

ORDINANCE NO. 19-01  
OF  
FORESTHILL PUBLIC UTILITY DISTRICT  
ESTABLISHING A PROCEDURE FOR RATEPAYER OBJECTIONS  
TO PROPOSED WATER RATES

**Section I: Findings**

The Board of Directors of the Foresthill Public Utility District (District) finds and declares as follows:

1. Foresthill Public Utility District (District) owns and operates a public water system.
2. State law requires that certain changes to water service rates occur in accordance with procedures outlined in Article XIII D, section 6, of the California Constitution, commonly referred to as "Proposition 218."
3. The purpose of this ordinance is to provide a meaningful opportunity for a ratepayer to resolve an objection to a proposed water rate before resorting to litigation after the new rate is approved.
4. This ordinance is intended to create an exhaustion of administrative remedies procedure in order for ratepayers to bring an objection regarding a proposed water rate to the District board's attention early in the rate consideration process, and to provide an opportunity for the District to address or resolve the objection(s) before the District board makes a final decision on whether to adopt a proposed water rate pursuant to Proposition 218.
5. Use of the term "water rate" is defined broadly to include consumptive rates, fixed rates, and other rates governed by Proposition 218.
6. This ordinance will take effect 30 days after initial board adoption and will apply to any proposed water rate changes pending at the time of adoption or proposed thereafter.

**Section II: Adoption of Exhaustion Procedures**

Be it enacted by the Board of Directors of the Foresthill Public Utility District:

**1. Overview of Exhaustion Procedure**

The exhaustion procedure shall include the following chronological steps and may run concurrently with the Proposition 218 process (further detail provided below):

1. District board directs staff to send notice of the start of the exhaustion procedure to record owners or customers of record.
2. Ratepayers have no less than 30 calendar days to submit to the District written objections to the proposed rate.

3. District staff will review timely submitted written objections and draft a written response to the written objections. District staff will then present its findings and written responses to the District board for review and to determine whether action is needed in response to the written objections and staff responses or findings.

4. A summary of written objections and staff response will be presented prior to the start of a Proposition 218 protest hearing and prior to a final determination by the District board regarding whether to approve the proposed water rate.

## **2. Initiating Exhaustion Procedure**

Once a proposed water rate has been presented to the District board the board shall also direct staff to compile and transmit to ratepayers an exhaustion procedure timeline with specific deadlines for each step of the exhaustion procedure specified below, in compliance with this ordinance. The exhaustion procedure must conclude before the Proposition 218 protest hearing, but may conclude on the same day as the Proposition 218 protest hearing.

## **3. Exhaustion Notice**

The exhaustion notice shall include an overview of the exhaustion procedure (example in section 12.2 above), specify how ratepayers can submit written objections, provide the date and time by which those objections must be received by the District, specify when written staff response will be presented to the public, and identify the point of contact to whom the objections will be sent. The exhaustion notice must notify ratepayers of the following or substantially similar terms:

“The exhaustion procedure is separate from the Proposition 218 protest hearing. To participate in the exhaustion procedure, a written objection must indicate it is submitted as an objection in accordance with the exhaustion ordinance. Ratepayers who wish to submit a written protest for the Proposition 218 protest hearing must follow separate directions provided in the Proposition 218 notice letter.”

## **4. Written Objections**

Ratepayers shall be given no less than 30 calendar days, starting on the date the exhaustion notice is mailed, to submit written objections to the District regarding the proposed water rate.

As stated above, to avoid confusion with written protests for the Proposition 218 process, a written objection must specify that it is submitted as part of the exhaustion procedure or in accordance with the exhaustion ordinance. All written objections shall state the specific grounds for concern with a proposed water rate and include a desired resolution or outcome. If the nature of the dispute is vague or unclear, the District board may request clarification. Objections shall include the name, phone number, street address, and e-mail address (if applicable) and preferred method of communication with the objecting ratepayer (also referred to as “objector”).

Any protest must be received by the District before the close of business on the stated deadline date, and a postmark will not be considered as sufficient. Verbal objections or written objections that are not received by the deadline specified in the exhaustion notice may be considered by the District board with an offer of proof of extraordinary circumstances. The District board has sole discretion to determine whether to consider those objections.

## 5. Staff Response

At the close of the written objection period, District staff shall review timely submitted and otherwise compliant written objections in accordance with the requirements above and shall draft written responses to the written objections.

District staff shall present the findings to the District board at a board meeting that was specified in the exhaustion notice. The District board, in exercising its discretion, shall determine whether further review is needed, whether the input gathered from written objections and the staff response warrant amendments to the proposed water rate, or whether to proceed to the Proposition 218 protest hearing.

## 6. Conclusion of Exhaustion Procedure

Once the District board has made its final determination as to any objection, it may proceed to the Proposition 218 protest hearing (as previously noticed in accordance with Proposition 218).

## 7. Rate Challenger Must Exhaust Administrative Remedies

No claim, suit for damages, suit for injunctive relief, petition for writ of mandamus, or administrative or judicial proceeding shall be brought against the District, the District board, or its employees, officers, or designees, regarding a challenge to a proposed water rate unless the challenging party first exhausts its administrative remedies by complying with the exhaustion procedure specified above.

PASSED AND ADOPTED by the District Board of the Directors on November 18, 2019 by the following vote:

AYES:	<u>5</u>
NOES:	<u>0</u>
ABSTAIN:	<u>0</u>
ABSENT:	<u>0</u>



Neil Cochran, Board President

ATTEST:

By:   
Hank White, Clerk and Ex-Officio Secretary