

RESOLUTION NO. 2012-04

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

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

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

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

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

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

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

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

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

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

(b) Recipients of the Section 6 Notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Conduct of the Public Hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

AYES:
NOES:
ABSENT:
ABSTAIN:

Gary Thomas, President
Board of Directors

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