

# *Ponderosa Community Services District*

## *Minutes of Public Hearing*

Saturday August 13, 2011

1:00 pm, at the District Building

Present:

Directors: D. Doty, C. Marchaunt, B. Benton, M. Moroney, Barbara Dolmovic

Staff: Board Secretary - J. Robertson, T. Griesbach

Attorney: Mike Maurer

Engineer Bill Roberts was present at the request of the board, in the event there were engineering questions the board was unable to answer.

The meeting moved outside of the district building to accommodate the number of people present.

Members of the Public: (in alphabetical order – 31 total)

Arnold, Barbara	Dolmovic, William	Lack, Gail	Rainwater, Carroll
Bozanich, John	Flavin, Sharyn	Lollis, John	Roberts, Jeri
Califf, Brad	Jewett, Margaret	Lowry, Kent	Shortz, Marvin D.
Cappelen, Carl	Korf, Elizabeth	Lowry, Lynn	Smith, Roger A.
Coffey, Rod	Korf, Kristopher	McWilliams, Mike	Strickbine, Michel
DeClerck, Dominique	Kracik, Alvie	Perry, Jim	Thetford, Jim
DeClerck, Yves	Kracik, John	Perry, JoAnn	Witherow, Shawn
Duffy, Sandy	Lack, Dennis	Rainwater, Carolyn	

Mr. Doty welcomed the public following the flag salute and declared the hearing open.

Mr. Doty gave an opening statement explaining the reason for calling the hearing, reviewing the reasons the Board was seeking to increase annual water service fees. An increase of \$209.42 per year is being sought in order to offset the District's increasing costs of providing water service, and to service the debt the PCSD will incur to undertake water system improvements.

Members of the public that wished to speak were given 3 minutes to express their views and concerns. The Board answered questions as they were able.

Before public comments began, Mr. Kracik requested to submit to the board a list of questions/concerns that he had. He said there was more than he could address in the three minutes allotted to each speaker.

Anyone wishing to speak was requested to put their name on a list, the secretary called on speakers in the order they were listed:

**Lynn Lowry** – reading from notes about how votes for a 218 hearing should be counted, “ballots for and against must be counted”. She also stated that letters received should not have been opened prior to the hearing. She believed the entire procedure was illegal since votes received in the mail had already been opened and counted before being turned over to the secretary at the regular meeting yesterday.

The attorney explained there are different types of 218 hearings. The section of the law that Mrs. Lowry was referring to was related to assessments. This hearing is for water service fees. Water service fees are considered property related fees and are not subject to the same voting requirements as assessments.

**John Kracik** – had questions regarding the PER

- Payment for milestones
- Why PER not allowed an independent water system analysis
- This is a long term project, felt the board should have used a ballot vote even though not required
- PCSD (all boards) has made sufficient financial mistakes, paid down existing loan, purchased neighboring lot, did not purchase a well
- PER is a feasibility study for USDA

**Roger Smith** – the board obviously thinks this is a good project. Do you feel all water users are in agreement? Several of us could put together a pay as you go option if the board is willing to consider this alternative. Mr. Smith suggests having an election to prove support for this project.

Board response – (C. Marchaunt) We are surprised at the perception this project is being suddenly rammed through. This process has been ongoing for at least 4 years. This conversation has been occurring in board meetings for 5 years. The public has been invited to meetings specifically related to describing the needs of the water system and outlining necessary improvements. Several community members were asked to serve on a water committee and to provide input.

**Tom Griesbach** – In November Mr. Griesbach was asked to become the General Manager for PCSD. He has been working primarily on FEMA applications. He has noticed that numerous times the storage tank at Summit is low, that leak detection consists of people driving around attempting to find water running somewhere, and that it takes a huge effort to maintain the current water system.

**Carl Cappelen** – was happy to see the community participation through email postings

**Gail Lack** – wished to address the people writing protest letters. This hearing is asking for an annual \$209.42 increase to the water rates. What happens if this increase request fails? There are transite pipes that need replacing; a lack of water storage, insufficient pressure, the lack of an automated system and additional meters would be useful. The district currently owes \$52,000 to the RCAC (Rural Community Assistance Corp). That loan has to be paid. Tulare County has ordered repairs and determined some of the current water mains are in violation, and flow meters are required by the state of California.

**John Bozanich** – There is division for and against this proposal. Those against are being misunderstood. They are for something to be done to improve the water system; they are just not for this option. He then posed a question for the board framed in a parable about repairs to a car.

Board response – (D. Doty) the district is not a car, the district distributes water to homes. The question as it was posed is not relevant to the discussion.

**Bill Dolmovic** – Has been a resident for 32 years. Mr. Dolmovic has worked on this water system since 1979 when the original owner, Don Carter, was still around. As someone who has had hands-on experience with this system...people should be surprised that there is water when they turn on the tap. Mr. Dolmovic understands the concerns that are being expressed but reminds everyone that this

situation has been open for participation for the last 4 years. The people that have been working on this have put together what is felt the system needs. The current proposed water system improvement project and USDA funding offer is believed to be the community's best shot. This effort has been done with the best of intentions and a lot of research.

**Yves DeClerck** – appreciate the efforts of the board. Mr. DeClerck has some questions about the proposed project regarding the storage tank at Summit. Add another tank or replace the current tank? If adding a tank, where would it be placed? He has concerns that increasing the tank size or adding another tank will impact the Summit residents. Mr. DeClerck feels that the board tried to have good communication with property owners but there was too much by email. The issues became confusing.

Board response – (Bill Dolmovic [on behalf of the PCSD] has been in contact with the property owner where the current tank is situated so he answered these questions.) The current storage tank at Summit is on private property. The district has an easement for the tank. The current easement is essentially the size of the current tank. The owner is willing to increase the easement to accommodate an additional tank. An additional tank would sit directly behind the existing tank.

**Kent Lowry** – has concerns about how this election was run. There should have been ballots sent to all water users and the letters received by the district should not have been opened before this meeting. How can we know that all the votes were counted? Mr. Lowry also has concerns about the terms of the loan. He feels the board misled people and did not tell them the entire truth.

**John Lollis** – had a question to clarify understanding. PER increase tank size – modified report? The problem of low pressure to Summit loop residents – is this a system failure or an individual cabin problem. All water systems have 3 components, operations, maintenance/replacement and expansion. Mr. Lollis feels the board should consider impact fees for new construction when considering expansion of the current system.

Board response – (D Doty) Holby tanks hold water in reserve (30,000 gallons) which must be transferred to the Summit tank to be available, Summit tank holds 60,000 gallons. The pressure problems in the Summit loop are a system problem and the district is in violation with the county for supplying inadequate pressure to those water customers. The PER will not need to be modified if a larger tank is placed at Summit.

**Sharon Flavin** (Summit loop resident) – echoed concerns of Mr. DeClerck about placement of an additional tank at Summit. Mrs. Flavin also mentioned that there have been several times when even though there is water in Summit tank, they have very low pressure at their cabin.

Board response – this question was addressed by engineer Bill Roberts. The pressure system in the proposed water system project will result in adequate pressure for the residents on the Summit loop.

As there were no more requests to speak, a final call for votes was issued. Votes were collected by the secretary

The hearing was declared closed at 1:58pm.

A brief recess was called to allow for tabulation and verification of votes received.

The secretary brought the letters given to her the previous day. They were reviewed with director Mike Moroney. The new votes collected at the hearing were added to the previous count. All votes were then reviewed again by the secretary and director Barbara Dolmovic.

The board reconvened at 2:15 pm.

22 letters were given to the secretary at the regular meeting yesterday. An additional 8 letters were turned in today at the hearing. Mr. Lowry presented an email from a property owner wanting to confirm their vote in case the original letter had gotten lost in the mail. Their original letter was received and counted. All votes received were counted, even if they did not contain all necessary data.

There were 30 letters received.

1 did not contain a vote

**28 votes against increase**

1 vote in favor of the increase

There are 143 water service connections. 72 votes against the increase are necessary in order to prevent the board from implementing the proposed annual water service fees.

Based on the report of voting results the board determined to implement the proposed annual water rate increase. It was moved, seconded and passed unanimously to increase the current annual water rates in accordance with proposed water rate schedule 1.

**PROPOSED Annual Flat/Tiered Rate Water**

Effective July 1, 2011 for fiscal year 2011-2012

<b>Water Service based on usage:</b>	<b>Per service connection</b>
Annual flat rate for unmetered properties:	\$511.00
Base rate: under 75,000 gallons	\$511.00
2 <sup>nd</sup> tier: 75,100 – 150,000 gal	\$.30/100 gal
3 <sup>rd</sup> tier: 150,100 – 250,000 gal	\$.45/100 gal
4 <sup>th</sup> tier: 250,100 – 1,000,000 gal	\$.50/100 gal

These charges are levied without regard for property valuation

*This clause shall be suspended until fiscal year 2014-2015*

Special Condition:

This schedule shall be increased annually by an amount not to exceed the annual cost of living increase as determined by the national Consumer Price Index; reported by the Bureau of Labor Statistics for the period ending each December 31.

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Effective July 1, 2012 for fiscal year 2012-2013

|                                                          |               |
|----------------------------------------------------------|---------------|
| Flat rate for all unmetered properties:                  | \$740.42      |
| Tiered rate for metered properties:                      |               |
| Base – usage to 75,000 gallons/year                      | \$740.42      |
| 2 <sup>nd</sup> tier: usage 75,100 – 150,000 gal/year    | \$.30/100 gal |
| 3 <sup>rd</sup> tier: usage 150,100 – 250,000 gal/year   | \$.45/100 gal |
| 4 <sup>th</sup> tier :usage 250,100 – 1,000,000 gal/year | \$.50/100 gal |

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Effective July 1, 2012 for fiscal year 2012-2013

Flat rate for all unmetered properties:	\$750.42
Tiered rate for metered properties:	
Base – usage to 75,000 gallons/year	\$750.42
2 <sup>nd</sup> tier: usage 75,100 – 150,000 gal/year	\$.30/100 gal
3 <sup>rd</sup> tier: usage 150,100 – 250,000 gal/year	\$.45/100 gal
4 <sup>th</sup> tier :usage 250,100 – 1,000,000 gal/year	\$.50/100 gal

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Effective July 1, 2014 and future fiscal years

Special Condition:

This schedule shall be increased annually by an amount not to exceed the annual cost of living increase as determined by the national Consumer Price Index; reported by the Bureau of Labor Statistics for the period ending each December 31.

It was moved, seconded and passed to adjourn the meeting.

Respectfully submitted,

Jennifer Robertson - PCSD Board Secretary

*Issues were raised at the hearing regarding procedural requirements. The following information about Proposition 218 (1996) has been included for clarification.*

*Property related fees compared to assessments and 218 requirements*

[http://www.cacities.org/resource\\_files/newCybrary/2007/legalresource/26003.PROP%20218%20final.pdf](http://www.cacities.org/resource_files/newCybrary/2007/legalresource/26003.PROP%20218%20final.pdf)

## **Property-Related Fees and Charges** pg 49

Article XIII D defines “fee” or “charge” as “*including* a user fee or charge for a property related service.” (Cal. Const., art. XIII D, § 2, subd. (e), italics added.) The word “including” is “ordinarily a term of enlargement.” (citations omitted) ...[D]omestic water delivery through a pipeline is a property-related service within the meaning of this definition. Accordingly, 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, whether the charge is calculated on the basis of consumption or is imposed as a fixed monthly fee. *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 216-217.

## **Key Changes Proposition 218 Makes to Fee and Charge Law** pgs 49-50

**Notice and Hearing Requirements.** Proposition 218 imposes requirements for mailed notice to property owners of new or increased property-related fees and a mechanism for property owner rejection of such fees via a “majority protest” at a public hearing.

**Voter-Approval.** Except for sewer, water and refuse collection services, fees subject to the requirements of article XIID require a majority vote of property owners or, at the public agency’s option, a two-thirds vote of the electorate, in addition to compliance with the majority protest proceedings.

## **Procedural Requirements** pg 62

Article XIID, section 6 imposes certain procedural requirements when property-related fees are imposed or increase. It takes a two-tiered approach. Fees for “sewer, water, and refuse collection services” are subject to the notice, hearing and majority protest procedures. Other fees for property-related services are subject to these same procedures plus they are subject to a voter-approval procedure. The substantive requirements apply to fees for all property-related services that are otherwise subject to section 6.

The procedures in Section 6(a) to impose or increase a “fee or charge” are as follows:

- Identify the parcels upon which a fee or charge is proposed for imposition.
- Calculate the amount of the fee proposed to be imposed on each parcel.
- Provide written notice by mail to the “record owner of each identified parcel.”
- Conduct a public hearing on the proposed fee not less than 45 days after the mailing.
- Consider “all protests against the proposed fee or charge.”
- If written protests against the fee are presented by a “majority of owners of the identified parcels,” the fee cannot be imposed.

## Excerpts of Proposition 218 text

*Current Practice.* Local governments charge fees to pay for many services to their residents. Some of these fees pay for services to property, such as garbage collection and sewer service. Fees are also called "charges."

Local governments often establish several fee amounts for a service, each based on the approximate cost of providing the service to different types of properties (such as commercial, industrial, or residential property). Local governments usually send monthly bills to property owners to collect these fees, although some fees are placed on the property tax bill. Local governments generally hold public hearings before creating or increasing such a fee, but do not hold elections on fees.

***Proposed Requirements for Property-Related Fees.* This measure would restrict local governments' ability to charge "property-related" fees. (Fees for water, sewer, and refuse collection service probably meet the measure's definition of a property-related fee.**

- . No fee revenue may be used for any purpose other than providing the property-related service.
- . Fees may only be charged for services immediately available to property owners.

In addition, the measure specifies that before adopting a *new* property-related fee (or increasing an *existing* one), local governments must: mail information about the fee to every property owner, reject the fee if a majority of the property owners protest in writing, **and hold an election on the fee (unless it is for water, sewer, or refuse collection service).**

*Current Practice.* Local governments charge assessments to pay for projects and services that benefit specific properties. For example, home owners may pay assessments for sidewalks, streets, lighting, or recreation programs in their neighborhood. Assessments are also called "benefit assessments," "special assessments," "maintenance assessments," and similar terms. Local governments typically place assessment charges on the property tax bill.

***Proposed Requirements for Assessments.* This measure would place extensive requirements on local governments charging assessments. Specifically, the measure requires all *new* or *increased* assessments -- and some *existing* assessments -- to meet four conditions.**

. Finally, local governments must hold a mail-in election for each assessment. Only property owners and any renters responsible for paying assessments would be eligible to vote. Ballots cast in these elections would be weighted based on the amount of the assessment the property owner or renter would pay. For example, if a business owner would pay twice as much assessment as a homeowner, the business owner's vote would "count" twice as much as the homeowner's vote.

Please note that according to these documents, water service fees are not considered assessments and are not subject to the same voting requirements as assessments.