

# **DIABLO WATER DISTRICT**

## **REGULATION NO. 13**

### **RATE CHANGE PROCEEDINGS**

#### **Section I. Background**

- A. 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.
- B. By way of the ruling in the case of Big Horn Desert View Water Agency v. Verjil, Verjil (2006) 39 Cal.4th 205, 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 of public water districts operating within the State of California.
- C. This Regulation Number 13, Rate Change Proceedings (“Regulation”) is adopted by the Board of Directors (“Board”) of Diablo Water District (“DWD”) in order to provide directives, guidance, and policies to its staff for potential changes in DWD’s water rates, whether as fees, charges, or otherwise as the case may be in accordance with the law as the law may change or evolve over time.
- D. The findings and directives set forth herein represent the policy and directives of the Board, subject to compliance with legal requirements applicable at the time a rate change is contemplated.

## **Section II. Notices**

### **A. Provision of Notice(s)**

DWD will provide written notice of the hearing(s) and proposed rate change(s) or rate modification(s) pursuant to the provisions of State law. Written notices must be provided to DWD current customers and/or record owners of parcels in the DWD service area, as required 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, DWD's billing statement(s) for the services(s) which will be affected by such proposed change(s) or modification(s). Alternatively, if legally compliant, notice(s) may be provided by separate mailing by DWD to the address to which DWD customarily mails the billing statement(s) for fees or charges for the service(s) provided by DWD.

- i. In the event DWD desires to preserve authority, to the extent permissible by law, to record or enforce a lien on a parcel to which service is provided, DWD will also mail written notice of the hearing(s) and proposed rate change(s) to the record property owner's address as shown on the last equalized assessment roll, to the extent that address is different from that reflected on the DWD Customer's billing statement(s).

### **B. Form of Notice**

- i. Written notice(s) provided pursuant to this Regulation and State law will include those matters described in Section 6(a)(1) of Article XIII D of the California Constitution and such other applicable legal authority,

including without limitation, AB 2257 (2024 Legislative session) as codified in Government Code section 53759.1 (“AB 2257”).

- ii. AB 2257 is a supplemental measure under Proposition 218 providing public agencies the option to utilize to further enhance public participation and limit litigation by requiring more robust notice and comment process. Specifically, if AB 2257 is invoked by the public agency, then the notice must state, amongst other things, that legal objections must be stated in writing. The public agency must then respond in writing so that the governing body can consider all such written comments prior to taking action on the proposed rate changes. Under AB 2257, failure of an interested person or entity to follow the procedure is deemed failure to exhaust administrative remedies for purposes of subsequent litigation related to the rate change(s).
- iii. Irrespective of AB 2257, DWD will 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 DWD customer(s), as 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 DWD customer (as 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).

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

**C. Conduct of Public Hearing**

- i. The Board will 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 XIII D of the California Constitution. The public hearing will 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 DWD customer (as applicable), upon which the proposed rate change or modification is proposed for imposition.
- ii. At the public hearing, the Board of DWD will 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, subject to the provisions of AB 2257 if being utilized by DWD. Written

comments or protests are encouraged to allow for a more deliberative exchange between DWD and the commenting person or entity, and written legal objections are indeed required, and potentially in advance of the hearing as provided in the notice, if AB 2257 is utilized.

**D. Receipt and Review of Protests; Valid Protests**

Section 6(a)(2) of Article XIIIID of the California Constitution provides that at the public hearing, the public agency proposing to change a rate must 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 DWD customers, as applicable, the agency will not impose the fee or charge.

1. DWD will calculate, or cause to be calculated, the total number of assessor parcels involved in the rate change(s) or modification(s) being proposed. Valid protests, as defined below will 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:
  - i. 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 DWD. Hand-delivered written protests provided to staff or inserted in the office drop box will be allowed. Verbal comments, telephone calls, electronic transmissions

or other forms of communication(s) will not be considered, or counted, as valid protests for purposes of such proceedings or this Regulation, though any and all verbal comments will be given due consideration by the Board prior to closing the public hearing.

- ii. 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).
- iii. In order to be valid and counted as part of the protest process, each protest, 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 the party or representative of the party submitting the protest.
- iv. If the essential information submitted on a protest is illegible or cannot otherwise be discerned by DWD, such protest will not be included in the counted valid protests concerning the proposed rate change(s) or modification(s).

- a. Only one valid protest per street address or parcel will be counted for purposes of the protest process.
- b. If a written communication or comment is received but is not considered a valid protest for purposes of this Regulation, such communication will be retained by DWD but will not be included in the total number of valid protests submitted against the proposed rate change(s) or modification(s). However, all protests will be presented to the Board.
- c. Communications and valid protests received by DWD as part of the rate change or modification process will be retained by the District's Board Secretary for a period of not less than three years after such new rates have been adopted pursuant to DWD's Documents and Records Retention policies.
- d. Protests not received by the date and time specified in the written notice(s) for proposed rate change(s) or modification(s) will not be counted in the number of valid protests submitted against the proposed corresponding rate change(s) or modification(s). A postmark date will 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), is required.
- e. Protests submitted under the provisions of Article XIIID, Section 6(a)(2) of the Constitution are not, and do not constitute, an election;

and are not, and will not be, entitled to the confidential protections provided in an election process. Valid protests and other documents submitted to DWD will be considered public records pursuant to the California Public Records Act and will be available for public review upon request in accordance with DWD's Public Records Act policies or rules and regulations.

**Section III. Board Considerations**

In adopting a rate change or modification pursuant to this Regulation, the Board will 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 and all such other factual, technical, and legal information presented to the Board for its consideration and decision-making process.

**Section IV. Pass-Through Fees or Charge Increases**

In accordance with applicable law, DWD 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:

the schedule of fees or charges for property-related services are for a period not to exceed five years;

1. the schedule of fees or charges includes a schedule of adjustments. Any inflation adjustment to a fee or charge for a property-related service must not exceed the cost of providing that service;
2. 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 DWD purchases the water;

3. notice of any adjustment(s) made pursuant to this Section IV may, at the Board's direction or as required by applicable law, be provided to DWD's customers not less than 30 days before the effective date of the adjustment(s). Such notice may be provided by such means as DWD determines, including, but not limited to, publication in DWD's newsletter.

**Section 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 Regulation. This includes, but is not 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 Regulation, (ii) preparation of any and all reports, documents and information needed in order to describe the proposed modification(s) or change(s) to DWD'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 DWD'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's Board Secretary may assist the General Manager in completing any such action(s).

**Section VI. Claims**

It is the directive of this Board, to the extent compatible with applicable law, that

any claims against DWD asserting non-compliance with the provisions of Proposition 218 or that any action(s) taken by DWD do not or did not comport with the requirements of Section 6 of Article XIII D of the California Constitution will be limited as to time of commencement and filing as set forth under California law, and subject to AB 2257 if utilized by DWD for the rate increase process being challenged.

**Section VII. Changes to Regulation; Waivers, Variations**

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

**Section VIII. Severability**

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