Public comment on October 15, 2018:

"Dillon's Rule" – which in its most basic form, states that a local government only has the powers granted it by the legislature. In this case, the legislature granted "appointed" trustees the ability to receive limited compensation under Section 4. The legislature did not grant elected trustees the ability to receive any compensation.

We had previously questioned whether an elected trustee of a water district could receive any compensation at all, since all references to compensating trustees referred to "appointed" trustees, not "elected" trustees. We believe that if the legislature had wanted elected trustees to be compensated, it would have included them in the statute governing water districts, and would have given them permission to be compensated. Their attorney disregarded "Dillon's Rule" and basically told them they can get paid.

Section 4 of the ***Public Water District Act*** states:

For terms commencing before the effective date of this amendatory Act of the 96th General Assembly, **the trustees appointed under this Act shall be paid** a sum of not to exceed $600 per annum for their respective duties as trustees, except that trustees of a district with an annual operating budget of $1,000,000 or more may be paid a **sum not to exceed $1,000 per annum**. For terms commencing on or after the effective date of this amendatory Act of the 96th General Assembly, the trustees shall be paid a sum of not to exceed $1,200 per annum. However, **trustees appointed under this Act** for any public water district which acquires by purchase or condemnation, or constructs, and maintains and **operates sewerage properties in combination with its waterworks properties, under the provisions of Section 23a of this Act, shall be paid a sum of not to exceed $2,000 per annum** for their respective duties as trustees. Compensation in either case shall be determined by resolution of the respective boards of trustees, to be adopted annually at their first meeting in May.

Do you see any compensation mentioned for trustees elected under this act? We don't either. This Section 4 talks only about "appointed" trustees. Additionally, the only time given for setting compensation falls under this section for appointed trustees. No such authorization is granted under any other section of this Act.

Section 4.2 discusses "Elected" trustees and the process to convert the district from appointed to elected trustees. This section does not mention compensation for anyone.

Can the CERWD collect tap-on fees?

"No." However, to answer this question properly, we must look at the Public Water District Act and see if a water district is given the authority to collect connection fees.

There are two distinctly different districts mentioned in the PWDA, they are: "*Combined Waterworks and Sewerage District*", and "*Water District*". CERWD is a "*Water District*."

Another useful definition used in the PWDA is "*use and service*" – the Legislature did not include "*connections thereto*" when defining "*use and service*" – this is evidenced by their separation of those items in Section 23 (f) of the Act.

In Section 23 (f) the Act specifically authorizes a **Combination Waterworks and Sewerage District** to "*charge rates and charges for the use and service of the combined waterworks and sewerage system, and to defray the cost of connections thereto*",...

"The board of trustees is authorized to charge rates and charges for the use and service of the ***combined waterworks and sewerage system, and*** *to defray the costs of connections thereto, "*

That specific language is absent in paragraphs talking about Water Districts – – which means the legislature did not intend for a water district to charge fees for "*connections thereto*" like they authorized a combination district to charge. Sections 12, 22, and 23 discuss Water Districts, and does not state charges can be made to defray the cost of connections for water districts.

Can the CERWD place a lien on real estate for delinquent payments?

"No." However, we must again look to the statute for clarification.

The PWDA, in Section 23 (f), gives specific authorization for a **Combined Waterworks and Sewerage District** to place liens on real estate for delinquent payments. Not only does it authorize liens, it states that delinquencies are *ipso facto* (automatically) a lien on the real estate, however, in order to take precedence over other debtors of the real estate, the lien must be filed with the property record.

"*Such charges or rates, including any penalties for late payment, are liens upon the real estate upon or for which service is supplied or made available whenever the charges or rates become delinquent as provided by any ordinance of the district fixing a delinquency date. A lien is created under the preceding sentence only if..."* (and it explains how a lien is created) "*Such liens shall arise ipso facto upon the delinquency of such charges or rates; however, the district has no preference over the rights of any purchaser, mortgagee, judgment creditor, or other lien holder arising prior to the filing of a notice of such a lien in the office of the recorder of the county in which such real estate is located, or in the office of the registrar of titles of such county if the property affected is registered under the Torrens system.*" It further explains how to properly file the lien. It also explains the combined district can foreclose on the lien in the same manner as if it were a delinquent mortgage.

This language is found nowhere else in the Act, which shows the legislative intent to withhold this authorization from a Water District. It is our understanding that the CERWD has in the past placed liens on real estate. We do not know if liens are still current CERWD policy.