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State Water Resources Control Board

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Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC HEARING

Bear Valley in Alpine County

The State Water Resources Control Board will hold a
Public Hearing to consider
**Lake Alpine Water Company's and the County of Alpine's
Petition for Partial Assignment of State Filed Application (SFA) 5648 and
Accompanying Application 5648X07, Petition for Changes to SFA 5648, and
Application 31523**

The **Public Hearing**
will commence on
Monday, July 14, 2008, at 10 a.m.

in

the Sierra Hearing Room
Joe Serna, Jr./Cal EPA Building
1001 I Street, Second Floor
Sacramento, CA

PURPOSE OF HEARING

The purpose of this hearing is to receive evidence to be considered in determining whether to approve the following petitions and applications jointly filed by Lake Alpine Water Company and the County of Alpine (jointly referred to herein as "Applicants"): (1) petition for partial assignment of State Filed Application (SFA) 5648 and accompanying Application 5648X07; (2) petition to change the place and purpose of use of SFA 5648 and to add a point of diversion to SFA 5648; and (3) alternatively, if the above petitions are not approved, Application 31523. The State Water Board will also consider whether it is more appropriate to release the priority of SFA 5648 in favor of Application 31523 instead of assigning a portion of SFA 5648.

Any interested person may appear at the hearing and present their views and objections to the Applicants' request for assignment of SFA 5648 or to the release of the priority of SFA 5648 in favor of Application 31523.

BACKGROUND

State Filed Applications

The Legislature has authorized the filing of applications by the State to appropriate water that “is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking toward the development, utilization, or conservation of the water resources of the state.” (Wat. Code, § 10500.) These “state filed applications” are held by the State Water Board, which may release from priority or assign any portion of an application when “the release or assignment is for the purpose of development not in conflict with such general plan or coordinated plan or with water quality objectives established pursuant to law.” (*Id.*, § 10504.) The State Water Board may not release from priority or assign a state filed application if the county in which the water originates would be deprived of water necessary for its development. (*Id.*, §§ 10505, 10505.5.)

State Filed Application 5648

SFA 5648 was filed on July 30, 1927 for irrigation and domestic use on 310,000 acres within an area roughly comprising Amador County, Calaveras County, Stanislaus County, and Eastern San Joaquin County. The attached “Table Summarizing Development – SFA 5648” provides a summary of administrative actions taken by the State with regard to the assignment or partial assignment and release of priority of SFA 5648.

Project Description

The Bear Valley resort community was developed pursuant to the Bear Valley Master Plan (BVMP), which established a plan for residential, commercial, and recreational development on 870 privately owned acres in the Bear Valley area on the north side of Highway 4. The community of Bear Valley is located in Alpine County within the Stanislaus National Forest. (See Figure 1 - Project Location Map.)

In 1978, the County of Alpine (County) certified the BVMP Environmental Impact Report (EIR), which was prepared for modifications and enlargements to the existing master plan for Bear Valley. A mitigation measure in the 1978 BVMP EIR required the County to develop a guaranteed water supply to serve planned growth under the BVMP. The County proposes this project, which consists of the water right applications and petitions that are the subject of this hearing, to implement that mitigation measure.

Lake Alpine Water Company (LAWC) supplies municipal and recreational water to the Bear Valley resort development area by directly diverting water as follows: (1) at three springs located at the north end of Bear Valley, (2) at two intermittent tributaries to Bear Creek, and (3) from storage at Bear Lake (Reba Dam). Bear Lake is located at the headwaters of Bear Creek, which flows tributary to Blood Creek thence the North Fork of the Stanislaus River. Bear Lake (Reba Dam) was completed in 1965 and has an “as-built” maximum capacity of 360 acre-feet (af). (See Figure 2 – Project Boundary Map.)

Water Rights History: During the 1960s, appropriative water rights were initially secured by LAWC with the 1961 filing of water right Application 20312 (Permit 13903) and with the 1963 filing of water right Application 21485 (Permit 14541). In 1978 and 1980, water right Licenses 10840 and 11007 were issued pursuant to Permits 13903 and 14541. The following table provides a summary of the licensed water rights.

**Lake Alpine Water Company
Recorded Licensed Water Rights**

Recorded Right*	Priority Dated	Authorized Direct Diversion Rate**	Authorized Storage Amount ¹	Authorized Diversion Seasons	Authorized Purposes of Use ²	Authorized Maximum Annual Use** Limitations ³
A020312 P013903 L010840	07/21/1961	0.75 cfs	0	01/01 – 12/31	Domestic Municipal Snowmaking	42 afa
A021485 P014541 L011007	10/07/1963	0.05 cfs	240 af	Direct Diversion: 01/01 – 12/31 Storage: 10/01 – 06/01	Domestic Municipal Snowmaking	Taken from source: 261 afa (direct diversion (dd) + storage) Placed to beneficial use: 140 afa (dd + withdraw from storage)

An identification number beginning with “A” refers to the application number, “P” refers to permit number, and “L” refers to License number

** cfs = cubic feet per second; af = acre-feet; afa = acre-feet per annum

¹ The “as-built” capacity of Bear Lake is 360 afa, not 240 afa as licensed.

² Snowmaking season is restricted to the period 11/01 – 03/01.

³ The maximum annual amount of water diverted under License 10840 and License 11007 shall not exceed 182 afa.

Submitted Petitions and Application

The maximum allowable annual use of water by LAWC under existing appropriative water rights Licenses 10840 and 11007 is limited to 182 afa. Additionally, License 11007’s maximum allowable storage at Bear Lake is limited to 240 af, even though the “as built” capacity of Bear Lake is 360 af. Therefore, the Applicants seek to obtain additional appropriative rights (1) to authorize the full amount of water that could be stored and beneficially used in Bear Lake (approximately 220 af of storage¹) and (2) to directly divert an additional 175 afa from Bear Creek. The total combined direct diversion and storage sought during any one year under the submitted filings is 395 afa.

Initial Filings: On April 19, 1996, LAWC filed a petition for partial assignment of SFA 5648. The petition and accompanying water right application requested the additional appropriation of water from Bear Creek tributary to Blood Creek thence the North Fork Stanislaus River, at a

¹ Although LAWC’s existing License 11007 authorizes 240 af of storage, the licensed right only allows for the withdrawal of 140 af of stored water in any year. LAWC wants to be able to make full use of all of Bear Lake’s 360 af of storage capacity. The 220 af requested is calculated as follows: (120 af of unpermitted storage capacity) + (100 af of licensed, but unused storage capacity) = 220 af. The 220 af requested is added to the 140 af of currently authorized withdrawal and equals 360 af.

maximum rate of 0.78 cfs (139 afa) by direct diversion (October 1 – August 31) and 256 af by storage at Bear Lake (October 1 – August 31) for municipal, recreational, and snowmaking purposes within Alpine County.²

On June 20, 1997, the Division of Water Rights (Division) noticed the filings, and protests were submitted by the following five entities: U.S. Bureau of Reclamation, Department of Water Resources, Stockton East Water District, Oakdale Irrigation District, and Delta Water Users Association. On March 12, 1999, the Division notified LAWC of its intent to accept all protests.

Amended Filings: In 2000, the State Water Board requested additional information from LAWC to support its contention that the place of use of SFA 5648 includes or was intended to include the Applicants’ proposed petitioned purposes of use, place of use, or point of diversion.

In 2003, LAWC submitted an amended petition for partial assignment of SFA 5648 with accompanying Application 5648X07. LAWC also filed a petition to change the place and purpose of use of SFA 5648, and to add a point of diversion to SFA 5648. The 1996 filings were revised by the amended 2003 filings, as follows: (1) the County of Alpine was added as a co-applicant, (2) snowmaking was deleted as a purpose of use, (3) the requested direct diversion annual limitation was increased from 139 afa to 175 afa and the requested storage amount was reduced from 256 af to 220 af (the combined direct diversion and storage amount not to exceed 395 afa), (4) the requested direct diversion season and storage season was modified to the period October 1 through July 31, and (5) the proposed place of use area was reduced.

In the event that Applicants’ petitions are denied, the Applicants filed Application 31523, under claim of area-of-origin preference, in order to qualify for an exemption from the Declaration of Fully Appropriated Stream Listing.³ Application 31523 is identical to the Applicants’ application accompanying the petition for partial assignment of SFA 5648X07.

The following table summarizes the Applicants’ 2003 filings.

**Lake Alpine Water Company - Alpine County
2003 Water Rights Filing**

Submitted Filing	Requested Direct Diversion Rate	Requested Storage Amount	Requested Diversion Season	Requested Purposes of Use	Proposed Maximum Annual Use Limitations
SFA 5648X07 A031523	0.78 cfs	220 af	10/01 - 07/31	Municipal Recreation	395 afa (dd + storage)

² LAWC seeks to divert water from streams tributary to the Stanislaus River. State Water Board Order WR 89-25 declared the Stanislaus River to be fully appropriated from the confluence of the San Joaquin River upstream from April 1 to November 30, based on the 1929 Stanislaus River Decree and Decision 1422. State Water Board Order WR 98-08, allows state filed applications to be processed on fully appropriated stream systems. Such filings must be processed in the manner provided by law. (State Water Board Order WR 98-08, p. 19.)

³ State Water Board Orders WR 89-25 and 98-08 provide for the acceptance of new applications that propose appropriations entitled to the benefit of area-of-origin principles. (See, e.g., Wat. Code, §§ 11460 et seq., 10500 et seq.)

Petition for Change of SFA 5648: SFA 5648 does not include the Bear Valley area within Alpine County as a place of use. SFA 5648's purposes of use are limited to irrigation and domestic uses. The Applicant's 2003 petition for change of SFA 5648 requests that: (1) SFA 5648's place of use be changed to include the area being served by the LAWC in Alpine County, (2) SFA 5648's purpose of use be modified to include municipal and recreational uses, and (3) SFA 5648's points of diversion be modified to include Bear Lake (Reba Dam) as a point of diversion and rediversion.

Protests to 2003 Filings: On December 10, 2004, the Division noticed the 2003 filings. The following entities filed protests: Oakdale Irrigation District, South San Joaquin Irrigation District, U.S. Bureau of Reclamation, Calaveras County Water District, Northern California Power Agency, California Department of Fish and Game, and Central Sierra Environmental Resources Center.

Status of Protests:

All submitted protests against the Applicants' 1996 filings and 2003 amended filings have been resolved, withdrawn and/or dismissed.

Water Availability Information

The Applicants have submitted a water availability analysis comprising a hydrologic evaluation of the Bear Creek and Blood Creek watersheds, and a review of the historic development under SFA 5648. The analysis concludes that the total recorded water rights demand within the Blood Creek and Bear Creek watersheds, including the Applicants' existing and proposed total use demand of 577 afa, represents less than 2.8 percent of the estimated discharge of Blood Creek at its confluence with the North Fork Stanislaus River. Additionally, according to the Applicants, a review of water availability under SFA 5648 for the North Fork Stanislaus River indicates that sufficient reserved direct diversion and storage under SFA 5648 exists to allow the Applicants' proposed maximum diversion amount of 395 afa.

Environmental Information

The County is lead agency under the California Environmental Quality Act (CEQA). As lead agency, the County prepared an Environmental Impact Report (EIR) on the proposed Bear Creek Water Rights Applications pursuant to CEQA section 21000 et seq. (State Clearing House # 2006012049.) By Resolution R2006-43A, dated September 5, 2006, the County adopted a Final EIR; a statement of findings, facts and overriding considerations; and a mitigation monitoring and reporting program. On February 5, 2007, the County filed a Notice of Determination.

KEY ISSUES

1. Petition for Partial Assignment of SFA 5648
 - a. Does the State of California have a general and coordinated plan for the development of water that would use SFA 5648?
 - b. Does Alpine County or any other county covered under SFA 5648 have a general and coordinated plan for the development of water that would use SFA 5648?
 - c. Will the State Water Board's partial assignment of SFA 5648 to the Applicants be for purposes of development that are not in conflict with a general and coordinated plan or with water quality objectives established pursuant to law?
 - d. Is unappropriated water available for appropriation? To what extent, if any, should

the pre-1914 rights adjudicated under the 1929 Stanislaus River Decree be considered in the determination of water availability?

- e. Will the assignment or release of priority of SFA 5648 adversely affect any holders of post-1914 appropriative water rights in the counties of origin whose rights are junior to SFA 5648 but senior to Application 31523? If yes, how will those rights be adversely affected? What are those rights?
- f. Should the State Water Board approve the petition for partial assignment of SFA 5648? If so, what conditions, if any, should be included in the approval to ensure that the diversion is in accordance with applicable law and in the public interest?
- g. Should the State Water Board release the priority of SFA 5648 in favor of Application 31523? If so, what conditions, if any, should be included in the approval to ensure that the diversion is in accordance with applicable law and in the public interest?
- h. In which county or counties does the water covered by SFA 5648 originate? Will the State Water Board's partial assignment deprive the county or counties in which the water covered by the application originates of any such water necessary for the development of the county or counties?
- i. What terms and conditions, if any, should be included in any permit issued by the State Water Board? Will approval of the application result in adverse environmental impacts, including water quality impacts, or harm to public trust resources? What conditions, if any, should the State Water Board adopt to avoid or mitigate any adverse impacts on fish, wildlife, or other public trust resources that may occur as a result of approval of the petition?

2. Petition to Change SFA 5648

- a. Do the Applicants' petition and application for partial assignment of SFA 5648 propose the development of water within the place of use designated by SFA 5648, particularly insofar as it pertains to the Stanislaus River watershed?
- b. Would approval of the Applicants' petition to change the point of diversion, place of use, and purposes of use for SFA 5648 result in injury to any legal user of water, unreasonably affect fish, wildlife, or instream beneficial uses, and serve the public interest?
- c. Should the State Water Board approve the Applicants' change petition for SFA 5648? If so, what conditions, if any, should be included in the State Water Board order approving the change petition?

3. Application 31523 – Area of Origin Claim

- a. Are the Applicants entitled to priority for any of the following reasons: 1) under the watershed protection statutes (Wat. Code, §§ 11128, 11460 et seq.), 2) under the county of origin statutes (Wat. Code, § 10500 et seq.), or 3) over holders of post-1914 appropriative water rights in the counties of origin whose rights are junior to SFA to 5648 but senior to Application 31523?
- b. Is water available for appropriation? If so, when and under what circumstances is water available?

- c. Is the proposed appropriation for a beneficial use and in the public interest? If the State Water Board approves the application, what conditions, if any, should be included in the permit to ensure that the diversion is in accordance with applicable law and in the public interest?
- d. Will the proposed appropriation cause injury to the prior rights of other legal users of the water, cause environmental impacts or harm to public trust resources, or cause degradation of water quality on a project-specific or cumulative basis?
- e. If issues 3a – 3d are answered affirmatively, what terms or conditions should be included in the approval to mitigate for such impacts or harm that may occur as a result of approval of the application?

HEARING OFFICER AND HEARING TEAM

State Water Board Member Francis Spivy-Weber will preside as hearing officer over this proceeding. Other members of the State Water Board may be present during the hearing (and any pre-hearing conference). State Water Board staff hearing team members will include Staff Counsel Matt Bullock, Water Resources Control Engineer Ernest Mona, and Environmental Scientist Jane Farwell. The hearing staff will assist the hearing officer and other members of the State Water Board throughout this proceeding.

PRE-HEARING CONFERENCE

No pre-hearing conference has been scheduled for this hearing.

HEARING PARTICIPATION

IF YOU WANT TO TAKE PART IN THE EVIDENTIARY HEARING, you should carefully read the enclosure entitled “Information Concerning Appearance at Water Right Hearings.” As stated in that enclosure, parties wishing to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than the deadline listed below.

Within one week after the deadline for Notices of Intent to Appear, the State Water Board will mail out a list of those who have indicated a desire to participate in the hearing and a copy of all Notices of Intent to Appear that were timely received by the State Water Board. The list is provided in order to facilitate exchange of written testimony, exhibits, and witness qualifications in advance of the hearing. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence. Copies of witnesses’ proposed **testimony, exhibits, lists of exhibits, and qualifications** must be **received** by the State Water Board and served on each of the parties who have indicated their intent to appear, no later than the deadline listed below.

Noon, Wednesday, June 4, 2008 Deadline for receipt of Notice of Intent to Appear.

Noon, Tuesday, July 1, 2008 Deadline for receipt and service of witnesses' proposed testimony, exhibits, lists of exhibits, and qualifications.

SUBMITTALS TO THE STATE WATER BOARD: Notices of Intent to Appear, written testimony, and other exhibits submitted to the State Water Board should be addressed as follows:

Division of Water Rights
State Water Resources Control Board
Attention: Ernest Mona
P.O. Box 2000
Sacramento, CA 95812-2000

Phone: (916) 341-5359
Fax: (916) 341-5400

Email: wrhearing@waterboards.ca.gov

With Subject of "Lake Alpine Water Company - SFA 5648 Hearing"

IF YOU HAVE ANY QUESTIONS

During the pendency of this proceeding and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants regarding substantive or controversial procedural matters within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters should be directed to Ernest Mona at (916) 341-5359 or emona@waterboards.ca.gov or to Matt Bullock at (916) 341-5164 or mbullock@waterboards.ca.gov.

PARKING, ACCESSIBILITY AND SECURITY

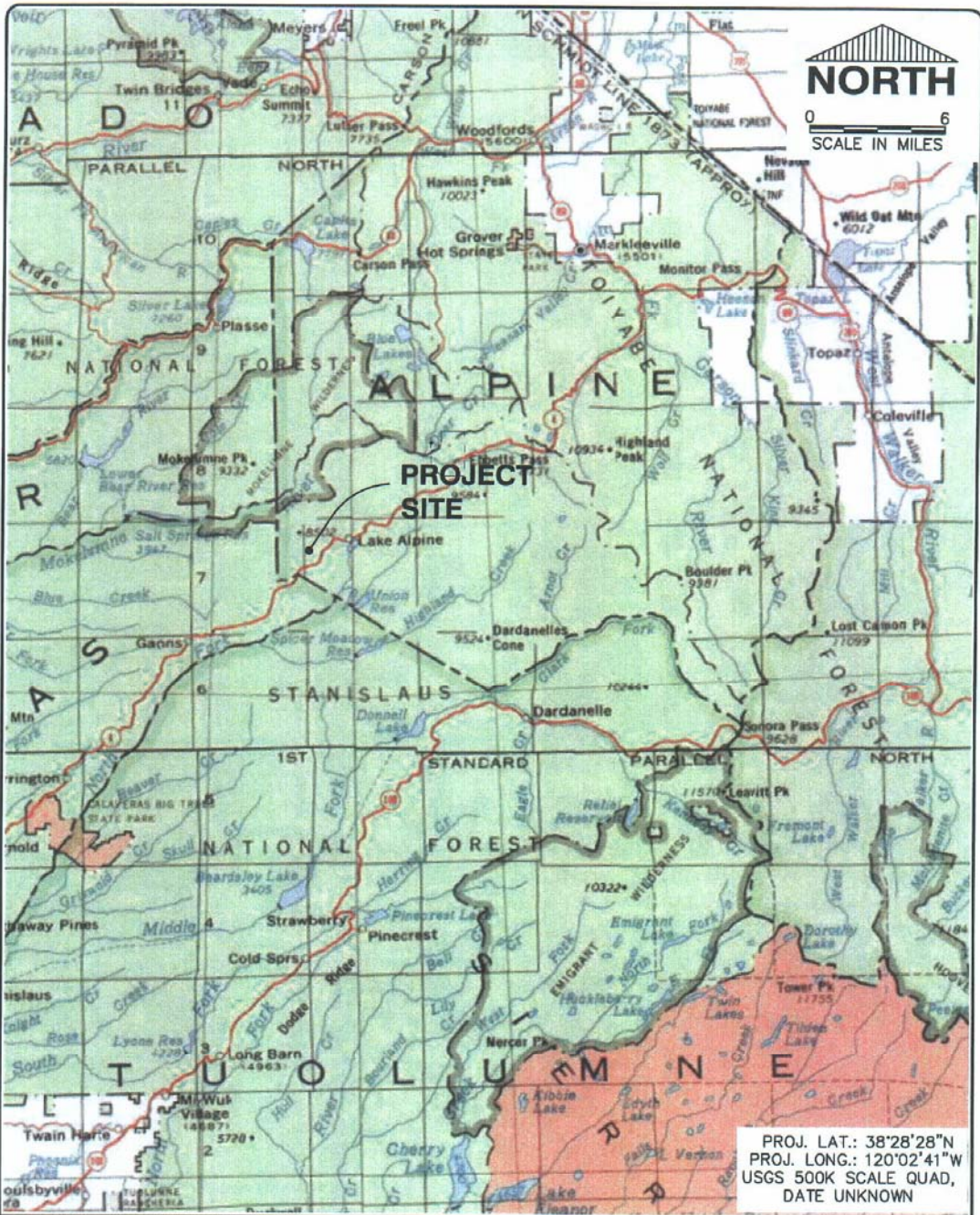
The enclosed maps show the location of the Joe Serna Jr./Cal-EPA Building and public parking sites in Sacramento. The Joe Serna Jr./Cal-EPA Building is accessible to people with disabilities. Individuals who require special accommodations at the Joe Serna Jr./Cal-EPA Building are requested to contact Catherine Foreman, Office of Employee Assistance, at (916) 341-5881.

Due to enhanced security precautions at the Cal-EPA Headquarters Building, all visitors are required to register with security staff prior to attending any meeting. To sign in and receive a visitor's badge, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take up to fifteen minutes. Please allow adequate time to sign in before being directed to the hearing.

Date May 21, 2008

Jeanine Townsend
Jeanine Townsend
Clerk to the Board

Enclosures



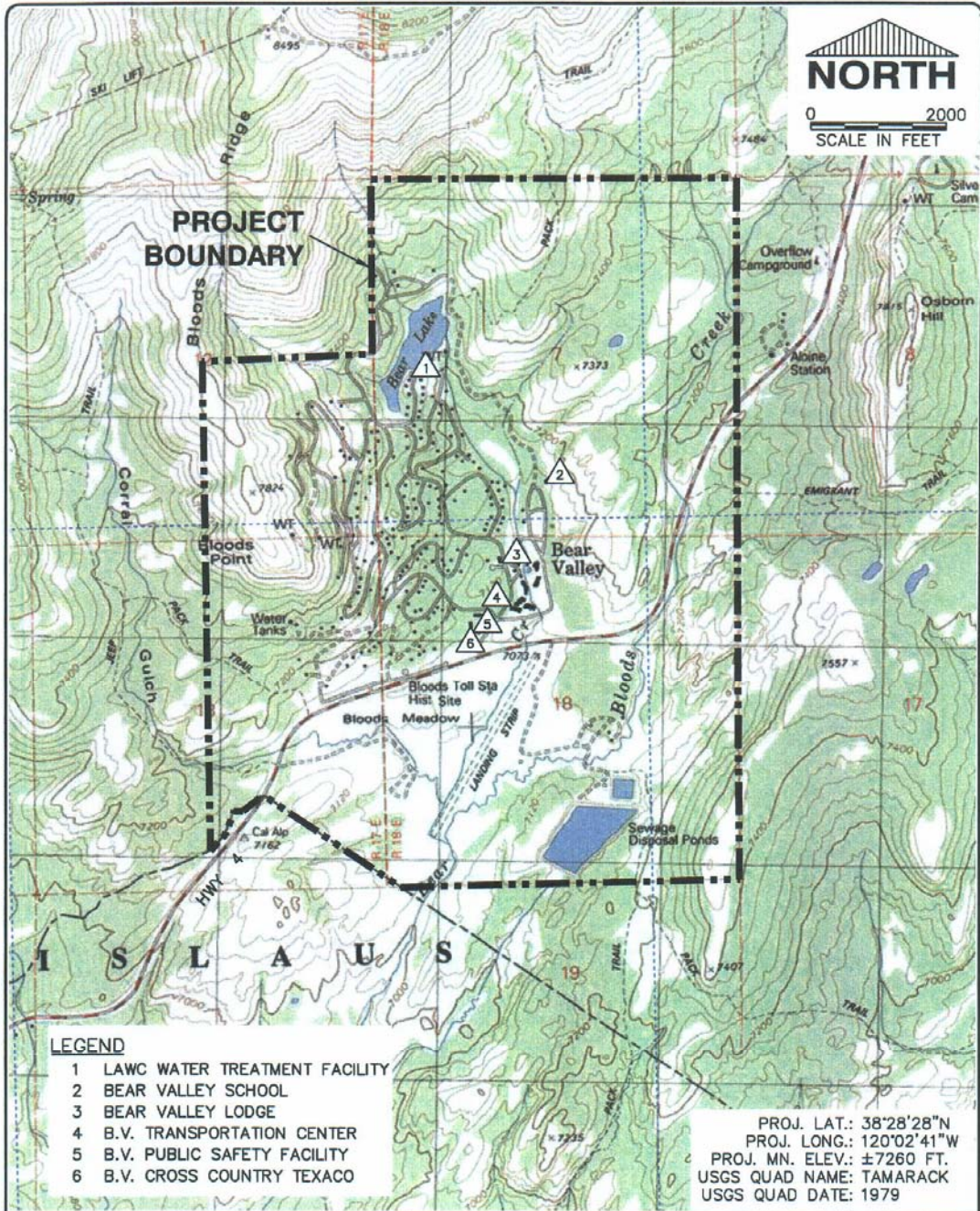
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 PROJ. LONG.: 120°02'41"W
 USGS 500K SCALE QUAD,
 DATE UNKNOWN

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Job No.	4800A
Published Date	8 MAR. 2006
Scale	AS SHOWN
Drawn	DJT
Chk'd	PMRG

VICINITY MAP
BEAR CREEK WATER RIGHTS E.I.R.
ALPINE COUNTY
BEAR VALLEY, ALPINE COUNTY,
CALIFORNIA

FIGURE
1
 File No.
 4800A-F1



LEGEND

- 1 LAWC WATER TREATMENT FACILITY
- 2 BEAR VALLEY SCHOOL
- 3 BEAR VALLEY LODGE
- 4 B.V. TRANSPORTATION CENTER
- 5 B.V. PUBLIC SAFETY FACILITY
- 6 B.V. CROSS COUNTRY TEXACO

PROJ. LAT.: 38°28'28"N
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 PROJ. MN. ELEV.: ±7260 FT.
 USGS QUAD NAME: TAMARACK
 USGS QUAD DATE: 1979

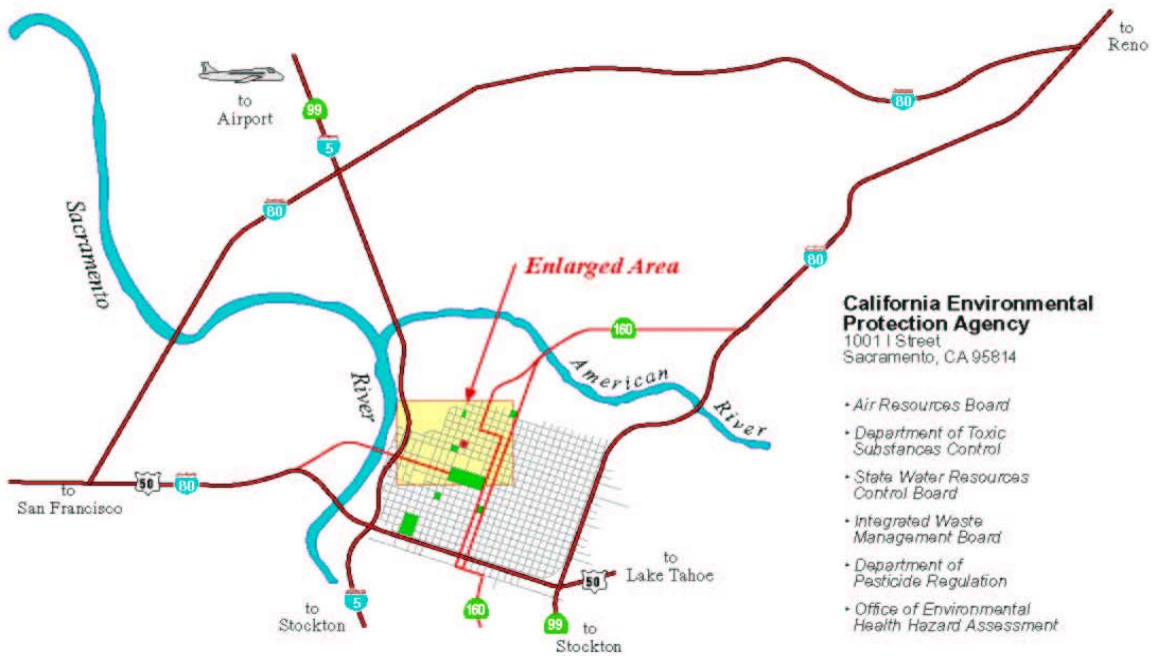
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PROPOSED PROJECT SITE MAP
BEAR CREEK WATER RIGHTS E.I.R.
ALPINE COUNTY
BEAR VALLEY, ALPINE COUNTY,
CALIFORNIA

FIGURE
2
 File No.
 4800A-F1

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Parking Lot Locations



Parking Lot Locations

- Lot 1 (7th & G St.)
- Lot 2 (7th & G St.)
- Lot A (7th & Capitol)
- Lot C (14th & H St.)
- Lot G (3rd & L)
- Lot H (10th & L)
- Lot I (10th & I, 11th & I)
- Lot K (6th & J/L, 7th & K)
- Lot P (2nd & I)
- Lot U (5th & J)
- Lot W (2nd & I St.)

Table Summarizing Development - SFA 5648

SOURCES	DIVERSION AMOUNT (JAN. 1 – DEC. 31)	DIVERSION LOCATION (Diversion Description)	CONDITIONED RELEASE FROM PRIORITY	CONDITIONED ASSIGNMENT	RELATED APPLICATIONS AND/OR DECISION/ORDERS (SEE NOTES)
FOREST CREEK	D/D: 25 cfs (18,067 afa)	SEC. 24, T7N, R14E	(1) 140,000 afa		(1) A13156 (P10478), A15201 (P10479) – [See note “C”]
MIDDLE FORK MOKELUMNE RIVER	D/D: 140 cfs (101,178 afa) STO: 80,000 afa	SEC.8, T6N, R13E SW1/4 SEC.12, T6N, R13E (Middle Fork Reservoir)	(1) 140,000 afa	(1) D/D: 4 cfs STO: 150,000 afa (2) STO: 2,130 afa (6,656 afa Safe Yield)	(1) A13156 (P10478), A15201 (P10479) – [See note “C”] (2) A5648-D [See note “H”] (3) A5648-F [See note “I”]
SOUTH FORK MOKELUMNE RIVER	D/D: 25 CFS (18,067 afa) D/D: 230 CFS (166,221 afa) STO: 40,000 afa	SEC.2, T5N, R14E SEC.16, T6N, R13E NE1/4 SEC.23, T6N, R13E (Railroad Flat Reservoir)	(1) 140,000 afa	(2) STO: 2,130 afa (6,656 afa safe yield)	(1) A13156 (P10478), A15201 (P10479) – [See note “C”] (2) A5648-F [See note “I”]
MOKELUMNE RIVER	D/D: 300 CFS (216,810 afa)	SEC.18, T5N, R11E (Pardee Reservoir)	(1) 140,000 afa	(2) 5,000 afa	(1) A13156 (P10478), A15201 (P10479) – [See note “C”] (2) A5648-B [See note “D”]
CALAVERAS RIVER	D/D: 800 CFS (578,160 afa) STO: 100,000 afa	SW1/4 SEC.31, T4N, R11E (New Hogan Reservoir)	(1) D/D: 13.75 cfs STO: 11,500 afa (3) STO: 76,000 afa (4) STO: 76,300 afa	(2) D/D: 200 cfs STO: 325,000 afa	(1) A6522 (L2021) – [See note “A”] (2) A5648-C, A5648-C1 through C15 – [See note “E”] (3) A12668 (cancelled) – [See note “F”] (4) A14250 (cancelled), A14251 (cancelled), A18729 (cancelled), A18855 (revoked) , A11792B (P15013) – [See note “G”]
HIGHLAND CREEK	STO: 65,000 afa	NE1/4 SEC.9, T6N, R18E (Spicer Reservoir)			
NORTH FORK STANISLAUS RIVER	STO: 30,000 afa D/D: 975 cfs	NW1/4 SEC.23, T6N, R16E SEC.2, T4N, R15E (CALAVERAS COUNTY) (Ramsey Reservoir)			
MIDDLE FORK STANISLAUS RIVER	STO: 60,000 afa	NE1/4 SEC.14, T4N, R17E (Beardsley Reservoir)		STO: 60,000 afa	A5648-A (Decision 777) – [See note “B”]
STANISLAUS RIVER	D/D: 600 CFS (433,620 afa)	SEC.11, T1N, R13E (New Melones Dam)			

NOTES:

- a. January 30, 1931 – **Unconditional release from priority** to Linden Irrigation District (Application 6522), insofar as it pertains to the appropriation of water from the Calaveras River. (original application demand - d/d: 154 cfs; sto: 40,000 afa.) Licensed 2021 issued May 9, 1940.
 - April 29, 1958, License 2021 assigned to Stockton and East Stockton Water Conservation District
- b. April 7, 1953 – DECISION 777 – **Conditioned assignment** by the Department of Finance to the Oakdale Irrigation District and South San Joaquin Irrigation District (Tri-Dam project applications: A10872, 11105, 12490, 12614, 12873, 13309, and 13310), of the part of Application 5648 pertaining to Beardsley Reservoir Site (i.e., Middle Fork Stanislaus River.) **SEE APPLICATION 5648-A.**
 - December 8, 1961, California Water Commission approves amendment of Application 5648-A.
- c. March 5, 1959 – **Conditional release from priority** to East Bay Municipal Utility District (EBMUD) (Applications 13156 and 15201), insofar as it pertains to the appropriation of water from the Mokelumne River and its tributaries.
 - The quantity of water which EBMUD is allowed to divert from the Mokelumne River watershed shall not exceed the equivalent of an average flow of 194 cfs or 140,000 afa whether by direct diversion or diversion from storage.
 - 20,000 AFA “RESERVATION” FOR AMADOR COUNTY.
 - 27,000 AFA “RESERVATION” FOR CALAVERAS COUNTY (pursuant to May 8, 1940 agreement between EBMUD and Calaveras Public Utility District.)
- d. August 31, 1959 – **Conditioned assignment** by the California Water Commission to Jackson Valley Irrigation District (5,000 afa), of the part of Application 5648 pertaining to the Mokelumne River Reservation of 20,000 afa for Amador County. **SEE APPLICATION 5648-B.**
 - On January 25, 1979, the State Water Board issued Decision 1490. D-1490 ordered that the right to divert 1,150 afa of Jackson Valley Irrigation District's assigned right revert back to the State.
- e. May 4, 1962 – **Conditioned assignment** by the California Water Commission to the U.S. Bureau of Reclamation (USBR) (Applications 18812 and 18813), of the portion of Application 5648 pertaining to the Calaveras River (New Hogan Project) **SEE APPLICATION 5648-C.**
 - February 1, 1963, USBR reassigns A5648-C back to the California Water Commission.
 - The State Water Board has issued the following conditioned assignments: A5648-C1, A5648-C2, A5648-C3, A5648-C5, A5648-C6, A5648-C7, A5648-C9, A5648-C11, A5648-C13, and A5648-C15 for a total appropriation of 190 afa storage.
- f. May 4, 1962 – **Conditional release from priority** to Stockton and East San Joaquin Water Conservation District (Application 12668), insofar as it pertains to the appropriation of water from Calaveras River (76,000 afa.)
 - April 21, 1964, Application 12668 was cancelled.
- g. May 4, 1962 – **Conditional release from priority** to Calaveras County Water District (Applications 14250, 14251, 18729, 18855 and 11792), insofar as it pertains to the appropriation of water from the Calaveras River watershed.
 - April 21, 1964, Applications 14250, 14251, and 18729 were cancelled.
 - November 9, 1988, Application 18855 was revoked
- h. July 2, 1965 – **Conditional assignment** by the California Water Commission to Calaveras County Water District (d/d: 4 cfs and sto: 150 afa), of a portion of Application 5648 pertaining to Middle Fork Mokelumne River Reservation of 27,000 afa for Calaveras County (West Point Project.) **SEE APPLICATION 5648-D.**
- i. December 2, 1971 – **Conditional assignment** by the State Water Resources Control Board to Calaveras Public Utility District (2,130 afa storage - 6,656 afa, safe yield developed), of the portion of Application 5648 pertaining to South Fork Mokelumne River and Middle Fork Mokelumne River reservation of 27,000 afa for Calaveras County (Jeff Davis Reservoir.) **SEE APPLICATION 5648-F.**

INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

HEARING ON LAKE ALPINE WATER COMPANY'S AND THE COUNTY OF ALPINE'S PETITION FOR PARTIAL ASSIGNMENT OF STATE FILED APPLICATION (SFA) 5648 AND ACCOMPANYING APPLICATION 5648X07, PETITION FOR CHANGES TO SFA 5648, AND APPLICATION 31523

The following procedural requirements will apply and will be strictly enforced:

1. **HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site: http://www.waterboards.ca.gov/laws_regulations/.

Each party has the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. The hearing officer may extend these rights to a non-party participant or may limit the participation of a non-party participant.

Any requests for exceptions to procedural requirements shall be filed in writing with the State Water Board and served on the parties. To provide time for other participants to respond, the hearing officer will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

2. **PARTIES:** The parties are the Lake Alpine Water Company and the County of Alpine. Other persons or entities may participate as authorized by the hearing officer. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence.

A person or entity that appears and presents only a policy statement will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. The rules for policy statements are discussed below.

3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file two copies of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **the deadline prescribed in the Hearing Notice**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the State Water Board as intent not to appear.

The Notice of Intent to Appear must state: (1) the name and address of the participant; (2) the name of each witness who will testify on the participant's behalf; (3) a brief description of each witness' proposed testimony; and (4) an estimate of the time (not to exceed 20 minutes) that the witness will need to present a brief oral summary of their testimony. The witness's testimony must be submitted in writing as described in section 4 below. Participants who do not intend to present a case-in-chief but wish to cross-examine

witnesses or present rebuttal should so indicate on the Notice of Intent to Appear. Participants who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the State Water Board and the other participants as soon as possible.

In order to expedite the exchange of information and lower the cost of participating in the hearing, the State Water Board encourages participants to submit written policy statements, written opening statements, written testimony, exhibits, and an Exhibit Identification Index to the State Water Board in electronic form. In addition, participants may exchange the foregoing documents in electronic form. Hearing participants are not required to submit these documents in electronic form or accept electronic service; however, those who choose to submit these documents electronically must comply with the requirements described in section 5, below. If you are willing to accept electronic media service in lieu of receiving hard copies of items, please check the appropriate box on the Notice of Intent to Appear.

The State Water Board will mail a service list of parties to exchange information to each person who has submitted a Notice of Intent to Appear. The service list will indicate which participants agreed to accept electronic service. If there is any change in the hearing schedule, only those persons or entities that have filed a Notice of Intent to Appear will be informed of the change.

4. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each participant proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.⁴ Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A participant who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each participant shall submit to the State Water Board either: seven paper copies of each of its exhibits; or five paper copies and one electronic copy of each of its exhibits. Each participant shall also serve a copy of each exhibit on every participant on the service list. Participants may serve those parties who agree to electronic service with an electronic copy of exhibits. Participants must serve paper copies of exhibits on those participants who do not agree to electronic service. Hearing participants who intend to make only policy statements are not required to exchange information and will not receive copies of written testimony or exhibits from the parties.

With its exhibits, each participant must submit to the State Water Board and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should submit to the State Water Board and serve on the other participants an electronic copy, as well as a paper copy of the Exhibit Identification Index. Please see section 5 for details regarding electronic submissions.

⁴ The hearing officer may make an exception to this rule if the witness is adverse to the participant presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement. In such a case, the hearing officer may allow presentation of the oral direct testimony without requiring written testimony.

A statement of service with manner of service indicated shall be filed with each participant's exhibits. The exhibits and indexes for this hearing, and a statement of service, must be **received** by the State Water Board and served on the other participants no later than the **deadline** prescribed in the Hearing Notice.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
 - b. The hearing officer has discretion to receive in evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A participant offering an exhibit by reference shall advise the other participants and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the participant relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.
 - c. A participant seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other participants prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a participant waives the opportunity to obtain a copy of the exhibit, the participant sponsoring the exhibit will not be required to provide a copy to the waiving participant. Additionally, such exhibits may be submitted to the State Water Board in electronic form, using a file format readable by Microsoft Office 2003 software.
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
 - e. Participants submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, participants may supply, for the hearing record, a reduced copy of a large format original if it is readable.
5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the State Water Board in electronic form: written opening statements; written policy statements; written testimony; exhibits; and Exhibit Identification Indexes. In addition, the foregoing documents may be served electronically on those participants who have agreed to accept electronic service. Paper copies of all other documents must be submitted to the State Water Board and served on the other parties, unless the hearing officer specifies otherwise.

Any documents submitted or served electronically must be in Adobe™ Portable Document Format (PDF), except for Exhibit Identification Indexes, which must be in a version supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 11 megabytes (incoming mail server attachment limitation) in total size may be sent via electronic mail to: wrhearing@waterboards.ca.gov with a subject of

“Lake Alpine Water Company - SFA 5648 Hearing.” Electronic submittals to the State Water Board of documents greater than 11 megabytes in total size should be sent by regular mail in PDF format on compact disk (CD™) media. Electronic service on participants shall be in the same format as submittals to the State Water Board, and should be submitted to the other participants by mail on CD.

Participants who agree to electronic service may request that specific documents be provided to them in paper copy. Requests should be made to the participant who submitted the document, not to the State Water Board. Participants who receive such a request shall provide a paper copy of the requested document within five days of the date the request is received. The State Water Board will post a list of all exhibits submitted for the hearing on its website at:

http://www.waterrights.ca.gov/HTML/lakealpinewater_alpinecounty.html

6. **ORDER OF PROCEEDING:** The State Water Board member serving as hearing officer will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events. The time limits specified below may be changed by the hearing officer, at his/her discretion, as a result of the pre-hearing conference.
 - a. **Policy Statements Within the Evidentiary Hearing:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not hearing participants. Policy statements will be heard at the start of the hearing, immediately after a hearing officer identifies the parties and other participants. Policy statements are subject to the following provisions in addition to the regulation:
 - i. Policy statements are not subject to the pre-hearing requirements noted above for testimony or exhibits, except that persons wishing to make policy statements are requested to file a Notice of Intent to Appear, indicating clearly an intent to make only a policy statement.
 - ii. The State Water Board requests that policy statements be provided in writing before they are presented. Please see section 5, above, for details regarding electronic submittal of policy statements. Oral summaries of the policy statements will be limited to five minutes or such other time as established by the hearing officer.
 - b. **Presentation of Cases-In-Chief:** Each participant may present a case-in-chief addressing the key issues identified in the hearing notice. The case-in-chief will consist of any opening statement provided by the participant, oral testimony, introduction of exhibits, and cross-examination of the participant's witnesses. The hearing officer may allow redirect examination and recross examination. The hearing officer will decide whether to accept the participant's exhibits in evidence upon a motion of the participant after the case-in-chief has been completed.
 - i. **Opening Statements:** At the beginning of a case-in-chief, the participant or the participant's attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to 20 minutes per participant. A participant may submit a written opening statement. Please see section 5, above, for details regarding electronic submittal of written opening

statements. Any policy-oriented statements by a participant should be included in the participant's opening statement.

- ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed up to 20 minutes to summarize or emphasize their written testimony on direct examination.⁵ Each participant will be allowed up to two hours total to present all of its direct testimony.⁶
 - iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters. If a participant presents multiple witnesses, a hearing officer will decide whether the participant's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to one hour per witness or panel of witnesses. The hearing officer has discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Any redirect examination and recross-examination permitted by a hearing officer will be limited to the scope of the cross-examination and the redirect examination, respectively. Witnesses may be cross-examined on relevant subjects that are not covered in the direct testimony. (Gov. Code, § 11513, subd. (b)) Ordinarily, only a participant or the participant's representative will be permitted to examine a witness, but a hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. State Water Board members and the State Water Board's counsel may ask questions at any time, and the State Water Board members and staff may cross-examine any witness.
- c. **Rebuttal:** After all participants have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer will allow participants to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another participant's case-in-chief. Rebuttal testimony and exhibits need not be submitted prior to the hearing. Rebuttal evidence is limited to evidence that is responsive to evidence presented in a case-in-chief, and it does not include evidence that should have been presented during the presenter's case-in-chief. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.
 - d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times if appropriate, the hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If the hearing officer authorizes the participants to file briefs, five copies of each brief shall be submitted to the State Water Board, and one copy shall be served on each of the other participants on the service list. A participant shall not attach a document of an evidentiary nature to a brief unless the document is at the time in the evidentiary hearing record or is the subject of an offer of the document in evidence. Every participant filing a brief shall file a statement of service with the brief, indicating the manner of service.

⁵ The hearing officer may allow additional time for the oral direct testimony of the witness if the witness is adverse to the participant presenting the testimony and the hearing officer is satisfied that the participant could not produce written direct testimony for the witness.

⁶ The hearing officer may, for good cause, approve a party's request to use more than two hours total to present direct testimony during the party's case-in-chief.

7. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications between either State Water Board members or State Water Board hearing team staff and any of the other participants, including the members of the prosecution team, regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b)) A document regarding *ex parte* communications entitled, "Ex Parte Questions and Answers" is available upon request or from our website at: http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.
8. **RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

STAFF EXHIBITS TO BE OFFERED INTO EVIDENCE

The following items will be offered, by reference, as staff exhibits at the July 14, 2008 hearing on the Lake Alpine Water Company and County of Alpine Petition for Partial Assignment of SFA 5648.

1. All water right files related to:
 - a. State Filed Application 5648
 - b. Application 5648-X07
 - c. Application 31532
 - d. Application 20312
 - e. Application 21485
 - f. Applications 14858, 14859 and related Decision 1422 (New Melones Project)
 - g. State Water Board Orders WR 89-25 and WR 98-08
2. Topographic Maps published by the United States Geological Survey covering the area under consideration.
3. United States Geological Survey, "Water Resource Data, California" for the period of published record and covering the Stanislaus River watershed.
<http://waterdata.usgs.gov/ca/nwis>
4. Climatology Data for the Stanislaus River watershed for the period of published record.
<http://cdec.water.ca.gov/>
5. California Department of Water Resources' Water Data Library (WDL) hydrologic data.
<http://wdl.water.ca.gov/>
6. Water Quality Control Plan, Central Valley Region, as originally approved by the State Water Resources Control Board, and any amendments thereto.

NOTICE OF INTENT TO APPEAR

_____ plans to participate in the water right hearing regarding
(name of party or participant)

**Lake Alpine Water Company's and the County of Alpine's
Petition for Partial Assignment of State Filed Application (SFA) 5648 and
Accompanying Application 5648X07, Petition for Changes to SFA 5648 and
Application 31523**

**scheduled for
Monday, July 14, 2008**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we agree to accept electronic service of hearing-related materials.
- I/we plan to call the following witnesses to testify at the hearing.

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

Name, Address, Phone Number and Fax Number of Attorney or Other Representative

Signature: _____ Dated: _____

Name (Print): _____

Mailing Address: _____

Phone Number: _____ () _____ Fax Number: _____ () _____

E-mail Address: _____

**Lake Alpine Water Company's and the County of Alpine's
Petition for Partial Assignment of State Filed Application (SFA) 5648 and
Accompanying Application 5648X07, Petition for Changes to SFA 5648 and
Application 31523**

scheduled for
Monday, July 14, 2008

Exhibit Identification Index

Participant _____

Exhibit No.	Description	Status as Evidence	
		Introduced	Accepted