewater collection, treatment and disposal.**
- **Techniques and methods for long-term planning, goal setting and establishing objectives.**
- **Administrative, fiscal and human resources management principles and practices.**
- **Principles and practices of construction and service contract negotiations and administration.**
- **Fundamentals of safety and risk management.**
- **Operations and application of Microsoft word processing and spreadsheet software applications.**

Ability to:

- **Plan, organize and direct work at the executive level.**

- **Work effectively with Boards of Directors, other utilities and governmental agencies, the public and others contacted in the course of work.**
- **Plan, establish and implement programs, services, capital improvements, goals, objectives, policies and procedures.**
- **Monitor and control fiscal and revenue activities.**
- **Analyze complex management and operations problems, evaluate alternatives, and direct changes.**
- **Identify and respond to issues and concerns from the general public and the Board of Directors.**
- **Communicate effectively orally and in writing, including written reports and oral presentations.**
- **Establish and maintain cooperative and effective working relationships with those contacted in the course of work.**
- **Supervise, train, motivate and evaluate assigned personnel.**

PHYSICAL DEMANDS

The physical demands described herein are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly required to sit and talk or hear. The employee is occasionally required to stand; walk and use hands to finger, handle, or feel. The employee must occasionally lift and/or move up to 10 pounds. Specific vision abilities required by this job include close vision, distance vision, peripheral vision and ability to adjust focus.

WORK ENVIRONMENT

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The majority of the job activities are performed indoors in a temperature-controlled environment; occasional out-of-doors may occur. Minimal exposure to noise generated from the operation of office equipment.

This job specification should not be construed to imply that these requirements are the exclusive standards of the position. Incumbents will follow any other instructions, and perform any other related duties, as may be required.

AMADOR WATER AGENCY

SPECIAL MEETING OF THE
BOARD OF DIRECTORS OF THE
AMADOR WATER AGENCY
HAS BEEN CALLED BY THE PRESIDENT FOR

September 18, 2009
9:00 a.m.
12800 Ridge Rd
Sutter Creek, CA 95685

1. **CALL TO ORDER**

2. **AMADOR WATER SYSTEM**
 - A. Amador County Jail
 1. Discussion and Direction regarding water and wastewater services for the proposed County Jail Site in the Martell area

3. **AGENCY GENERAL**
 - A. Senate Bill 802
 1. Discussion and Direction to staff to send letter opposing SB 802 which seeks to lower the retention proceeds for public contracts from the current 10% down to 5%.

4. **ADJOURNMENT**

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AWS JAIL AD HOC COMMITTEE REPORT

Amador County Jail

Proposed Water and Wastewater Capacity Reservation and Fees

For A Potential Site Under Consideration by the Board of Supervisors for a new County Jail

Requested Action:

General Manager to work with legal counsel to develop and execute an agreement with the County regarding a reservation of water and wastewater capacity along with terms for will serves and Direct the Interim payment of participation fees consistent with the recommendations of the AWA Jail Ad Hoc Committee for the proposed jail in the Amador Central Office Park.

Background:

The County is considering the purchase of parcel #044-540-018 in the Amador Central Office Park for construction a new County Jail. The parcel has an entitlement to 3 EDUs for water and wastewater. The proposed jail is estimated to need 22,000 GPD water and 19,400 GPD wastewater (97 EDUs). The County needs to confirm the availability and cost for water and wastewater service for the additional capacity needs prior to purchasing the property. The fees are also a concern for the County. The County provided

the attached proposal for the Water Agency's consideration. The Water Agency Jail Ad Hoc Committee met and has the following recommendations:

1. The County shall pay the current AWS water participation fees in place at the time of the executing an agreement discussed herein based on a four inch meter for domestic use and a one inch meter for irrigation. This is with the understanding that the 4 inch connection shall not exceed 20,400 gallons on any 24 hour period and that the total of both the 4 inch and the one inch meter shall not exceed 22,000 gallons on any 24 hour period. The County may reduce the meter sizes if it determines the water needs for the jail are less than currently projected. Participation fees will be reduced accordingly.

2. The Water Agency shall credit the County for a 2 inch (treated wholesale) service that will be disconnected and abandoned at the existing jail site subject to the City of Jackson's concurrence. This credit will be used against the value of the new treated water retail participation fees. Currently there are two 2 inch meters at the existing jail facility leaving one 2 inch meter for the continued water service at the current site.

3. The County may pay the water participation fees over a one year period beginning from the date of execution of an agreement which identifies terms herein described. Alternatively, the County may pay participation fees for a ten year period initiating at the time of executing said agreement with a 3% annual escalator imposed at the beginning of the second year on any unpaid balance; provided, however, that in no event shall the County pay more than the Agency's adopted AWS treated water participation fees in any given year that the County makes final payment of participation fees.

4. The County shall not pay monthly service fees until service is initiated upon request by the County.

5. The County shall prepare a hydraulic computer model to AWA standards to simulate domestic, fireflow, and wastewater flows to determine needed infrastructure improvements both on and offsite to provide service and ensure existing system service capacity is not negatively impacted. The Water Agency staff shall then prepare a list of improvements, if any, that the County will be required to

construct or mitigate as a part of the project. The identified improvements will be based on information (assumptions) known at the time of the model and as provided by the County. Information will include, but not limited to required fire flow requirements, onsite jail facilities, wastewater strength, and food preparation or dishwashing facilities. If the assumptions change in the future at no fault of the Water Agency, then the any subsequent improvements determined by the Water Agency necessary to accommodate those modifications at the time of the jail construction will be at the cost of the County. The County would enter into the Water Agency's standard Main Line Extension agreement for on and offsite improvements identified or modified to accommodate changed assumptions prior to the start of construction. Service shall not be initiated until all improvements identified in accordance with the main line extension agreement above have been completed and accepted by the Water Agency.

6. The County and the Water Agency shall work cooperatively to maximize the use of reclaimed water to the extent feasible, such as the installation of dedicated purple pipe for use of flushing toilets within the jail site.

7. The County contacted the Sutter Creek City Manager who indicated that the City could provide wastewater treatment capacity for the jail. This will require an agreement between the City and the Water Agency to purchase that capacity. The County shall pay wastewater fees based on the current rate of \$9310 per EDU for a total maximum of 97 EDUs given that the City of Sutter Creek executes the sale of 20,000 GPD from the existing sewer plant capacity to the Water Agency. If this agreement with the City of Sutter Creek is not executed, then the County shall pay \$11,728 per EDU for a total maximum of 97 EDUs. If the County determines that the projected wastewater needs for the jail are less than projected, then the capacity and fees will be reduced accordingly. As with water participation fees, the County may pay the wastewater participation fees over a one year period beginning from the date of execution of an agreement which identifying terms are herein described. Alternatively, the County may pay participation fees for a ten year period (beginning at the time of the said agreement) with a 3% annual escalator imposed at the beginning of the second year on any unpaid balance; provided, however, that in no event shall the

County pay more than Agency adopted Martell wastewater participation fees in any given year that the County makes final payment of participation fees. If the Water Agency purchases wastewater treatment capacity from the City of Sutter Creek for the County's jail reservation prior to the County's payment of wastewater participation fees, the County shall pay at a minimum towards the participation fee, an amount equal to the purchase cost of capacity reserved for the jail. The estimated cost for treatment capacity is \$2,582 per EDU. If at anytime the County wishes to terminate the agreement for reservation of capacity prior to end of the agreement term, the Water Agency shall refund the County for funds advanced towards purchase of Sutter Creek wastewater plant capacity and have no further obligation for reservation of capacity.

8. The Water Agency shall reserve 22,000 GPD (peak day) water capacity and 19,400 GPD (average dry weather flow) wastewater capacity for the term of an agreement which shall be ten years.

9. The County may obtain a will serve for the water and wastewater by acquiring the property, and execution of an agreement for terms described herein.

10. The reservation and proposed agreement for water and wastewater service is specific for the purpose of a new County Jail at the site identified above.

There are a number of policies, water code, wastewater standards, and guidelines which would be waived by the Agency to accommodate the requested reservation, will serve and fee payment for the proposed new jail facility.

It is the Ad Hoc Committee's recommendation that these requirements are waived in recognition of the county wide benefit of a new County Jail and in cooperation between local governmental agencies. These waivers are briefly described below.

1. Agency policy requires that the participation fees are determined either by the current participation fee schedule by meter size or by computation of EDUs based on estimated annual water use, whichever is greater.

2. Once a will serve is issued it remains with the land and is not transferable. (relative to the credit for the two inch wholesale connection)
3. Participation fees are based on the current fee in place at the time of payment. When participation fees are paid, service is to be initiated within two years otherwise payment of any increase in the fee must be paid.
4. The Water Agency does not currently have wastewater capacity confirmed for the proposed jail site and is currently negotiating additional treatment capacity with the City of Sutter Creek. Actual costs for additional or new treatment capacity is not known at this time. The Water Agency has other conditional will serve commitments ahead of the County's request waiting for available capacity. Capacity is assigned based on first in time. The County approached the City of Sutter Creek directly to assist with acquisition of additional capacity for the proposed jail.
5. Conditional will serves (reservation of capacity) terminate in two years.

Some additional information considered by the Ad Hoc Committee:

1. Current AWS retail participation fee, 4 inch meter \$265,745
2. 2007 participation fee study, 4 inch meter \$246,884
3. Current AWS wholesale participation fee, 2 inch \$60,445
4. Current AWS retail participation fee 5/8 inch (1EDU) \$10,630
5. 4 inch meter has a hydraulic capacity 25 times a 5/8 inch meter
6. Assume 1 EDU= 400 GPD average and 800 GPD peak
7. The county's consultant provided that the average capacity needs of the jail (excluding landscape irrigation) would be 20,400 GPD. County staff recently confirmed that the jail would not exceed 20,400 GPD (ie peak day use)
8. Jail would be estimated at $20,400/400=51$ EDUs based on average annual use and $20,400/800=25.5$ EDUs based peak day or not to exceed use.

The County has indicated that time sensitive decisions regarding the jail and respective proposed site must be made in the near future. The Water Agency Board President previously assigned an Ad Hoc Committee to address issues concerning the water and wastewater services for the proposed County jail and provide recommendations to the full Board for consideration.

Prepared by: Gene Mancebo



September 8, 2009

Amador Water Agency
12800 Ridge Road
Sutter Creek, CA 95685

RE: Water and Wastewater for County Jail Project

Executive Summary

Amador County is expected to experience significant cost and demands in the future in regards to the construction of a new jail facility (Project). This particular Project has no limitations in that it will impact all jurisdictions and every taxpayer in Amador County. At the same time, the County continues to experience increases for its public safety demands. The purpose of this document is to propose solutions that will enable two primary jurisdictions, Amador Water Agency (AWA) and Amador County, to meet future jail water and wastewater needs.

Current Situation

Final construction of the current jail occurred October 18, 1983, and since then the necessity for a new County jail facility has been present for over five (5) years due to overcrowding. As a result, the limitations to the intake of inmates into the jail have created a system of early release programs. These actions allow convicted criminals to avoid portions, if not all, of their time ordered to jail. Within the State correctional system, the State of California is faced with prison overcrowding problems and the problem of a continuing recidivism rate of 70%, according to California Department of Corrections and Rehabilitation (CDCR). Therefore, it is imperative to continue seeking solutions to construct a new jail in the near future; water and wastewater deliveries and costs are key elements to the Project.

The water and wastewater Conditional Will Serve letters received from the AWA on November 19, 2008 remain in good standing if all conditions are met by November 19, 2010, at which time Will Serve letters would be delivered. However, two significant challenges face the two jurisdictions in order to meet those conditions: 1) reserving future capacity, and 2) costs.¹

Unique government community projects, such as a jail, have health, social, and/or economic benefits. To realize those benefits, the County and AWA must work collaboratively for the purpose of providing water and wastewater for the Project and agree the Project benefits the community, is required for public safety, and that the existing jail utilizes the same facilities within the Amador Water System (AWS) as those facilities that will be utilized by the Project.

¹ The County has applied for a State grant from monies provided by AB 900 for new jail construction. However, there is no assurance that the County will be able to utilize the AB 900 monies. In addition, no money from the State AB 900 grant may be used for infrastructure costs.

- d. Since the fee study is based upon the currently-existing system, it is reasonable to expect any existing developments with Will Serve or Conditional Will Serve Letters that drop off or fail to come to fruition will add to existing projected capacity and extend the projected life of the water system. Similarly, water utilization for a particular use in one location could be redirected to a different location if served by the same source. The existing jail, if relocated, would more than likely abandon one of its two 2-inch meters, again demonstrating that the overall impact of the Project is less than calculated.
- e. Fees shown on page 10 of the fee study include Plymouth participation fees. The County would appreciate an understanding of why these fees are separate and included.
- f. The County is a local government entity and sub-political division of the State of California and cannot be defined as a typical developer or wholesale customer. Because of the uniqueness of the Project and where it is required for public safety, the Project should be considered different than any other. To that extent AWA should consider a policy change for local governments. The County does not wish to have AWA customers unfairly assume any additional burden; however, it is not clear that basing fees utilizing the rates for a 4-inch and 1-inch meter would adversely affect AWA's ratepayers. To the contrary, use of an EDU-based formula that significantly overstates usage will adversely affect the County's taxpayers, and unfairly enrich AWA's ratepayers because the Project would be bearing more than its fair share based on usage.

The County therefore proposes as follows:

- i. The County shall pay participation fees for one 4-inch and one 1-inch water meter(s) as represented in the October 3, 2007, Amador Water System (AWS) Participation Fee Study. The Project will not be subject to any additional fees or a per-EDU charge.**
- ii. AWA shall allow a "credit" for terminations of existing water uses served by the Amador Water System.**
- iii. The County may pay participation fees over a one (1) year period. Alternatively, the County may pay fixed participation fees over a ten (10) year period, with a three percent (3%) annual escalator imposed at the beginning of the second year and each year thereafter on any outstanding balance; provided, however, that in no event shall the County pay proportionately more for water participation fees than participation fees imposed by AWA on any other user.**

3. Monthly Service Fees:

- a. There will most likely be a time lag between installation of the meter and occupancy of the Project and therefore it is reasonable to assume that until water is consumed or wastewater discharged, no additional impact to the water

The County therefore proposes as follows:

- i. AWA shall reserve a minimum of 97 EDU's for the Project.**
- ii. AWA shall provide the County with a Will Serve letter, subject to County owning the property.**

7. Wastewater Participation Fees:

- a. If an agreement between the City of Sutter Creek and AWA is executed for additional wastewater capacity for CSA 4, no major improvements will be needed to serve the Project, such as a new treatment plant.

The County therefore proposes as follows:

- i. County shall pay participation fees of \$9,310.00 per EDU over a one (1) year period. Alternatively, the County may pay participation fees at this fixed rate over a ten (10) year period, with a three percent (3%) annual escalator imposed at the beginning of the second year and each year thereafter on any outstanding balance; provided, however, that in no event shall the County pay proportionately more for wastewater participation fees than participation fees imposed by AWA on any other user.**
- ii. If an agreement is not executed between the City and AWA, the County shall pay participation fees of \$11,728.00 per EDU over a one (1) year period. Alternatively, the County may pay participation fees at this fixed rate over a ten (10) year period, with a three percent (3%) annual escalator imposed at the beginning of the second year and each year thereafter on any outstanding balance; provided, however, that in no event shall the County pay proportionately more for wastewater participation fees than participation fees imposed by AWA on any other user.**



CALIFORNIA ASSOCIATION of SANITATION AGENCIES

1215 K Street, Suite 2290, Sacramento, CA 95814 PH: (916) 446-0388 – FX: (916) 231-2141 www.casaweb.org

VIA ELECTRONIC MAIL

September 11, 2009

TO: CASA Member Agencies
CASA Attorneys
CASA Associates
CASA Executive Board
CASA Legislative Committee

FROM: Mike Dillon, CASA Lobbyist
Christina DiCaro, CASA Lobbyist

RE: **ACTION REQUESTED – URGE GOVERNOR TO VETO SB 802 – LENO:
RETENTION PROCEEDS**

Throughout this Legislative Session, CASA, CSDA, The League of California Cities, California State Association of Counties, education organizations, and several dozen individual cities, special districts, school districts, and others have been opposing SB 802 by Senator Mark Leno. Unfortunately, the list of supporters, including the various contractor organizations, subcontractor groups, and unions, also exceed more than four dozen in number. These groups have significantly more clout than public agencies, and the bill has skated through the legislature with hardly a single “no” vote, despite the strong opposition from local governments. The bill is currently on its way to Governor Schwarzenegger for his signature or veto.

Specifically, SB 802 requires that contract retention proceeds not exceed 5% of the payment of all contracts entered into after January 1, 2010, between a public entity and an original contractor, between an original contractor and a subcontractor, and between all subcontractors. While a token “sunset date” of 2014 has been amended into the bill, CASA and the other local government organizations remain strongly opposed to SB 802. Our only option at this point is to request a Governor’s veto. CASA has argued that in instances where our wastewater agencies and the contractor have established relationships, the retention amount is often reduced to 5%. However, because local agencies must accept the lowest responsible bidder, there are often situations where the contractor fails to complete work on a project. The 10% retention level provides a source of funds to enable completion of the project.

Will you please take a moment and write a letter of opposition to the Governor, and include a couple of reasons stating why you feel retaining the current withhold requirement of 10% is necessary. Specific examples of contractors’ failure to complete the job are always helpful.

Please address your letter to:

The Honorable Arnold Schwarzenegger
Governor of California
State Capitol
Sacramento, CA 95814.

Dear Governor Schwarzenegger:

On behalf of the {AGENCY}, I respectfully request your consideration in vetoing SB 802, by Senator Leno, which seeks to lower the retention proceeds for public contracts from the current 10% down to 5%.

{Agency concerns and examples}.

P.S. If you would like to see a copy of SB 802, please visit: http://leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_802&sess=CUR&house=B&author=leno

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



September 15, 2009

To: California Water and Wastewater Agency Representatives

RE: Survey of Renewable Energy Development Potential Co-located with Water and Wastewater Systems

Dear Water and Wastewater Agency Representative

As you know, California has a long standing commitment to developing clean renewable energy resources and reducing the adverse effects of climate change on our state and the world. In 2008 the State of California made a significant commitment to reducing greenhouse gases (GHG) – the main contributor to climate change. Consistent with other commitments to ensure the reliability and cost effectiveness of the state's power grid, this GHG reduction strategy includes a commitment to develop all cost-effective renewable resources, especially where there are opportunities to co-locate with water and wastewater infrastructure or facilities.

(<http://www.arb.ca.gov/cc/scopingplan/scopingplan.htm>).

In order for California to pursue all reasonable opportunities for renewable development, a clear understanding of the current potential for and constraints to this development is needed. Recognizing the unique and beneficial opportunities to develop and operate renewable power generation co-located with water and wastewater treatment works, such as biogas digesters and fuel cells, the Energy Commission and our partners want to understand the current potential for additional renewable development in the water sector. At the following link, please find the Renewable Energy Development Survey for Water and Wastewater Agencies:

http://www.surveymonkey.com/s.aspx?sm=JCK_2bleCjPfVX6mA8K87kxw_3d_3d

This survey is being conducted in partnership with Association of California Water Agencies, California Association of Sanitation Agencies, Southern California Alliance of Publicly Owned Treatment Works, WaterReuse Association, Bay Area Coalition of Wastewater Agencies, Metropolitan Water District, Southern California Edison and Pacific Gas and Electric. The results of this survey will be shared with various state agencies so that those agencies have a better understanding of the ongoing voluntary efforts by water and wastewater agencies to incorporate renewable energy and energy efficiency practices into their business operations and to further promote such efforts. These agencies include the California Air Resources Board, the Department of Water Resources, the State Water Resources Control Board and the California Public Utilities Commission.

In order to ensure that California can achieve its renewable energy and GHG reduction goals, it is critical that we hear from you and that you provide us as much information as possible in this survey. Our objective is to accurately reflect the real potential for renewable energy development co-located with water and wastewater infrastructure and facilities. We are cognizant of other demands on your time and stress the following:

We do not wish to impose on you or your team any more than we need to. We have developed the survey in an easy-to-access and user friendly format using the online SurveyMonkey.com® service to minimize the time required to complete the survey.

We will be making the results of this survey available to all participants and the final white paper will be published on the Energy Commission's website.

To ensure that we fully understand your responses, we may contact your designated contact person directly to minimize demands on participants' time and ensure accuracy.

Please complete this survey no later than September 30, 2009. If you have any questions about this survey or the use of information gathered as part of this process, please contact me at 916 654-4075 or my assistant, Drew Atwater, at 916 651-2077. On behalf of the Energy Commission and our partners in this survey, we thank you in advance for your time and participation.

Sincerely,

M. Lorraine White
Senior Energy Specialist
California Energy Commission

Senate Bill No. 802

Passed the Senate September 10, 2009

Secretary of the Senate

Passed the Assembly September 9, 2009

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 7108.5 of the Business and Professions Code, to amend Section 3252 of the Civil Code, and to amend Sections 10262 and 10262.5 of, to amend, repeal, and add Section 10261 of, and to add and repeal Section 7201 of, the Public Contract Code, relating to works of improvement.

LEGISLATIVE COUNSEL'S DIGEST

SB 802, Leno. Works of improvement: progress payments: notice: retention proceeds.

(1) Existing law requires that, for private and public works of improvement, and in a public works contract, a prime contractor or subcontractor pay to any subcontractor, not later than 10 days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amount allowed the contractor on account of the work performed by the subcontractors, to the extent of each contractor's interest therein, as prescribed.

This bill would, instead, require that those amounts be paid not later than 7 days after receipt of each progress payment.

(2) Existing law requires, with regard to a contract entered into on or after January 1, 1995, in order to enforce a claim upon any payment bond given in connection with a public work, that a claimant give the 20-day public works bond preliminary notice, as provided. Existing law further authorizes a claimant, if the 20-day public works preliminary bond notice was not given as prescribed by statute, to enforce a claim by giving written notice to the surety and the bond principal, as provided, within 15 days after recordation of a notice of completion, or if no notice of completion has been recorded, within 75 days after completion of the work of improvement.

This bill would, instead, with regard to a contract entered into on or after January 1, 2010, require that the written notice to be given to the surety and the bond principal be given prior to the completion, as defined, of the project, or recordation of a notice of completion.

(3) Existing law authorizes the Department of General Services, or any other department with authority to enter into contracts, to

contract with suppliers for goods and services and for public works. Existing law provides that in a contract relating to the construction of a public work of improvement between the public entity and original contractor, the original contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of retention proceeds withheld cannot exceed the percentage specified in the contract between the public entity and the original contractor.

This bill would instead prohibit retention proceeds from exceeding 5% of the payment, as specified, for those contracts entered into on or after January 1, 2010, between a public entity, as defined, and an original contractor, between an original contractor and a subcontractor, and between all subcontractors thereunder.

(4) Existing law contains various provisions relating to contracts for the performance of public works of improvement, including provisions for the payment of progress payments and the disbursing and withholding of retention proceeds. Existing law prohibits progress payments upon these contracts from being made in excess of 95% of the percentage of actual work completed plus a like percentage of the value of material delivered, as specified, and requires the Department of General Services to withhold not less than 5% of the contract price until final completion and acceptance of the project.

This bill would, until December 31, 2013, instead, prohibit progress payments upon these contracts from being made in excess of 100% of the percentage of actual work completed, and would require the Department of General Services to withhold not more than 5% of the contract price until final completion and acceptance of the project.

The people of the State of California do enact as follows:

SECTION 1. Section 7108.5 of the Business and Professions Code is amended to read:

7108.5. A prime contractor or subcontractor shall pay to any subcontractor, not later than seven days of receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest

therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, then the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount.

Any violation of this section shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2 percent of the amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.

The sanctions authorized under this section shall be separate from, and in addition to, all other remedies either civil, administrative, or criminal.

This section applies to all private works of improvement and to all public works of improvement, except where Section 10262 of the Public Contract Code applies.

SEC. 2. Section 3252 of the Civil Code is amended to read:

3252. (a) With regard to a contract entered into on or after January 1, 1995, in order to enforce a claim upon any payment bond given in connection with a public work, a claimant shall give the 20-day public works preliminary bond notice as provided in Section 3098.

(b) (1) On and after January 1, 1995, and before January 1, 2010, if the 20-day public work preliminary bond notice was not given as provided in Section 3098, a claimant may enforce a claim by giving written notice to the surety and the bond principal as provided in Section 3227 within 15 days after recordation of a notice of completion. If no notice of completion has been recorded, the time for giving written notice to the surety and the bond principal is extended to 75 days after completion of the work of improvement.

(2) On and after January 1, 2010, if the 20-day public work preliminary bond notice was not given as provided in Section 3098, a claimant may enforce a claim by giving written notice to the surety and the bond principal, as provided in Section 3227, prior to completion, as defined in Section 3086, of the project, or recordation of a notice of completion.

SEC. 3. Section 7201 is added to the Public Contract Code, to read:

7201. (a) (1) This section shall apply with respect to all contracts entered into on or after January 1, 2010, between a public entity and an original contractor, between an original contractor and a subcontractor, and between all subcontractors thereunder, relating to the construction of any public work of improvement.

(2) Under no circumstances shall any provision of this section be construed to limit the ability of any public entity to withhold 150 percent of the value of any disputed amount of work from the final payment, as provided for in subdivision (c) of Section 7107. In the event of a good faith dispute, nothing in this section shall be construed to require a public entity to pay for work that is not approved or accepted in accordance with the proper plans or specifications.

(3) For purposes of this section, “public entity” means the state, including every state agency, office, department, division, bureau, board, or commission, the California State University, the University of California, a city, county, city and county, including chartered cities and chartered counties, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(b) (1) The retention proceeds withheld from any payment by a public entity from the original contractor, by the original contractor from any subcontractor, and by a subcontractor from any subcontractor thereunder shall not exceed 5 percent of the payment. In no event shall the total retention proceeds withheld exceed 5 percent of the contract price. In a contract between the original contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between the public entity and the original contractor.

(2) This subdivision shall not apply if the contractor provides written notice to the subcontractor, pursuant to subdivision (c) of Section 4108, prior to, or at, the time that the bid is requested, that bonds may be required, and the subcontractor subsequently is unable or refuses to furnish to the contractor a performance and payment bond issued by an admitted surety insurer.

(c) A party identified in subdivision (a) shall not require any other party to waive any provision of this section.

(d) This section shall remain in effect only until January 1, 2014, and as of that date is repealed.

SEC. 4. Section 10261 of the Public Contract Code is amended to read:

10261. (a) Payments upon contracts shall be made as the department prescribes upon estimates made and approved by the department, but progress payments shall not be made in excess of 100 percent of the percentage of actual work completed plus a like percentage of the value of material delivered on the ground or stored subject to or under the control of the state, and unused, except as otherwise provided in this section. The department shall withhold not more than 5 percent of the contract price until final completion and acceptance of the project. However, at any time after 95 percent of the work has been completed, the department may reduce the funds withheld to an amount not less than 125 percent of the estimated value of the work yet to be completed, as determined by the department, if the reduction has been approved, in writing, by the surety on the performance bond and by the surety on the payment bond. The Controller shall draw his or her warrants upon estimates so made and approved by the department and the Treasurer shall pay them. The funds may be released by electronic transfer if that procedure is requested by the contractor, in writing, and if the public entity has, in place at the time of the request, the mechanism for the transfer.

(b) This section shall remain in effect only until December 31, 2013, and as of January 1, 2014, is repealed.

SEC. 5. Section 10261 is added to the Public Contract Code, to read:

10261. (a) On and after January 1, 2014, payments upon contracts shall be made as the department prescribes upon estimates made and approved by the department, but progress payments shall not be made in excess of 95 percent of the percentage of actual work completed plus a like percentage of the value of material delivered on the ground or stored subject to or under the control of the state, and unused, except as otherwise provided in this section. The department shall withhold not less than 5 percent of the contract price until final completion and acceptance of the project. However, at any time after 95 percent of the work has been completed, the department may reduce the funds withheld to an amount not less than 125 percent of the estimated value of the

work yet to be completed, as determined by the department, if the reduction has been approved, in writing, by the surety on the performance bond and by the surety on the payment bond. The Controller shall draw his or her warrants upon estimates so made and approved by the department and the Treasurer shall pay them. The funds may be released by electronic transfer if that procedure is requested by the contractor, in writing, and if the public entity has, in place at the time of the request, the mechanism for the transfer.

(b) This section shall take effect on January 1, 2014.

SEC. 6. Section 10262 of the Public Contract Code is amended to read:

10262. The contractor shall pay to his or her subcontractors, within seven days of receipt of each progress payment, the respective amounts allowed the contractor on account of the work performed by his or her subcontractors, to the extent of each subcontractor's interest therein. The payments to subcontractors shall be based on estimates made pursuant to Section 10261. Any diversion by the contractor of payments received for prosecution of a contract, or failure to reasonably account for the application or use of the payments constitutes ground for actions proscribed in Section 10253, in addition to disciplinary action by the Contractors' State License Board. The subcontractor shall notify, in writing, the Contractors' State License Board and the department of any payment less than the amount or percentage approved for the class or item of work as set forth in Section 10261.

SEC. 7. Section 10262.5 of the Public Contract Code is amended to read:

10262.5. (a) Notwithstanding any other law, a prime contractor or subcontractor shall pay to any subcontractor, not later than seven days of receipt of each progress payment, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, then the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount.

Any contractor who violates this section shall pay to the subcontractor a penalty of 2 percent of the amount due per month

for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.

(b) This section shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to a contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by a contractor or deficient subcontract performance or nonperformance by a subcontractor.

(c) On or before September 1 of each year, the head of each state agency shall submit to the Legislature a report on the number and dollar volume of written complaints received from subcontractors and prime contractors on contracts in excess of three hundred thousand dollars (\$300,000), relating to violations of this section.

AMADOR WATER AGENCY

SPECIAL MEETING OF THE
BOARD OF DIRECTORS OF THE
AMADOR WATER AGENCY
HAS BEEN CALLED BY THE PRESIDENT FOR

September 18, 2009
11:00 a.m. (or as soon as can be heard thereafter)
12800 Ridge Rd
Sutter Creek, CA 95685

AWA Facilities Tour

1. **CALL TO ORDER**

2. **IMPROVEMENT DISTRICTS (Wastewater Improvement District No.1)**
 - A. Pine Grove Wastewater
 - B. Gayla Manor Wastewater

3. **CAWP Facilities Tour**
 - A. Buckhorn Water Treatment Plant
 - B. Buckhorn Backwash Water

4. **ADJOURNMENT**

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.