

RESOLUTION NO. 2015-1220

RESOLUTION OF THE BOARD OF DIRECTORS OF THE TRABUCO CANYON WATER DISTRICT AMENDING POLICY REGARDING RATE CHANGE PROCEEDINGS

WHEREAS, the Trabuco Canyon Water District ("District") is a county water district organized and operating pursuant to the provisions of Water Code Section 30000 and following; and

WHEREAS, the Board of Directors ("Board") of the District has previously determined that the adoption of a policy regarding water and waste water change proceedings is in the best interests of the District, the Board, District staff, District consultants and District rate payers and customers in order to provide directives, guidance and policies for changes in water, waste water and other rates which are subject to the provisions of Proposition 218, as applicable to the District under certain currently existing case law, and to provide assistance for District staff and members of the public in the District's implementation of such requirements and proceedings; and

WHEREAS, the Board has previously adopted District Resolution No. 2007-1085, on November 21, 2007 ("Resolution No. 2007-1085"), adopting the Trabuco Canyon Water District Policy Concerning Rate Change Proceedings ("2007 Policy"), which 2007 Policy is currently in effect; and

WHEREAS, subsequent to the adoption of the 2007 Policy, State legislation was enacted to clarify various matters concerning Proposition 218 rate change proceedings; and

WHEREAS, based on events and changes to State law, the Board has determined that it is appropriate, at this time, to update and amend the 2007 Policy to reflect current legal circumstances; and

WHEREAS, a proposed amended Trabuco Canyon Water District Rate Change Proceedings Policy has been prepared and presented to the Board for consideration; and

WHEREAS, the Board desires to take action thereon at this time.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE TRABUCO CANYON WATER DISTRICT DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. **Recitals.** The Board does hereby find and determine that the foregoing recitals and above-referenced determinations are true and correct.

Section 2. **Adoption of Amended Policy.** The Board hereby adopts the amended Trabuco Canyon Water District Rate Change Proceedings Policy (hereinafter the "Policy") attached hereto as Attachment "A" and incorporated herein by this reference. The 2007 Policy shall be, and is, superseded by the Policy upon the adoption of this Resolution No. 2015-1220.

Section 3. **Future Amendments to Adopted Policy.** The Board hereby reserves all rights to amend, revise, provide or direct waivers or variations from such Policy and take such other and further actions related to such policy as the Board shall in the future direct, which amendments,

revisions, waivers and variations may be based upon future court interpretations of Proposition 218 and related law, changes in California statutes, economic necessity and other factors as shall be determined by the Board in its sole discretion.

Section 4. Effective Date. This Resolution and the Policy shall be effective upon adoption. The Policy shall also be effective as to any rate change, modification and/or implementation proceedings pending at the time this Resolution is adopted.

Section 5. Further Actions. The General Manager and legal counsel to the District and the District's staff and consultants are authorized to take any and all actions necessary to implement the directives and intention of this Resolution.

ADOPTED, SIGNED and APPROVED this 18th day of November, 2015.

TRABUCO CANYON WATER DISTRICT:



President/Vice President



Secretary/Assistant Secretary

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, Michael Perea, Secretary of the Trabuco Canyon Water District, do hereby certify that the foregoing resolution was duly adopted by the Board of such District at a meeting of such Board held on the 18th day of November, 2015, of which meeting all of the members of the Board had due notice and at which a quorum thereof were present and acting throughout and for which notice and an agenda was prepared and posted as required by law and that at such meeting such resolution was adopted by the following vote:

AYES: Dopudja, Acosta, Haselton, Mandich, Safranski

NOES: None

ABSTAIN: None

ABSENT: None



District Secretary,
Trabuco Canyon Water District

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, Michael Perea, Secretary of the Trabuco Canyon Water District, do hereby certify that the foregoing is a full, true and correct copy of Resolution No. 2015-1220 of such Board and that the same has not been amended or repealed.

Dated this 18th day of November, 2015.



District Secretary,
Trabuco Canyon Water District

ATTACHMENT "A"

FORM OF AMENDED RATE CHANGE POLICY

TRABUCO CANYON WATER DISTRICT

POLICY CONCERNING RATE CHANGE PROCEEDINGS

I. Background.

The electorate of the State of California ("State") previously adopted Proposition 218 on November 5, 1996, which principally added Articles XIIC and XIID to the California Constitution.

By way of the ruling in the case of *Big Horn Desert View Water Agency v. Verjil, etc, et al.*, California Supreme Court Case No. S 127535, the California Supreme Court made the provisions of Section 6 of Article XIID of the California Constitution applicable to various rates and charges of public agencies and entities including, but not limited to, water rates, sewer rates and meter charges of public water districts operating within the State of California.

This Policy Concerning Rate Change Proceedings ("Policy") is adopted by the Board of Directors ("Board") of the Trabuco Canyon Water District ("TCWD") in order to provide directives, guidance and policies for changes in TCWD's water, sewer, recycled water and/or meter rates under the provisions of Proposition 218 as interpreted under the *Big Horn* decision related State legislation, and to provide assistance for staff in the implementation of such requirements.

The findings and directives set forth herein represent the policy and directives of the Board.

II. Notices.

A. Provision of Notice(s).

TCWD shall provide written notice of the hearing(s) and proposed rate change(s) or modification(s) pursuant to the provisions of State law. Written notices shall be provided to owners ("record owner" or collectively "record owners"), as set forth on the currently-available list of assessor parcels from the Orange County Assessor's Office, of parcels within TCWD's service area, and/or to TCWD customers as provided by applicable State law at the time such notices are mailed. To the extent permitted by applicable law, such notice(s) may be provided with, or as part of, TCWD's billing statement(s) for the services(s) which will be affected by such proposed change(s) or modification(s). Alternatively, notice(s) may be provided by separate mailing by TCWD to the address to which TCWD customarily mails the billing statement(s) for fees or charges for the service(s) provided by TCWD.

In the event TCWD desires to preserve authority, if any, to record or enforce a lien on a parcel to which service is provided, TCWD shall also mail written notice of the hearing(s) and proposed rate change(s) to the record owner's address as shown on the last equalized assessment roll, to the extent that address is different from that reflected on the billing statement(s).

B. Form of Notice.

Written notice(s) provided pursuant to this Policy and State law shall include those matters described in Section 6(a)(1) of Article XIID of the California Constitution.

TCWD shall provide written notice(s) by mail (or other legally acceptable means) of the proposed rate change(s) or modification(s) to the record owner of each identified parcel, or to the corresponding TCWD customer(s), as shall be applicable, upon which the proposed rate change(s) or modification(s) as proposed for imposition or implementation, the amount of the proposed rate change(s) or modification(s) to be imposed upon each record owner, or TCWD customer (as shall be applicable), the basis upon which the amount of the proposed rate change(s) or modification(s) are calculated, and the reason(s) for the proposed rate change(s) or modification(s).

Such written notice(s) shall include the date, time and location for the public hearing(s) on the proposed rate change(s) or modification(s). The notice(s) shall state the due date and time for submission of written protests for the proposed rate change(s) or modification(s) and shall state the information required for any protest to be valid and considered by TCWD pursuant to this Policy.

C. Conduct of Public Hearing.

The Board shall at the time, date, and place specified in the corresponding notice(s) conduct a public hearing regarding the proposed rate change(s) or modification(s) as provided for under Section 6(a)(2) of Article XIID of the California Constitution. The public hearing shall take place not less than forty-five (45) days after mailing of the notice(s) of the proposed rate change(s) or modification(s) to the record owner of each identified parcel, or TCWD customer, as shall be applicable, upon which the proposed rate change or modification is proposed for imposition.

At the public hearing, the Board of TCWD shall be presented with the basis upon which the rate change(s) or modification(s) are calculated and the reasons for the rate change(s) or modification(s). At the public hearing, any interested party desiring to be heard with regard to such proposed rate change(s) or modification(s) may appear and be heard by the Board through comments submitted either verbally or in writing. However, in order for any submitted comment(s) to be considered as a valid protest, such party must submit such protest in writing as set forth in (D) below.

D. Receipt and Review of Protests; Valid Protests.

Section 6(a)(2) of Article XIID of the California Constitution provides that at the public hearing, the public agency proposing to change a rate shall consider all protests against the proposed rate fee or charge. If written protests against the proposed fee(s) or charge(s) are presented by a majority of the record owners of the identified parcels, or TCWD customers, as shall be applicable, the agency shall not impose the fee or charge.

TCWD shall calculate, or caused to be calculated, the total number of accessor parcels involved in the rate change(s) or modification(s) being proposed.

Valid protests, as defined below shall be received, tabulated and the results presented to the Board during or following the conclusion of the public hearing regarding such proposed rate change(s) or modification(s).

In order to be a valid protest for purposes of such proceedings, any such protest must include, or provide for, all of the following:

1. Any such valid protest must be submitted in writing to the designated physical address specified in the written notice(s) of proposed rate change(s) or modification(s) provided by TCWD. Verbal comments, telephone calls, electronic transmissions or other forms of communication(s) shall not be considered, or counted, as valid protests for purposes of such proceedings or this Policy.
2. Valid protests must be submitted in accordance with the parameters (in terms of address, place of submission and date and time specified for receipt) set forth in the notice(s) relating to such rate change(s) or modification(s).
3. In order to be valid and counted as part of the protest process, each protest, in order to be valid, must include all of the following:
 - a. The street address or parcel number of the property for which the protest is being submitted;
 - b. A clear statement of protest against the proposed rate change(s) or modification(s);
 - c. The printed name of the person or party who is submitting the protest and whether the person or party is the owner or tenant of the property for which such protest is submitted; and
 - d. The signature of party or representative of the party submitting the protest.
4. If the essential information submitted on a protest is illegible or cannot otherwise be discerned by TCWD, such protest shall not be included in the counted valid protests concerning the proposed rate change(s) or modification(s).

Only one valid protest per street address or parcel will be counted for purposes of the protest process.

If a written communication or comment is received but is not considered a valid protest for purposes of this Policy, such communication shall be retained by TCWD but shall not be included in the total number of valid protests submitted against the proposed rate change(s) or modification(s).

Communications and valid protests received by TCWD as part of the rate change or modification process shall be retained by the District's Secretary for a period of not less than three years after such new rates have been adopted pursuant to TCWD's Documents and Records Retention policies.

Protests not received by the date and time specified in the written notice(s) for proposed rate change(s) or modification(s) shall not be counted in the number of valid protests submitted against the proposed corresponding rate change(s) or modification(s). A postmark date shall not be acceptable; physical receipt of the valid written protest, at the designated physical address specified in the written notice(s) of proposed rate change(s) or modification(s), shall be required.

Protests submitted under the provisions of Article XIID, Section 6(a)(2) of the Constitution are not, and do not constitute, an election; and are not, and shall not be, entitled to the confidential protections provided in an election process. Valid protests and other documents submitted to TCWD shall be considered public records pursuant to the California Public Records Act and shall be available for public review upon request in accordance with TCWD's Public Records Act policies or rules and regulations.

III. Board Considerations.

In adopting a rate change or modification pursuant to this Policy, the Board shall consider the limitations and conditions applicable to such rate change(s) or modification(s) as set forth in Section 6(b) of Article XIID of the California Constitution and related State legislation.

IV. Pass Through Fee or Charge Increases

TCWD may adopt a schedule of fees or charges authorizing automatic adjustments in order to pass through increases in wholesale charges for water or adjustments for inflation, on the condition that:

- (a) the schedule of fees or charges for property-related services are for a period not to exceed five years;
- (b) the schedule of fees or charges includes a schedule of adjustments, Any inflation adjustment to a fee or charge for a property-related service shall not exceed the cost of providing that service;
- (c) the schedule of fees or charges provides for automatic adjustments that pass through the adopted increases or decreases in the wholesale charges for water established by the agency from which TCWD purchases the water;
- (d) notice of any adjustment(s) made pursuant to this Section IV shall be provided to TCWD's customers, not less than 30 days before the effective date of the adjustment. Such notice may be provided by such means as TCWD shall determine, including, but not limited to, publication in TCWD's newsletter.

V. Implementation.

The General Manager is hereby directed, and authorized, to take all reasonable and necessary action(s) to implement and carry out the directives and requirements of this Policy. This shall include, but shall not be limited to, (i) providing all required notice(s), and the form(s) thereof, in order to comply with the requirements of State law and this Policy, (ii) preparation of any and all reports, documents and information needed in order to describe the proposed modification(s) or change(s) to TCWD's rates or charges (including information required to support findings and determinations by the Board in such respect), (iii) receipt and calculation of any and all protests to such proposed modification(s) or change(s) to TCWD's rates or charges, and (iv) such other and further actions as may be necessary to comply with the provisions or then-applicable State law and directives of the Board. The District Secretary may assist the General Manager in completing any such action(s).

VI. Claims.

It is the directive of this Board, to the extent compatible with applicable law, that any claims against TCWD asserting non-compliance with the provisions of Proposition 218 or that any action(s) taken by TCWD do not or did not comport with the requirements of Section 6 of Article XIID of the California Constitution shall be limited as to time of commencement and filing as set forth under California law or TCWD Ordinance No. 2006-17, whichever shall be less.

VII. Changes to Policy; Waivers, Variations.

The Board reserves the right to amend, update, clarify, revise or provide waivers or variations from this Policy based upon future court interpretations of Proposition 218 and related law, changes in California statutes, economic necessity, and other factors as shall be determined by the Board.

VIII. Severability.

If any part of this Policy is held to be unenforceable or inconsistent with then-applicable law by a court of competent jurisdiction, the remainder of this Policy shall not be affected thereby and shall be given effect to the fullest extent possible.

Adopted: November 18, 2015