



RESOLUTION NO. 2012-03

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT ADOPTING GUIDELINES FOR THE SUBMISSION AND TABULATION OF PROTESTS IN CONNECTION WITH FEE AND CHARGE HEARINGS CONDUCTED PURSUANT TO ARTICLE XIID, SECTION 6 OF THE CALIFORNIA CONSTITUTION

FINDINGS

1. Article XIID, Section 6 of the California Constitution requires the Board of the Monterey Peninsula Water Management District to consider written protests to certain proposed imposition or increase to water fees or charges; and
2. This provision does not offer specific guidance as to who is allowed to submit protests, how written protests are to be submitted, or how the District is to tabulate the protests.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Monterey Peninsula Water Management District Board of Directors that the following procedures shall be used when imposing or increasing a fee or charge subject to Article XIID of the California Constitution:

Section One. **Findings.** The Findings set forth above are incorporated into this Resolution as if set forth in full.

Section Two. **Definitions.** Unless the context plainly indicates another meaning was intended, the following definitions shall apply in construction of these guidelines.

- A. "Parcel" means a County Assessor's parcel the owner or occupant of which is subject to the proposed fee or charge that is the subject of the hearing.
- B. "Record owner," "owner of record," and "parcel owner" mean the person or persons whose name or names appear on the County Assessor's latest equalized secured property tax assessment roll as the owner of a parcel.
- C. A "fee protest proceeding" is not an election, but the District Secretary shall maintain the confidentiality of protests as provided below and shall maintain the security and integrity of protests at all times.
- D. All undefined terms shall be given the definitions set forth in Rule 11 of the District Rules and Regulations.

Section Three. **Notice Delivery.** Notice of proposed fees or charges and public hearing shall be as follows:

- A. The District shall give notice of proposed fees or charges via U.S. mail to all record owners within the District boundary that the District has determined is a water customer of the main California American Water Company (Cal-Am) Water Distribution System, with the exception of the Hidden Hills, Toro, Ambler Park, and Bishop sub-units of Cal-Am.
- B. The District will post the notice of proposed fees or charges and public hearing at its official posting sites.

Section Four. Protest Submittal.

- A. Any record owner who is subject to the proposed fee or charge which is the subject of the hearing may submit a written protest to the District Secretary, by:
 - Personal delivery to the District Secretary at the District's Office, 5 Harris Court, Building G, Monterey, California during published business hours, or
 - Mail to the District Secretary at Monterey Peninsula Water Management District, PO Box 85, Monterey, CA 93942-0085, received on or before the date of the public hearing, or
 - Personally submitting the protest at the public hearing.
- B. Protests must be received before the end of the public hearing, including those mailed to the District. No postmarks shall be accepted; therefore, any protest not actually received by the close of the hearing, whether or not mailed prior to the hearing, shall not be counted.
- C. Emailed, faxed and photocopied protests shall not be counted.
- D. Although oral comments at the public hearing will not qualify as a formal protest unless accompanied by a written protest, the District welcomes input from the community during the public hearing on the proposed charges.

Section Five. Protest Requirements.

- A. A written protest must include:
 - (i) A statement that it is a protest against the proposed fee or charge which is the subject of the hearing.
 - (ii) Name of the record owner who is submitting the protest;
 - (iii) Identity, by street address or assessor's parcel number (APN), of the parcel with respect to which the protest is made;
 - (iv) Original signature and legibly printed name of the record owner who is submitting the protest.

- B. Protests shall not be counted if any of the required elements (i thru iv) outlined in the preceding subsection "A." are omitted.
- C. Only one protest will be counted per parcel as provided by Government Code Section 53755(b).
- D. A separate written and signed protest shall be required for each parcel.

Section Six. Protest Withdrawal. Any person who submits a protest may withdraw it by submitting to the District Secretary a written request that the protest be withdrawn. The withdrawal of a protest shall contain sufficient information to identify the affected parcel and the name of the record owner or customer of record who submitted both the protest and the request that it be withdrawn. Withdrawals must be received before the end of the public hearing.

Section Seven. Transparency, Confidentiality, and Disclosure.

- A. To ensure transparency and accountability in the protest tabulation while protecting the privacy rights of record owners and customers of record, protests shall be maintained in confidence until tabulation begins following the public hearing.
- B. Once a protest is opened during the tabulation, it becomes a discloseable public record, as required by state law.

Section Eight: District Secretary.

The District Secretary shall not accept as valid any protest if he or she determines that any of the following is true:

- A. The protest does not state its opposition to the proposed charges.
- B. The protest does not name the record owner of the parcel identified in the protest as of the date of the public hearing.
- C. The protest does not identify a parcel within the District which is subject to the proposed charge.
- D. The protest does not bear an original signature of the named record owner of the parcel identified on the protest. Whether a signature is valid shall be entrusted to the reasonable judgment of the District Secretary, who may consult signatures on file with the County Elections Official and/or the District.
- E. The protest was altered in a way that raises a fair question as to whether the protest actually expresses the intent of a record owner to protest the charges.
- F. The protest was not received by the District Secretary before the close of the public hearing on the proposed charges.
- G. A request to withdraw the protest was received prior to the close of the public hearing on the proposed charges.

Section Nine. **District Secretary's Decisions Final.** The District Secretary's decision that a protest is or is not valid shall constitute a final action of the District and shall not be subject to any internal appeal.

Section Ten. **Majority Protest.**

- A. A majority protest exists if timely written protests are submitted and not withdrawn by the record owners of a majority (50% plus one) of the parcels subject to the proposed charge.
- B. While the District may inform the public of the number of parcels served by the District when a notice of proposed rates or fees is mailed, the number of parcels with active Cal-Am customer accounts served by the District on the date of the hearing shall control in determining whether a majority protest exists.

Section Eleven. **Tabulation of Protests.** At the conclusion of the public hearing, the District Secretary shall tabulate all protests received, including those received during the public hearing, and shall report the results of the tabulation to the District Board. If the total number of protests received is insufficient to constitute a majority protest, the District Secretary may determine the absence of a majority protest without validating the protests received, but may instead deem them all valid without further examination. Further, if the number of protests received is obviously substantially fewer than the number required to constitute a majority protest, the District Secretary may determine the absence of a majority protest without opening the envelopes in which protests are returned.

Section Twelve. **Report of Tabulation.** If at the conclusion of the public hearing, the District Secretary determines that he or she will require additional time to tabulate the protests, he or she shall so advise the District Board, which may adjourn the meeting to allow the tabulation to be completed on another day or days. If so, the District Board shall declare the time and place of tabulation, which shall be conducted in a place where interested members of the public may observe the tabulation, and the District Board shall declare the time at which the meeting shall be resumed to receive and act on the tabulation report of the District Secretary.

Section Thirteen. **Delegation.** The General Manager is directed and authorized to execute all documents and to perform all necessary acts to implement the effect of this Resolution.

Section Fourteen. **Effective Date.** This Resolution shall take immediate effect.

Section Fifteen. **Severability.** If any subdivision, paragraph, sentence, clause or phrase of this Resolution is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or enforcement of the remaining portions of this Resolution. It is the District's express intent that each remaining portion would have been adopted irrespective of the fact that one or more subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid or unenforceable.

On a motion by Director Markey and second by Director Lewis the foregoing resolution is duly adopted this 16th day of April 2012 by the following votes.

Ayes: Directors Markey, Lewis, Brower, Byrne, Lehman and Pendergrass
Nays: None
Absent: Potter

I, David J. Stoldt, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify that the foregoing is a resolution duly adopted on the 16th day of April 2012.

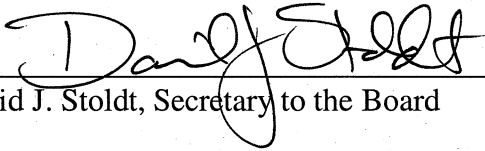
Witness my hand and seal of the Board of Directors this 23rd day of April 2012.



David J. Stoldt, Secretary to the Board

COPY CERTIFICATION

I, David J. Stoldt, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing is a full, true and correct copy of Resolution No. 2012-03 duly adopted on the 16th day of April 2012.



David J. Stoldt, Secretary to the Board

4.20.12
Date