

TULARE IRRIGATION DISTRICT

RESOLUTION NO. 22-11

RESOLUTION ADOPTING PROPOSITION 218 ASSESSMENT BALLOT PROCEDURES AND CALLING FOR AN ASSESSMENT BALLOT PROCEEDING ON PROPOSED ASSESSMENT

WHEREAS, through the adoption of Proposition 218 which added Article XIID, Section 4, the State of California’s Constitution requires that public agencies present proposed increases in assessments on property to the owners of said property for approval or rejection; and

WHEREAS, Article XIID of the California Constitution imposes certain procedural and substantive requirements relating to assessments (as defined therein); and

WHEREAS, as authorized by Water Code Section 36550 *et seq.*, this Board has determined that it is necessary to adopt an assessment to cover certain of the District’s estimated costs; and

WHEREAS, the Board is in receipt of an Engineer’s Report, entitled “Engineer’s Report for Tulare Irrigation District: Proposition 218 Procedures for Benefit Assessment” prepared for the District in compliance with Proposition 218 by Provost & Pritchard Consulting Group and attached to this Resolution as **Exhibit A**; and

WHEREAS, the Engineer’s Report discusses the District’s anticipated costs and required revenues; and

WHEREAS, the Engineer’s Report recommends that the District levy a proposed assessment (“Assessment”) made up of three components to fund the District’s Fixed Costs - General & Administrative (G&A), Surface Water Supply expenses, and Capital Improvements Plan Projects; and

WHEREAS, the Engineer’s Report recommends parcels less than one acre in size be assessed at the Fixed Cost – General & Administrative component; and

WHEREAS, the purpose of the proposed Assessment is further described in Section 4 of the Engineer’s Report; and

WHEREAS, the Board believes it to be in the best interest of its landowners to record its decisions regarding implementation of Proposition 218’s provisions relating to the Assessment and to provide its landowners with a guide to those decisions and how they have been made.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF TULARE IRRIGATION DISTRICT does hereby resolve, declare and order as follows:

1) Statement of Legislative Intent. It is the District’s intent in adopting this Resolution, to call for an assessment ballot proceeding to provide its landowners with a say in the adoption of the proposed Assessment. Additionally, it is the District’s intent in adopting this Resolution to adopt assessment ballot proceedings which are consistent, and in compliance with Article XIID, Section 4 of the California Constitution and with Proposition 218’s Omnibus Implementation Act codified in Government Code sections 53750 through 53758.

2) Assessment Ballot Proceedings. The following procedures shall be used by the District in an assessment ballot proceeding for adopting the proposed Assessment as required by Article XIID, Section 4 of the California Constitution:

A. Engineer’s Report. The District has received an Engineer’s Report prepared by Provost & Pritchard Consulting Group, which is attached to this Resolution as **Exhibit A**. The Engineer’s Report complies with the applicable state statutes authorizing the assessment and with Article XIID, Section 4 of the California Constitution. The Engineer’s Report explains the special benefit conferred by each of the Proposed Assessments. Additionally, the Engineer’s Report provides the evidence upon which this Board may find that a special benefit exists and the amount of that special benefit per parcel.

B. Amount of Assessment: For purposes of the Assessment, as authorized by Water Code

section 36759, lands within the District shall be split into lands greater than one-acre and lands one acre or less.

1. **Lands One Acre or Less:** Shall be assessed only for the District's G&A component of the Assessment.
2. **Lands Greater than One Acre:** Shall be assessed for all components of the Assessment.
3. **District G&A Assessment:**
 - a) The proposed maximum assessment for the District G&A component of the Assessment is \$67.00 per acre.
 - b) This G&A component of the Assessment is subject to an annual escalator based upon the annual "Western US Cities Average Consumer Price Index" The G&A component of the Assessment shall continue to be subject to this escalation (which would accumulate to the extent not used within a given year), to be exercised at the Board's discretion, as approved through the Proposition 218 Assessment Ballot proceeding called for in this Resolution.
4. **Water Supply Assessment:**
 - a) The proposed maximum assessment for the Water Supply component of the Assessment is \$35.00 per acre.
 - b) This Water Supply component of the Assessment is subject to an annual escalator based upon the annual "Western US Cities Average Consumer Price Index." The Water Supply component of the Assessment shall continue to be subject to this escalation (which would accumulate to the extent not used within a given year), to be exercised at the Board's discretion, as approved through the Proposition 218 Assessment Ballot proceeding called for in this Resolution.
5. **Capital Improvements Plan Projects Assessment:**
 - a) The proposed maximum assessment for the Groundwater Recharge component of the Assessment is \$38.00 per acre.
 - b) This Capital Improvements Plan Projects component of the Assessment is subject to an annual escalator based upon the annual "Western US Cities Average Consumer Price Index." The Capital Improvements Plan Project component of the Assessment shall continue to be subject to this escalation (which would accumulate to the extent not used within a given year), to be exercised at the Board's discretion, as approved through the Proposition 218 Assessment Ballot proceeding called for in this Resolution.
6. The Board shall have the authority upon Board approval to move up to 50%, or \$19 from the Capital Improvements Plan Projects Assessment to cover unforeseen costs in the District G&A Assessment or Water Supply Assessment which exceed the assumptions of the Engineer's Report and incorporated escalator.

C. **Notice.** The following guidelines shall apply to giving notice of the proposed Assessment and the public hearing relating to the increase.

1. The recorded owner(s) of each parcel to be assessed shall be determined from the last equalization property tax roll from each of the County Assessor. If the roll shows more than one owner at a single address, only one ballot and notice will be mailed to those owners at that address. If the property tax roll indicates more than one owner at separate addresses, ballots and notices will be mailed to the owners at those separate addresses as reflected in the roll. If the property is held in trust the notice shall be sent to the trustee as reflected in the last equalization property tax roll. Only property owners shall receive notice and ballots.
2. The final adopted notice shall be sent at least forty-five (45) days prior to the date set for the public hearing on the proposed Assessment.
3. On the face of the envelope mailed to the record owner, in which the notice and ballot are enclosed, there shall appear in substantially the following form in no smaller than 16-point bold type: "OFFICIAL BALLOT ENCLOSED."
4. The notice provided by this section and in accordance with Article XIID, Section 4 of the California Constitution and Government Code Section 53753(a) shall supersede and be in lieu of any other statutes requiring notice to levy or increase an assessment.

5. Failure of any person to receive notice shall not invalidate the proceedings.
6. The final general form of the Notice is attached to this resolution as **Exhibit B**.

D. Assessment Ballot. The following guidelines shall apply to the ballot:

1. The official as adopted ballot required by Article XIID, Section 4(d) of the California Constitution shall be mailed to all property owners of record receiving notice as described in section 2(C) herein at least forty-five (45) days prior to the date of the public hearing on the proposed Assessment.
2. As required by Article XIID, Section 4(e) of the California Constitution and Government Code Section 53753(b), the ballots will be weighted according to the proportional financial obligation on the affected property.
3. The Board hereby designates Matt Klinchuch of Provost & Pritchard to act as the “Designated Individual” for purposes of this assessment ballot proceeding.
4. All ballots must be returned to the Designated Individual by mail or in person, sealed in the envelope provided no later than the close of the public hearing. Additionally, a landowner has the right to change his vote at any time, and as many times as he wishes, up until the close of the hearing.
5. A ballot must be signed under penalty of perjury. For properties with more than one owner of record, ballots will be accepted from each owner of record. Each owner of record is entitled to vote. The Designated Individual shall apportion the voting rights between owners based upon the respective interests as he deems correct, proper, and appropriate. However, if only one owner of record votes, the Designated Individual shall tabulate that vote on behalf of the entire parcel. Additionally, if a parcel has more than one owner but not all of the owners submit a ballot the Designated Individual will apportion the received ballots in proportion to reflect a one hundred percent (100%) vote for the parcel. Therefore, if a parcel has three (3) recorded owners but only two (2) ballots are submitted the submitted ballots will each be apportioned to reflect fifty percent (50%) of the vote for the parcel so that a total vote of one-hundred percent (100%) is recorded for the parcel.
6. Because the proposed assessment is property related and is therefore the responsibility of the parcel’s owner, a tenant of real property shall not have the power or authority to submit a ballot; only landowners have the authority to vote on the proposed Assessment.
7. Only ballots with original signatures, not photocopies of signatures, will be accepted.
8. The Designated Individual may issue a duplicate ballot to any property owner who wishes to change their submitted ballot or whose original ballot was lost or destroyed. Such duplicate ballot shall be clearly marked as duplicate and shall be accompanied by sufficient information for the Designated Individual to verify the location and ownership of the property in question and the identity of the individual casting the ballot in order to verify its authenticity.
9. As provided for in Government Code section 53753(e)(6), this “assessment ballot proceeding” is not an election for purposes of conforming to the Election Code or Article II of the California Constitution.
10. Although an assessment ballot is a “public record” as that phrase is defined by the Public Records Act, the ballots will not be counted until the end of the noticed hearing and therefore to prevent possible harassment and intimidation of property owners the ballots shall not be open to public inspection until the conclusion of the assessment ballot proceedings in accordance with Government Code Section 53753(e)(2). During and after the tabulation, the assessment ballots and the information used to determine the weight of each ballot shall be equally available for inspection by both proponents and opponents of the proposed assessment. The ballots shall be preserved by the District for a minimum of two years, after which

they may be destroyed as provided by Law.

11. The final general form of the ballot is attached to this resolution as **Exhibit C**.

- E. **Mailing of Notice and Ballot.** In accordance with Government Code Section 53753(b) the Notice and Ballot described herein in sections 2(C) and 2(D) respectively shall be mailed jointly to the record owner of the affected parcels as determined from the last equalization property tax roll at least forty-five (45) days prior to the public hearing on that matter in an envelope which shall provide on its face in the following in font no smaller than 16-point bold type: "OFFICIAL BALLOT ENCLOSED". The provided ballot return envelope shall also be clearly marked on its face so that it may be readily identified upon its return.
- F. **Public Hearing.** In accordance with the California Constitution, the Board shall hold a public hearing at least forty-five (45) days after the mailing of the notice and ballot. The hearing shall substantially follow the procedures set forth herein:
1. At the public hearing, the District's Board of Directors shall hear public testimony regarding the proposed assessment and accept ballots up until the close of the public hearing. No ballot will be accepted after the hearing is closed.
 2. The then presiding President of the Board of Directors may impose reasonable time limits on both the length of the hearing and the length of each speaker's testimony.
 3. The District's Board of Directors may continue the hearing as they deem appropriate.
 4. The District's Board of Directors shall accept ballots on the proposal until the close of the public hearing. No Ballots shall be accepted for tabulation after the conclusion of the public hearing.
 5. A property owner has the right to withdraw a ballot submitted previously and to submit a new or changed ballot up until the conclusion of the public hearing on the proposed Assessment.
- G. **Tabulating Ballots.** In accordance with the California Constitution, the following guidelines shall apply to the tabulating of the assessment ballots:
1. At the conclusion of the public hearing, or shortly thereafter, a disinterested party designated by the District's Board of Directors shall begin the tabulation of the ballots, including those received during the public hearing.
 2. This Board designates the Matt Klinchuch of Provost & Pritchard, as the disinterested party to tabulate the ballots ("Designated Individual"). To the extent Matt Klinchuch relies on staff at Provost & Pritchard or staff at MK Elections to assist tabulation of ballots, he shall directly oversee their activities.
 3. In accordance with Article XIID, Section 4(e) of the California Constitution and Government Code Section 53753(b), the ballots will be weighted according to the proportional financial obligation on the affected property.
 4. The Designated Individual shall determine the validity of all ballots. The Designated Individual shall accept as valid all ballots except those in the following categories:
 - a) A photocopy of a ballot which does not contain an original signature;
 - b) An unsigned ballot;
 - c) A ballot which lacks an identifiable "yes" or "no" vote;
 - d) A ballot which appears to be tampered with or otherwise invalid based upon its appearance, method of delivery or other circumstances.
 5. The Designated Individual's determination, after consultation with District Counsel, that a ballot is invalid shall be final and may not be appealed to the Board of Directors.

6. The Designated Individual may not and will not begin tabulation of the ballots prior to the conclusion of the public hearing. All ballots are to remain sealed until the tabulation begins after the conclusion of the public hearing.
7. As previously stated, a property owner has the right to withdraw a ballot submitted previously and to submit a new ballot up until the conclusion of the public hearing. To facilitate this submission of a new ballot, the Designated Individual shall issue a duplicate ballot. Such duplicate ballot shall be clearly marked as duplicate and shall be accompanied by sufficient information for the Designated Individual to verify the location and ownership of the property in question and the identity of the individual casting the ballot in order to verify its authenticity. The withdrawn ballot, or ballots, shall not be used in vote tabulation even if the newly submitted ballot is rejected for some reason.
8. A property owner's failure to receive an assessment ballot shall not invalidate the proceedings conducted under this section and Article XIID, Section 4 of the California Constitution.

H. Notification of Election Results. The following guidelines shall apply to notifying landowners of the election results and which guidance those results will have upon the District.

1. If according to the final tabulation of the ballots, ballots submitted against the assessment exceed the ballots submitted in favor of the assessment, weighted according to the proportional financial obligation of the affected property, the District's Board of Directors will not impose the assessment at this time.
2. The results of the election shall be posted at the District's office and/or on the District's website and read into the minutes of the first regularly scheduled Board meeting following the election.
3. A property owner's failure to receive an assessment ballot shall not invalidate the proceedings conducted under this section and Article XIID, Section 4 of the California Constitution.

3) Adoption of Engineer's Report and Call for an Assessment Ballot Proceeding. Having reviewed the Engineer's Report, the Board of Directors hereby agrees with and adopts its conclusions and therefore calls for an "assessment ballot proceeding" for the proposed Assessment as provided for herein.

4) Hearing. The hearing on the increase shall be held at 9:00 a.m. on August 31, 2022, at the Tulare County Ag Commissioner's Office located at 4437 South Laspina Street, Tulare, California 93274.

5) Notices. District personnel, including consultants, are hereby directed to prepare and send out notices and ballots as described herein for that proceeding.

All the foregoing being on motion of Director Borges seconded by Director Thomas and authorized by the following vote, to wit:


AYES: Directors Bixler, Borges, Martin, Thomas, and Rogers

NOES: None

ABSTAIN: None

ABSENT: None

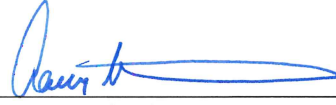
ATTEST:



 David G., Bixler President

I HEREBY CERTIFY that the foregoing resolution is the resolution of said District as duly passed and adopted by said Board of Directors on July 12, 2022.

WITNESS my hand of said Board of Directors, July 12, 2022.



Aaron Fukuda
Secretary of the Board of Directors

Attachments: Exhibit A: Engineer's Report
Exhibit B: Form of Notice – Assessment Ballot Proceedings
Exhibit C: Form of Assessment Ballot



EXHIBIT A

ENGINEER'S REPORT

EXHIBIT B
TULARE IRRIGATION DISTRICT

NOTICE OF PUBLIC HEARING
ON AN ASSESSMENT BALLOT PROCEEDINGS FOR PROPOSED ASSESSMENT

EXHIBIT C
TULARE IRRIGATION DISTRICT
OFFICIAL ASSESSMENT BALLOT
FOR PROPOSED ASSESSMENT