Submeters to Reduce Water Consumption

By David A. Kline, Esq.1

Governor Brown's executive order dated April 1, 2015, mandates a 25% statewide reduction in urban water use. That mandate requires water-saving targets between 12% and 36% for the San Diego County Water Authority's 20 member agencies. The City of San Diego, for example, is under mandatory water use restrictions and must reduce its water usage by a collective 16%. In Riverside, the Western Municipal Water District has a goal of reducing outdoor water use by 30% and recommends reducing outdoor watering by 50%. The Coachella Valley Water District has implemented mandatory water restrictions to reduce water use by 36%. Given this climate, it is hard to imagine that the cost of water will drop any time soon.

It is in everyone's interest to conserve water. Yet, communities that are commonly metered have less incentive to do so. These communities should try to instill an attitude conducive to conservation. One way is to convert to submeters. When the water bill is just a piece of the monthly assessment, residents don't see the connection between their personal water use and their monthly bills as directly as when each home receives its own water bill. However, communities that have converted to submeters have seen a 20% to 25% reduction in water use.

1.Purchasing Submeters:

When submeters are purchased, they are typically owned by the association and installed by an independent plumber. They typically come with a one-year warranty. Typically, the association will enter into an agreement with a third party to read the meters, bill the association's members, and collect money for the water used by each member.

2.Financing Submeters:

A special assessment may be necessary if the purchase cannot be paid from the association's operating account.

Votes on special assessments are governed by the Civil Code regardless of what your CC&Rs may state. Most special assessments require approval from a majority of those voting, provided at least a majority of the members cast ballots. This means as little as 26% of the membership can approve a special assessment, depending on exactly how many members participate in the vote.

[1]*A previous version of this article was written by James F. Danow, Esq. in March of 2009.*

3.Amending the CC&Rs:

A CC&R amendment is usually necessary to authorize the association to install submeters and to collect assessments for the cost of the water used by each member. The association will also need the tools to collect delinquent accounts. Amending the CC&Rs will protect the board from any claims it exceeded its authority.

4.Membership Approval:

It may also be necessary to hold a membership vote to authorize spending money on capital improvements, if the CC&Rs or Bylaws have such a requirement.

Thus, because the submetering project may have several components, there is no reason not to tie together all the approvals into one membership vote: (1) amend the CC&Rs, (2) impose a special assessment, if necessary, and (3) approve capital expenditure, if necessary. Either the entire project succeeds, or it fails, pursuant to only one vote.

5.Implementation:

If a board is serious about proceeding, here is what we recommend:

1.Meet with a representative of the submetering company to learn of the alternatives, such as purchasing versus renting, and the various types of meters. For example, less expensive meters will need to be "read" every month, while the more expensive and sophisticated ones automatically transmit usage electronically. Your object is to determine (1) exactly what you want, and (2) what it will cost.

2.Hold a town hall type meeting to get feedback from the owners, and let them know what your research has uncovered. Emphasize water conservation and reducing costs. It is always possible that your first choice is not what a majority really wants, and therefore you can explore other options before holding a membership vote.

3.The next step is the membership vote. The members will vote to (1) amend the CC&Rs to insert a new section on submetering, (2) approve a special assessment to finance purchase of the submeters (if necessary), and (3) approve a capital expenditure (if necessary). The owners should be told exactly what type of meters will be acquired, how the submetering process works, how money is collected, and what this will all cost each member up front.

4.The final step is to negotiate and sign a contract with the submetering company for the acquisition of submeters on the terms and conditions you explained to the membership, and on which they based their vote. Once the contract is completed, the submeters are installed and the new process begins.