

**RESOLUTION NO. 2011-05-01**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE BORREGO WATER DISTRICT ADOPTING PROCEDURES FOR INCREASING WATER AND SEWER SERVICE CHARGES UNDER PROPOSITION 218**

**WHEREAS**, Proposition 218 (Articles XIII C and XIII D of the California Constitution) requires the District to comply with the substantive and procedural requirements set forth in section 6 of Article XIII D of the California Constitution prior to imposing or increasing a fee or charge upon any parcel of property or upon any person as an incident of property ownership; and

**WHEREAS**, Proposition 218 requires that the record owner or ratepayer for the parcel upon which the fee or charge is proposed for imposition or increase be notified of the amount of the fee, the basis upon which the amount of the fee was calculated, the reason for the fee, and the date, time, and location of a public hearing on the fee; and

**WHEREAS**, Proposition 218 requires that all protests against the fee or charge be considered at that public hearing; and

**WHEREAS**, Proposition 218 does not clearly set forth who is allowed to submit protests, the procedure for submitting protests, or how the protests are to be tabulated;

**WHEREAS**, the California Legislature in 2008 passed Gov't Code Section 53755(a)(1) amending the Proposition 218 Omnibus Implementation Act to clarify the notice aspect of the Proposition 218 procedures; and

**WHEREAS**, the District Board of Directors (Board) wishes to set forth procedures in this resolution to clarify these issues, which are intended to be consistent with both Proposition 218 and with the Proposition 218 Omnibus Implementation Act.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Borrego Water District, that the following procedures shall be used when imposing or increasing a fee or charge subject to Proposition 218 as defined in Article XIII D of the California Constitution:

**Section 1.** **Fee or Charge:** For the purposes of this resolution, “fee or charge” means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service.

**Section 2.** **Property-related Service:** For purposes of this resolution, “property-related service” means a public service having a direct relationship to property ownership, and includes water and sewer service charges pursuant to Bighorn-Desert View Water Agency v. Verjil (2006) 39 Cal. 4<sup>th</sup> 205.

**Section 3.** **Notice: Increase in Existing Fee:** Prior to increasing a fee or charge, each parcel upon which the fee or charge is proposed for imposition shall be identified. The

District shall mail written notice at least forty-five days prior to the date of the public hearing on the fee or charge to all persons who have signed up to receive the service for which the fee or charge is imposed as reflected in the billing records of the District at the time the notice is given, at the mailing address shown in the billing records of the District. (as provided in Proposition 218 Omnibus Act listed above). In addition to the persons identified in this section, the City Clerk shall also mail written notice to anyone who has submitted a written request to receive notice of the imposition or increase of a fee or charge.

**Section 4. Protest Procedure:**

A. Who may protest: Any owners whose names and addresses appear on the last equalized secured property tax assessment roll and any persons who have signed up to receive the property-related service for which the fee or charge is proposed may submit a written protest against the proposed fee or charge.

B. How may protest be received: All written protests must be submitted at the noticed public hearing, or by U.S. Mail or hand delivery to the District Office, 806 Palm Canyon Drive, Borrego Springs, CA 92004 before the conclusion of the noticed public hearing. Protests submitted by electronic mail or facsimile, and verbal protests, will not be considered by the Board. The District shall not accept or consider any protest that is received after the conclusion of the public hearing even if postmarked prior to that time. All members of the public are welcome to make comments at the public hearing whether or not they choose to submit a written protest.

C. What must be in a protest to be considered valid: Written protests must identify the affected property (by assessor's parcel number or street address) and must include the original signature of the person submitting the protest. The person signing the protest shall identify him or herself as either the owner of the parcel as shown on the last equalized security property tax assessment roll or as the person who signed up to receive the property-related service for which the fee or charge is imposed.

D. How will protests be counted: One written protest per parcel, submitted by the owner of the parcel whose name appears on the last equalized property tax assessment roll or submitted by the person who signed up to receive the property-related service for which the fee or charge is imposed, shall be counted. If either the owner of the parcel whose name appears on the last equalized property tax assessment roll or the person who signed up to receive the property-related service for which the fee or charge is imposed submits a written protest, that protest shall be included in the calculation of whether there is a majority protest against the fee or charge. If more than one person or entity owns the parcel, if one of the owners submits a written protest, that protest shall be included in the calculation of whether there is a majority protest against the fee or charge. Under all circumstances, only one protest per parcel shall be counted.

E. How may protests be withdrawn: Any person who submits a written protest may withdraw it by submitting a written request that the protest be withdrawn in person at the public hearing or to the District by U.S. Mail before the conclusion of the public hearing. The written withdrawal of a protest shall identify the parcel and the name of either the owner whose name appears on the last equalized secured property tax assessment roll or the person who signed up to receive the property-related service for which the fee or charge is imposed

and include a request that the protest be withdrawn. The withdrawal of a protest shall only be valid if it is submitted by the same person who submitted the protest.

**Section 6.** Tabulation of Written Protests. The following procedures are hereby adopted for calculating whether a majority protest against a fee or charge has been received:

**A.** The District shall determine the validity of all protests. The District SHALL find valid all written protests received as required in Section 5 above.

**B.** The District shall NOT accept as valid any written protest if the District determines that any of the following are applicable:

- i. The protest does not identify a parcel which receives the property related service for which the fee or charge is imposed.
- ii. The protest does not bear the original signature of the person submitting the protest.
- iii. The protest does not state its opposition to the proposed fee or charge which is the subject of the protest proceeding.
- iv. The protest was not received by the District before the close of the public hearing on the proposed fee or charge.
- v. A valid request to withdraw the protest is received prior to the close of the public hearing on the proposed fee.
- vi. The protest was delivered to the District in a manner other than U.S. mail or personal delivery (such as electronic mail or facsimile).

**C.** The District's decision regarding the validity of a protest shall constitute final action of the District and shall not be subject to appeal to the Board or any other employee of the District.

**D.** The protests shall be tabulated following the close of the public hearing. Tabulation shall be conducted by a designated employee or official of the District, or by a consultant with relevant experience. The tabulation of protests shall be conducted at the District Office. At the Board's discretion, members of the public shall be permitted to observe the tabulation process, but shall not be entitled to actively participate in the tabulation process.

**E.** A majority protest exists if, with respect to a majority of the parcels subject to the proposed fee or charge, written protests which comply with each of the requirements of this resolution are timely submitted and not withdrawn.

**F.** After the conclusion of the public hearing and tabulation of protests, the written protests shall constitute "public records" (as defined in Government Code section 6254). (section relocated)

BE IT FURTHER RESOLVED, that this activity is not a project and therefore is not subject to the California Environmental Quality Act pursuant to CEQA Guidelines section 15060(c)(3).

Adopted, signed and approved this 17<sup>th</sup> day of May, 2011.

