

ITEM #8.A

*Summary of Objections Received Pursuant to District Policy Number
3240 Regarding Exhaustion Procedures for 2023 Proposition 218
Process*

DEL PASO MANOR WATER DISTRICT

SPECIAL BOARD MEETING

DATE: September 13, 2023

AGENDA ITEM NO. 8.A.

**SUBJECT: Summary of Objections Received Pursuant to District Policy Number 3240
Regarding Exhaustion Procedures for 2023 Proposition 218 Process**

STAFF CONTACT:

General Counsel

BACKGROUND:

On December 19, 2022, the Del Paso Manor Water District (“District”) Board of Directors (“Board”) adopted Policy Number 3240 (“Policy 3240”), which established a procedure for ratepayer objections to proposed water rates. Policy 3240 took effect on January 18, 2023.

The purpose of Policy 3240 is to provide a meaningful opportunity for a ratepayer to make and resolve an objection to a proposed water rate before resorting to litigation after the new rate is approved. Policy 3240 creates an exhaustion of administrative remedies procedure in order for ratepayers to bring an objection regarding a proposed water rate to the Board’s attention during the rate consideration process, and to provide the District an opportunity to address or resolve the objections before the Board makes a final decision on whether to adopt a proposed water rate. While the Policy 3240 process focuses on substantive challenges to the rate study, the Proposition 218 protest process allows ratepayers to oppose the proposed rates without providing any reason for their opposition.

Policy 3240 requires a rate challenger to exhaust his or her administrative remedies by complying with the policy prior to filing any lawsuit alleging that the District’s new water service rates violate Proposition 218 or other applicable law. The Policy 3240 process runs concurrently with the Proposition 218 process. For the District’s current Proposition 218 process governing water rate changes proposed for fiscal years 2023-24 through 2027-28, the Policy 3240 timeline is as follows:

1. The District sent notice of the start of the exhaustion procedure to record owners or customers of record on or about August 1, 2023. Written objections were due to the District by September 11, 2023. Objections under Policy 3240 are not the same as protests under Proposition 218. Record owners or customers of record have the full 45 days under Proposition 218 to submit a protest.
2. The District has reviewed timely submitted written objections. This staff report contains the written response to the written objections. At the Board’s special meeting on September 13, 2023, District staff will present a summary of its findings and a written response to the Board for review. The Board will determine

whether action is needed in response to the written objections and staff responses or findings.

FINDINGS:

The District received 45 written objections to the proposed Proposition 218 rate increase by the September 11, 2023, deadline for written objections.

Most of the objections were submitted on the basis that the proposed rates are too high and create a financial burden, that the proposed rates should increase more gradually, that the District should merge with a larger water district, and/or that the District should install meters at residences. The District notes these objections. These objections did not allege any procedural or substantive legal deficiencies against the proposed rates.

One objection stated that the rates must increase proportionately equally among all the ratepayers. They cited the proposed rate increases for different pipe sizes that would be effective on November 1, 2023, if the proposed rates are adopted: 0% increase for 1” pipe, 20% increase for 1.25” pipe, 33% increase for 1.5” pipe, and 60% increase for 2” pipe. They noted that increasing costs differently for different-sized pipes means that the larger pipe sizes are hit harder than the smaller pipes. They assert all ratepayers should pay more in equal percentage increases.

Under the proposed rates, residential customers would be charged a capital improvement plan (“CIP”) charge based on the size of the pipe servicing their parcel. The residential CIP charge increases based on pipe size and across the five years included in the Water Rate Study Report (“Rate Study”). CIP charges for larger pipe sizes are set proportional to the flow capacity of the meter as rated by the American Water Works Association. (Rate Study, Table 16, fn. 1.) Additionally, the proposed rates that would be effective on November 1, 2023, are not representative of the rate of increase or the final rates over the five years that the Rate Study covers. Below is a chart from the Rate Study showing the proposed increases for residential CIP charges over the next five years.

Capital Improvement Plan Charge (CIP Charge) [3]	Current	11/1/2023	7/1/2024	7/1/2025	7/1/2026	7/1/2027
Residential, up to 1” ⁽²⁾	\$23.05	\$23.05	\$44.17	\$44.17	\$44.17	\$44.17
Residential, 1.25”	\$28.81	\$34.58	\$66.26	\$66.26	\$66.26	\$66.26
Residential, 1.5”	\$34.58	\$46.10	\$88.35	\$88.35	\$88.35	\$88.35
Residential, 2”	\$46.10	\$73.76	\$141.36	\$141.36	\$141.36	\$141.36
Duplex	\$46.10	\$46.10	\$88.35	\$88.35	\$88.35	\$88.35
Residential over 1” (per 1”)	\$23.05	\$23.05	\$44.17	\$44.17	\$44.17	\$44.17
Additional Connection, per 1”	\$23.05	\$23.05	\$44.17	\$44.17	\$44.17	\$44.17

(Rate Study, Appx. Table A-12.)

The District notes the objection regarding the rate increases for CIP charges based on pipe size. This concern is addressed in the Rate Study and does not present a procedural or substantive legal deficiency with the proposed rates or the Rate Study.

Policy Number 3240 provides that, after being presented with District staff’s findings regarding the objections, the District board has the discretion to determine whether further review is needed, whether amendments to the proposed water rate are warranted, or whether to proceed to the Proposition 218 protest hearing.

RECOMMENDATION:

Direct District staff and legal counsel to proceed with the Proposition 218 protest hearing on September 18, 2023.