

**SPECIAL DISTRICT  
BOARD MEMBER PER DIEM**

<b>Special District</b>	<b>Per Diem/Compensation Amount Per Meeting</b>	<b>Maximum Per Month</b>	<b>Mileage</b>
Monterey County Water Resources Agency	\$50	None	\$.55 per mile
Transportation Agency of Monterey County	\$50	\$100	
Marina Coast Water District	None	----	
Fort Ord Reuse Authority	None	----	
Salinas Valley Solid Waste Authority	\$100	None	
Monterey Airport District	\$100	\$400	
Monterey Bay Unified Air Pollution Control District	\$100	None	
North County Fire Protection District	\$100	None	
Monterey Regional Water Pollution Control Agency <sup>(1)</sup>	\$100	\$600	\$.55 per mile
Carmel Area Wastewater District <sup>(2)</sup>	\$150 (Board) \$50 (Committee)	\$600	
Association of Monterey Bay Area Governments	Paid by Cities	----	
<b>Monterey Regional Waste Management District<sup>(3)</sup></b>	\$50	\$100	\$.55 per mile
Monterey Peninsula Water Management District	\$100	None	
Local Agency Formation Commission	None	----	
Castroville Community Services District	\$100	\$300	Current IRS rate
Pebble Beach Community Services District	\$100	\$600	\$.55 per mile

(1) Members may decline payment

(2) Chair receives \$200 per Board Meeting

(3) Chair receives additional \$100/month

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Memo to: William Merry, General Manager

From: Rob Wellington, Legal Counsel

**Re: Per Diem Compensation for Board Members; Consideration of  
Legislation to Make it Consistent With That of Other Special Districts**

As you know, recently there has been some discussion regarding the meaning and application of Section 49123 of the California Public Resources Code. Section 49123 is found in the Garbage and Refuse Disposal District law (Public Resources Code 49100 and following), the statutory scheme under which MRWMD is established.

Section 49123, covering board member expenses and compensation, first provides that board members may be reimbursed for actual and necessary expenses incurred in the performance of official district business. Subsection (b), the provision at issue here, reads: "Members of the district board may also receive not more than fifty dollars (\$50) per diem for each day of actual attendance at the meetings of the board, with the per diem to be established by order of the board and entered upon its minutes. No member of the district board shall, however, receive more than one hundred dollars (\$100) per diem in any calendar month." (Subsection (c) provides for additional compensation for the chair and secretary as established by the board.)

One possible suggestion was that the wording of (b) is not a limit on the total amount of per diem that can be "earned" in one month, rather that no more than a \$100 payment may be paid ("received") in one month. For example, so goes the argument, if five qualified meetings occur in June, and a board member attends all of them, he/she is entitled to \$250, receivable in successive monthly payments none of which exceeds \$100.

We disagree. While (b) is not an artfully drawn provision, possibly containing some ambiguity, we believe it is better read that no more than two meetings/month are compensable.

Rules of statutory construction include that interpretation should reflect the apparent purpose of the legislation, and that absurd and repugnant results should be avoided. It appears to us that the two sentences constituting Section 49123, read together, have the purpose, among others, of limiting the total amount that may be "earned" by members. Ascribing the suggested interpretation opens the door to the possibility of large monthly "earnings" payable over a lengthy period of time. Suppose the District is engaged in lengthy, contentious meet and confer sessions for 5 weeks, scheduling meetings every day to meet with employee representatives; 25 meetings, \$50/meeting, \$1,250 payable over twelve or so months. And then it happens the next year, increasing the total and extending the payment schedule. This does not appear to be a reasonable result anticipated by the California Legislature. In these days of appropriate close scrutiny of the public fisc, such an interpretation, while possibly not "devious," would in our opinion certainly be seen as "less than forthright."

We believe there is no good reason why our Board members should not receive, or at least have the ability to receive, the same compensation as provided by law for the board members of other special districts. There are several provisions similar to Section 49123 in the California codes, applicable to other sorts of districts. For example, Section 4733 of the California Health and Safety Code, a provision of the County Sanitation District Act, provides for "compensation [not exceeding] one hundred dollars (\$100) for each [district board meeting] or for each day's service rendered as a member by request of the board, not exceeding a total of six days in any calendar month, together with any expenses incident thereto." There is also a procedure for increasing the \$100/per meeting limit, but not the total of six.

Section 61047 of the California Government Code, a provision of the Community Services District Law, allows compensation not to exceed \$100 "for each day of service," with a proviso for no compensation "for more than six days of service in a month." Expense reimbursement is also provided for, as is the aforementioned mechanism for increasing the \$100/per limit. "Day of service" includes not only meeting, but also authorized (1) representation of the district at a public event, (2) representation at another public agency meeting, (3) representation on a public nonprofit on whose board the district has representation, and (4) participation in training related to the district.

Section 6489 of the California Health and Safety Code, a provision of the California Sanitary District Act of 1923, allows up to \$100/day for “each day’s attendance at meetings of the board or for each day’s service rendered as a director,” although in this case “service rendered” is defined by reference to a Government Code provision. Again, there is a “not exceeding a total of six days in any calendar month” limit, an expenses provision, and the increase mechanism.

Aside from learning that the Legislature has taken some writing clarity lessons since enacting MRWMD’s compensation statute, described above (it is the oldest, in terms of its last amendment – 1989 – of all those mentioned here), it is apparent that California’s law makers have consistently imposed total compensation limits on districts having some kinship to MRWMD. On that basis as well, it is also not unreasonable to interpret our Section 49123, despite the questionable use of “receive,” to mean that members may only be paid for two compensable events per month.

It is also clear to us that the companion statutes described above argue loudly for amendments to ours. Because members of our board have assumed and tackled responsibilities at least as weighty as those of the other districts discussed, the board may very appropriately want to contact our legislative representatives with a request to bring our board members’ compensation up to a level of parity with those districts. Any request should include the now prevalent payments for the expanded “days of service.” This would legislate, among others, what we have already opined to be legitimate compensation, i.e. attendance at district subcommittee meetings. We would be available to help with drafts of suggested amendment text.

If you have any questions or need any further information regarding the above, please let me know.

- R.R.W.