



**COMMUNITY
WATER CENTER**
EL CENTRO COMUNITARIO
POR EL AGUA



How to challenge an unfair water rate increase

There are laws that may protect you from water rate increases, but they depend on the type of water system you have. The laws that restrict a Public Water System's (PWS) ability to raise water rates vary depending on the type of PWS.

What can I do if my water provider is raising the rates?

<i>If your water system is a....</i>	<i>You have the following options to stop a water rate increase....</i>
Governmental entity	California Proposition 218 (Prop. 218) applies and there are strict requirements that your provider must follow before raising the rates.
Mutual water company	Your only recourse is to convince the board not to raise rates or to elect new board members at the annual election.
Private water utility	The rate increases must go through a process set by the Public Utility Commission (PUC).
Other types of nongovernmental entity, such as a mobile home park or apartment complex	There may be general consumer laws or contract laws that could apply if rates jump to unreasonable levels, so contact a legal services organization if such a situation arises. Additionally, mobile home customers may file a complaint with the PUC regarding rates charged or services provided. To file a complaint with the PUC, go to http://www.cpuc.ca.gov/puc/forms/Complaints/ or call (800) 649-7570.

This information was originally published in the Community Water Center's *Guide to Community Drinking Water Advocacy*.
available at: www.communitywatercenter.org

What is Proposition 218?

Proposition 218, known as Prop 218, is an article of the California Constitution, Article XIII D. It is a tool that can be used to protest water and sewer rate increases. It applies to governmental entities, including special districts, such as public water systems and community service districts. It sets requirements and procedures that entities must follow if they would like to raise rates. In general, the provider must provide information on the amount of the rate increase, why it is needed, how the increase was calculated, and it must provide sufficient notification to impacted property owners and an opportunity to protest the increase. For more detailed information, see CWC's Proposition 218 factsheet, available at <http://communitywatercenter.org/downloads.cfm?content=Presentations>.



Caution!!

Court interpretations of Proposition 218 are continually evolving and changing. Make sure you check with an attorney to find out if new cases have changed the interpretations presented here.

Who must comply with Prop 218?

All governmental water providers, including cities, counties, community services districts, and public utility districts. It does **NOT** apply to private companies, mutual water companies, or utilities regulated by the Public Utility Commission (PUC).

What procedures must a water provider follow in order to raise rates?

1. Identify the parcels of land within its jurisdiction that will be affected by the rate increase and the corresponding people who hold water accounts.
2. Send a written notice of the proposed rate increase to all affected landowners and all tenants that pay a bill directly.
3. At least 45 days after notices are sent, conduct a public hearing on the proposed rate increase and count and record all written protests by property owners or tenants that pay a bill directly.

Ensure your water provider is complying with Prop. 218

Your water provider is required to provide the following information.

Can you find the following information on the notice you received?

1 The amount of the rate increase

What is the proposed rate increase?

2 Why the increase is needed

Why does your water provider say it is needed?

3 How the provider calculated the amount of the needed increase

How was the rate increase calculated?

4 When and where the water provider will hold a public hearing on the proposed rate increase

When and where is the public hearing?

How can a rate increase be stopped?

- **Attend the public hearing and submit written protests!**
- **If a majority (50% +1) of property owners or tenants who pay a water bill directly within the service district submit written protests at the hearing, the provider cannot raise rates as proposed. You can use the sample written protest attached.**

Tips for effective advocacy within a rate hearing

Before the hearing:

- If you need translation at the hearing, make sure to call a week before the hearing and request to have translation available at the hearing.
- Call and ask your water provider how many notices were sent out. This will help you determine how many votes are needed to block the rate increase.
- If you are a renter and do not pay for the water bill, ask your landlord to consider signing a protest vote against the rate increase.
- Attach a copy of the water or sewer bill to the protest vote.
- Make copies of all protest votes or document how many protest votes you submitted.

At the hearing:

- Make sure the board counts all protest votes submitted at the public hearing.
- Ask if any other votes were submitted before the hearing.

Understanding the voting process

If a property owner or tenant who pays a water bill directly does not submit a written protest, it is counted as a vote in **favor** of the increase.

- If you own more than one property and pay a service bill for each one, you may have more than one vote. Make sure to submit a protest vote for each property. You can do so by listing all addresses for each service or by submitting individual protest votes for each parcel.
- You can collect protest votes from others who do not agree with the rate increase. However, if you collect protest votes from others in your community, you **must** submit them to the board on or before the hearing.

Even if a majority of property owners do not protest against the proposed rate increase, the increase must still satisfy the following substantive requirements to be valid:

- The provider must identify a particular water-related purpose for the rate increase and the funds from the increase may not be used for any other purpose.
- The provider must calculate the amount of the rate increase precisely to cover the cost of the funds needed to provide the service. The agency cannot generate a profit from increased water rates.
- The cost imposed on each property owner must be proportional to that property owner's water use.
- The provider must base the rate increase on actual use, not estimated use or potential future use.

Do Tenants Have Veto Power?

As the list of procedural steps demonstrates, the language of Article XIID clearly gives *landowners* the power to veto a governmental water provider's proposed water rate increase by majority protest. The question remains whether residential tenants wield similar power. No court has decided this issue, but Article XIID defines property ownership expansively to include tenants, at least in situations where tenants are directly liable to pay for fees or charges. Therefore, it is probably not unreasonable to construe Article XIID as extending veto power to those tenants who pay water bills directly to the water provider; however, those tenants whose water use charges are included in the monthly rent paid to the landlord probably do not qualify for veto power.

Other Limitations on Water Rate Increases

The fees and charges a governmental water provider imposes on its users must be reasonable, fair, and equitable in nature. However, when a governmental water provider passes an ordinance fixing water rates, this constitutes a legislative function, and courts therefore accord substantial deference to the provider's decision. Historically, the court will presume that the ordinance is valid, and the person challenging the rate increase bears the burden of proving otherwise. This is an extremely difficult standard to meet.

On the other hand, in the wake of Proposition 218 and the adoption of Article XIID of the Constitution, it appears that a governmental water provider no longer has a right to earn a reasonable rate of return (profit) from an increase in water rates. Instead, water charges must remain closely tied to the cost of delivering the water and maintaining the system. This suggests that, if challenged in court, perhaps a provider might need to produce some evidence after all of the linkage between the revenues generated by its rate increase and the operational costs toward which those funds are disbursed.

Finally, in contrast to private water utilities, which are governed by the PUC, governmental water providers are not required to pass along any cost savings to customers. The theory is that, unlike privately-owned corporations that are in the business of earning a profit, "the electoral process is a sufficient check on [the] functioning" of governmental water providers.

Discriminatory Rates

California courts have consistently held that in order to challenge a rate increase as being discriminatory in violation of the Equal Protection Clause, "a showing that rates lack uniformity is by itself insufficient to establish that they are unreasonable and hence unlawful. To be objectionable, discrimination must draw an unfair line or strike an unfair balance between those in like circumstances having equal rights and privileges. It is only unjust or unreasonable discrimination which renders a rate or charge unreasonable." Therefore, even if a rate increase impacts some users more heavily than others, or is not the same amount for all users, that fact alone does not establish unlawful discrimination. Rather, the differences in rates or impacts must also be unjust or unreasonable in order for that rate increase to be illegal.

Proposition 218 Protest Vote

I, _____
[insert name of person on water bill or property owner]

submit this protest vote to oppose the proposed rate increase by

_____ on behalf of the
[insert the name of your water provider]

following property:

[Insert address or parcel number of property]

[Insert address or parcel number of additional property]

Signed,

[Sign here]

[Insert Date]

[Print name of person on water bill or property owner]

Remember to make a copy for your own records after you fill this out.