



CITY OF EL PASO DE ROBLES
"The Pass of the Oaks"

CITY COUNCIL MINUTES

Tuesday, August 21, 2007 7:30 PM

**MEETING LOCATION: PASO ROBLES LIBRARY/CITY HALL
CONFERENCE CENTER, 1000 SPRING STREET**

**PLEASE SUBMIT ALL CORRESPONDENCE FOR CITY COUNCIL PRIOR
TO THE MEETING WITH A COPY TO THE CITY CLERK**

7:30 PM – CONVENE REGULAR MEETING

CALL TO ORDER – Downstairs Conference Center

PLEDGE OF ALLEGIANCE

Mayor Mecham expressed sympathies over the recent death of Michael Menath, a former member of the Planning Commission, and a valued member of the community.

INVOCATION – Led by Chaplain Donn Ragle, Campground Church

ROLL CALL Councilmembers John Hamon Gary Nemeth, Duane Picanco, Fred Strong, and Frank Mecham

PUBLIC COMMENTS

- Steve Perkins, City Building Official, encouraging attendance at the August 29, 2007 SLO Green Build Seminar (flyer attached)
- Edralin J. Maduli, Cuesta College requesting City Council support for Cuesta projects (letter attached)
- Norma Moye, promoting the 4th Annual Olive Festival on August 25, 2007 at the City Park.
- John Borst thanking the Council for responding in timely manner to his Prop 218 implementation questions posed at the August 7, 2007 regular meeting.

AGENDA ITEMS TO BE DEFERRED (IF ANY) - None

PRESENTATIONS

The City Manager congratulated and thanked Mike Compton, Director of Administrative Services, on his retirement at the end of the month and for twenty years of service to the City. Mr. Compton, who made his final appearance at a regular City Council meeting, will continue his involvement as the City's elected Treasurer.

1. **Water Conservation**
D. Monn, Public Works Director

Katie DiSimone presented a briefing on status of water conservation.

PUBLIC HEARINGS

2. **Determination of Historic or Architectural Significance and Request to Process a Pending Determination Permit Application (Demolition 07-003)**
R. Whisenand, Community Development Director

The City Council considered an application filed by William Ostrander and authorized a demolition permit for four residences and two outbuildings located at 721-731 Pine Street. Staff distributed a revised draft resolution for Council's review, clarifying the mitigation measures adopted in the Negative Declaration.

Mayor Mecham opened the public hearing. Speaking from the public was the applicant, William Ostrander. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Nemeth, seconded by Councilmember Hamon, moved to by separate actions to adopt a revised Resolution No. 07-171 adopting a Mitigated Negative Declaration for the properties; and authorize that the demolition permit application be processed.

Motion passed by the following unanimous roll call vote:

AYES: Hamon, Nemeth, Picanco, Strong, and Mecham

NOES:

ABSTAIN:

ABSENT:

CONSENT CALENDAR

Mayor Mecham called for public comments on Consent Calendar items. At the request of the public, Item 3 was pulled for separate discussion. There were no further comments from the public, either written or oral, and the public discussion was closed.

3. (pulled for separate discussion). Approve City Council minutes of August 7, 2007

4. Approve Warrant Register: Nos. 71627—71782 (08/02/07) and 71783—71950 (08/10/07)

5. Receive and file Advisory Body Committee minutes as follows:
Library Board of Trustees meeting of July 12, 2007
Senior Citizen Advisory Committee meeting of June 11, 2007

6. Adopt Resolution No. 07-172 approving a salary adjustment for the City Manager in accordance with the City Manager Employment Contract. Based on the annual review of City Manager's performance recently conducted by the City Council, and in accordance with the terms of the Contract, the annual base salary of the City Manager for the period of September 1, 2007 to August 31, 2008 shall be \$155,744.
I. Yang, City Attorney
7. Adopt Resolution 07-173 authorizing the receipt of Library Services and Technology Act ("LSTA") grant funds in the amount of \$4,188. The resolution provides the authority for the Paso Robles Public Library to receive grant funds and to make a budget appropriation for the funds for partial tuition reimbursement to qualifying students, subject to verification of paid tuition and evidence of satisfactory completion of course work.
8. Authorize the City Manager to enter into a Service Agreement with Penfield and Smith to upgrade the forced main that services Lift Station No. 3 for a not-to-exceed amount of \$37,650. Lift Station No. 3 is located at the Bella Vista Estates.
9. Adopt Resolution No. 07-174 authorizing the City Manager to execute a renewed Lease Agreement for 10 years, with the FAA for office space within the City-owned building located at 4914 Wing Way, at the Airport, to commence on October 1, 2007.
10. Adopt Resolution No. 07-175, with a revised Exhibit A, approval of carry-over appropriations for fiscal year 2007 encumbrance requests. These appropriations represent previously approved Council budget appropriations for projects and/or equipment purchases not completed in the prior budget year. Revised carry-over requests total \$3,270,600 of which only \$342,300 is for the General Fund.
- 10.1 Adopt Resolution No. 07-176 accepting the award of a Pacific Gas & Electric Company grant for emergency preparedness, instructional equipment, and material related to the Community Emergency Response Team (CERT) program, approved by the City Council in March 2007.

Mayor Mecham called for public comment on Item No. 3. John Borst submitted a request for additional information to be included in the minutes concerning item No. 6 Nacimiento Water Project, Water User Rates (copy attached).

City Attorney Seitz recommended that audio copies of the meetings are available to allow interested parties to review detailed public commentary. There were no further comments from the public, either written or oral, and the public discussion was closed.

Consent Calendar Items Nos. 3-10.1 were approved on a single motion by Councilmember Strong, seconded by Councilmember Nemeth, with Councilmember Strong abstaining on Warrant Register Items Nos. 190885, 190982 and 191231, Councilmember Picanco abstaining on Warrant Register Item Nos. 071733, 071894 and 071947, and Mayor Mecham abstaining on Warrant Register Item No. 071936.

Motion passed by the following unanimous roll call vote:

AYES: Hamon, Nemeth, Picanco, Strong, and Mecham
 NOES:
 ABSTAIN:
 ABSENT:

DISCUSSION

11. Paderewski Reprise – Funding Request

J. App, City Manager

The City Council considered a request for \$10,000 to support a half-day youth piano recital and concert reminiscing the days of Ignace Paderewski.

Mayor Mecham opened the public hearing. Speaking from the public in support were Steve Cass, Carl Moore, Marek Zebrowski, Polish Music Center, USC, Dale Gustin, and Mike Gibson. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Strong, seconded by Councilmember Nemeth, moved to contribute \$10,000 towards the 2007 Paderewski Reprise event.

Motion passed by the following roll call vote:

AYES: Hamon, Nemeth, Strong, and Mecham
NOES: Picanco
ABSTAIN:
ABSENT:

12. Traffic Calming, Rolling Hills Road

D. Monn, Director of Public Works

The City Council considered a study of traffic calming options for Rolling Hills Road. City Engineer, John Falkenstien, presented the staff report.

Mayor Mecham opened the public hearing. Speaking from the public was Carl Moore. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Picanco, seconded by Councilmember Strong, moved to add the Rolling Hills traffic calming study request to the list of road improvement projects for consideration in future budgets, and as an interim measure, install “bots” dots to be placed at two locations on Rolling Hills Road.

Motion passed by the following unanimous roll call vote:

AYES: Hamon, Nemeth, Picanco, Strong, and Mecham
NOES:
ABSTAIN:
ABSENT:

The City Council recessed at 8:45 PM. and reconvened at 8:55 PM. with the Mayor and all City Councilmembers present.

13. Nacimiento Water Project Update

D. Monn, Director of Public Works

For the City Council to receive an update to both the Nacimiento Water Project costs and the Opt-Out Period. Christine Halley, with T J. Cross, presented the staff report.

Mayor Mecham opened the public hearing. There were no comments from the public, either written or oral, and the public discussion was closed.

Councilmember Nemeth, seconded by Councilmember Hamon, moved to receive this update to the Nacimiento Water Project costs, and to continue participation in the project.

Motion passed by the following unanimous roll call vote:

AYES: Hamon, Nemeth, Picanco, Strong, and Mecham
NOES:
ABSTAIN:
ABSENT:

14. Uptown Specific Plan – Discretionary Development Plan (Daemesor LLC)

R. Whisenand, Community Development Director

The City Council considered a request to authorize the processing of a development plan (“PD”) application for a proposed hotel, located on the NE corner of Riverside Avenue and Black Oak Drive, prior to completion of the Uptown Specific Plan.

Mayor Mecham opened the public hearing. Speaking from the public in support of the project were Andrea Steinbeck, Mary Quan and Pete Clark. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Nemeth, seconded by Councilmember Strong, moved to authorize processing of an application for a 92-unit hotel on two acres of a 5-acre parcel, at the NE corner of Riverside Avenue and Black Oak Drive, with the condition that the applicant enter into a suitable agreement with the City that will result in payment of fees that are anticipated with the adoption of the Uptown Specific Plan. Fees to be paid at the time of occupancy.

Motion passed by the following unanimous roll call vote:

AYES: Hamon, Nemeth, Picanco, Strong, and Mecham

NOES:

ABSTAIN:

ABSENT:

15. Electronic Class Registration – Recreation Software

A. Robb, Director Library, and Recreation Services

For the City Council to consider authorizing a contract with The Active Network for the implementation and maintenance of web-based recreation class registration and web-based facility reservation.

Mayor Mecham opened the public hearing. There were no comments from the public, either written or oral, and the public discussion was closed.

Councilmember Strong, seconded by Councilmember Picanco, moved to adopt Resolution No. 07-177 authorizing the contract with The Active Network to provide ActiveNet recreation software implementation not to exceed \$47,000.

Motion passed by the following unanimous roll call vote:

AYES: Hamon, Nemeth, Picanco, Strong, and Mecham

NOES:

ABSTAIN:

ABSENT:

CITY MANAGER - None

CORRESPONDENCE - None

ADVISORY BODY COMMUNICATION –

16. Planning Commission - Appointment to Fill Current Vacancy

R. Whisenand, Community Development Director

The City Council considered making a mid-term appointment to fill vacancy on the Planning Commission for a term to expire December 31, 2007. Councilmembers were contacted by three individuals who expressed interest in an appointment (Wesley King, Robert Fonarow, and Joel C. Peterson).

Mayor Mecham opened the public hearing. There were no comments from the public, either written or oral, and the public discussion was closed.

Council voted to appoint Joel C. Peterson to complete the interim vacancy to December 31, 2007.

Motion passed by the following roll call vote:

AYES: Hamon, Nemeth, Strong, and Mecham

NOES:

ABSTAIN: Picanco

ABSENT:

AD HOC COMMITTEE COMMUNICATION

COUNCIL COMMENTS (Including oral reports on conferences attended) - None

PUBLIC COMMENT ON CLOSED SESSION - None

City Attorney Jon Seitz announced Council's authority to go into closed session to discuss the item listed on the agenda. It was the consensus of Council to adjourn from regular session at 9:55 PM. The City Council thereupon adjourned to Closed Session in the 2nd floor Large Conference Room.

CLOSED SESSION

CALL TO ORDER – Large Conference Room, 2nd Floor

The City Council returned to Regular Session at 10:55 PM.

RETURN TO OPEN SESSION

CLOSED SESSION REPORT

Deputy City Attorney Jon Seitz announced that Council confirmed the appointment of John Throop as Director of Administrative Services.

By unanimous voice vote, Council moved to adjourn from regular session at 11:00 PM.

ADJOURNMENT: To the National Stock Horse Association Draw Party at 5:00 PM on Friday, August 24, 2007, at the Paso Robles Event Center

To the Regular meeting at 7:30 PM on Tuesday, September 4, 2007, at the Library/City Hall Conference Center, 1000 Spring Street

Submitted:

Deborah D. Robinson, Deputy City Clerk

Approved:

THESE MINUTES ARE NOT OFFICIAL OR A PERMANENT PART OF THE RECORDS UNTIL APPROVED BY THE CITY COUNCIL AT A FUTURE REGULAR MEETING.

Enter the Booming Green Build Market

**LEARN ~ BUILD ~ SAVE
NORTH COUNTY**



Builders, Architects, Home Owners, Vendors, Engineers, come to this introductory meeting. Discover how the SLO Green Build network can advance all of your construction projects.

August 29, 2007

. 6:00-7:30 pm

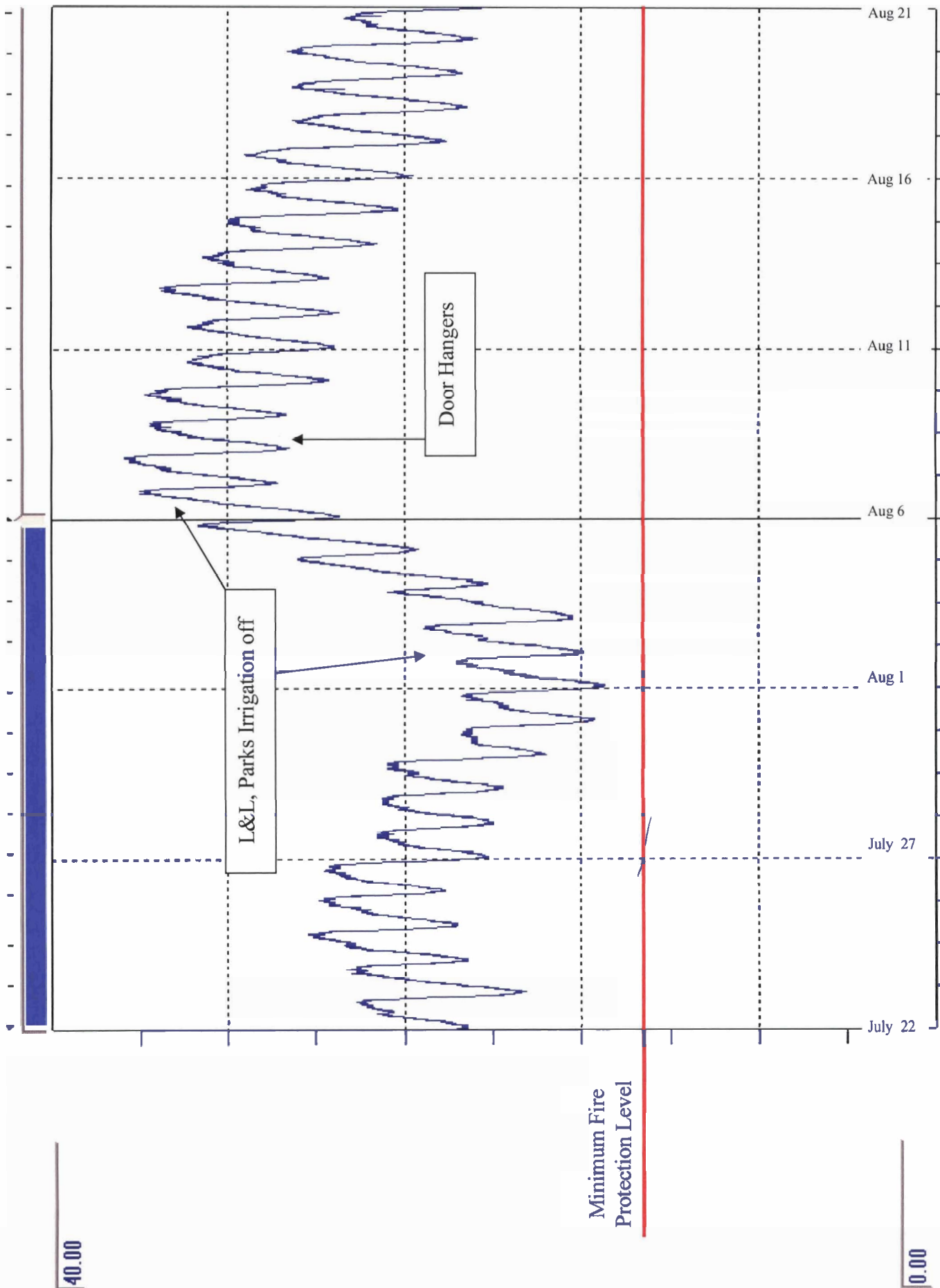
. Paso Robles City Hall Council Chambers

. Free & open to the public

Attend the expanded Learn~Build~Save green building education series coming to North County this October. Free to all!

www.SLOGreenBuild.org

**Want to get involved? Volunteer opportunities of all varieties are available now!
Contact Roger at (805) 286-0072 or SLOGreenBuild@Yahoo.com**





Public
Comment

SAN LUIS OBISPO COUNTY COMMUNITY COLLEGE DISTRICT

Where Lifelong Learning Happens

August 8, 2007

Members, City Council
City of El Paso de Robles
1000 Spring Street Paso Robles, CA. 93446

Dear Members of the Council,

We are encouraged to hear of your proposal to allocate funds from the Paso Robles Redevelopment Agency for two Cuesta College projects -- First Five Commission/Cuesta College (Dental Hygiene) for \$3,000,000 and the Cuesta College -- Applied Technology Academy for \$1,000,000. Our understanding is that these two projects are under consideration as an alternative use for funds previously designated for a new City Hall facility. We compliment the Council and city staff in suggesting these two projects and believe they reflect your vision for the City as outlined in the General Plan, the Uptown Specific Plan, and your Economic Strategy - as well as Cuesta's vision for the North County Campus.

Cuesta College has been represented as a potential partner during the planning for the *Paso Robles First Five Family Center*. Our understanding is that the *Center* is a two building campus housing a variety of services for children and families residing primarily in the northwestern portion of the city. The *Center* is planned to include preschool classrooms, health services, mental health and social services from the County of San Luis Obispo, the Paso Robles Library Study Center, the First Five School Readiness Office and Family Advocacy and Adult Literacy Classes offered by Cuesta College. The addition of Cuesta College Dental Hygiene to this project would be a wonderful new educational/vocational training opportunity for local residents - in a field that is in high demand and provides a livable wage. The program would be an ideal component for the *Center* because the Dental Hygiene portion of the building includes a low cost dental hygiene clinic.

The Cuesta College Applied Technology Academy is slated to be housed on the North County Campus in the Trades and Technology Building. Programs offered through the construction of this new facility would focus on the agricultural industry and provide instruction in a range of skills, from small engine repair and welding to electronics and construction – providing valuable training and retraining for community members.

The allocation total of \$4 million would allow Cuesta College to begin a long awaited Dental Hygiene program and would significantly contribute to making the Trades and Technology Building a reality. The remaining costs for these two Cuesta College undertakings are

projected to be provided from a combination of grants, state facility financing, college general funds, and charitable gifts.

We urge you to approve the allocation of these requested funds for the two projects outlined as a significant contribution to creating a healthy and productive environment for local citizens. Thank you for your consideration.



Angela Mitchell, President



Per Mathiesen, Vice President



Marie Kiersch, Trustee



Gaye Galvan, Trustee



Patrick Mullen, Trustee



Edralin J. Maculi, Secretary



Richie Kline, Student Trustee

Paso Robles City Council
August 19, 2007
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257 San Jacinto
Los Osos, CA 93402
August 19, 2007

The Honorable Frank Mecham
Mayor, City of Paso Robles
Members of City Council
1000 Spring Street
Paso Robles, CA 93422

Dear Mayor Mecham and Members of City Council,

The Paso Robles City Council will consider an item of interest at its meeting of August 21, 2007. I will be out of town and cannot attend and I wish to express my support of two proposed projects that have broad implications for the long term health and well-being of the citizens of Paso Robles. This letter is to communicate my strong endorsement of your proposed partnership with Cuesta College to accomplish the following:

1. First Five Commission/Cuesta College (Dental Hygiene), \$3,000,000
2. Cuesta College Applied Technology Academy (Trades and Technology Complex), \$2,000,000

The Dental Hygiene program will bring a first-rate program to Paso Robles that is in high demand throughout the County. It will provide leading edge training for well-paying jobs and an on-site low cost dental hygiene clinic for Paso residents. Job training, health care and a program that will be envied throughout the state are some of the benefits that will continue the City on its path as the idyllic spot in California. It supports children and families, smart job development, and the economic health and well-being of Paso Robles. It is an extraordinary opportunity and represents the forward-thinking vision so prominent in the history of the leadership of the City.

A collaborative project to build the Trades and Technology Complex on Cuesta's North County Campus is another exceptional opportunity to support the local Ag industry, the construction trades, viticulture, and other job training programs for welding, engine repair, electronics and computer sciences. It opens a local door to vocational training, job upgrading, skill development, and an infinite number of programs and services at what would be the County's premier applied technology facility. Proposition 55 funds will provide the vast majority of funds needed, and I predict that local donors will be quick to support this vision.

Paso Robles City Council

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I am not a resident of Paso Robles although my nearly full-time work there from 1996 – 1998 gave me an abiding appreciation for this beautiful city and the can-do attitude of my Paso Robles friends who have brought many impossible dreams to life for its residents.

Thank you for this opportunity to express my opinion, and my strong support and advocacy for these two projects. Although I will be out-of-state at the time of your meeting, I look forward to checking online for the good news that these projects will go forward.

With appreciation,

Barbara H. George
Cuesta College Emeritus

c: Dennis Fansler, City Clerk
Santee McLaughlin, Dean, North County Campus
Angela Mitchell, President, Board of Trustees, Cuesta College, and Members
Sandy Boxer, Chair, North County Campus Ambassadors, and Members

August 21, 2007

Dear Paso Robles City Council Members,

Regarding the minutes of August 7, 2007, I consider them incomplete.

First. On Item 6 of the said minutes, not only did I voice my opposition to Ordinance No. 935 N.S., but I stated that the Ordinance as written did not reflect current California Law. That is, Section 1 C of the Ordinance in part reads,

“Other than as expressly set forth herein, such water usage rates may only be established or amended by a two-thirds vote of the city council in favor of such establishment or amendment of water usage rates.”

I expressed this aspect of the Ordinance as written did not reflect current California law and should be rewritten to reflect the California Supreme Court finding in *Bighorn-Desert View Water v. Veril* (July 24, 2006) __Cal 4th__ [S127535]. Therein it states that water district fees are subject to being limited or repealed by local initiative measure under Proposition 218, specifically California Constitution, article XIII C, section 3.

I request the minutes (and again the Ordinance as well) be changed to reflect this California Supreme Court decision and Proposition 218 law.

Second. I request that mention be made in the August 7th minutes that City attorney Iris Yang was directed by the City Council to provide a written response within two weeks time to each of the Proposition 218 challenges I posed on the then provided 2 page document questioning the legality of the proceedings and decisions made during the July 17th 2007 Public Hearing held regarding the City's proposed water rate increase related to the Nacimiento water project and Water Treatment plant.

Thank you.

John Borst
209 Navajo Ave.
Paso Robles, CA



Iris P. Yang
Attorney at Law

Sacramento Office
916.325.4576 tel
916.444.3826 fax
iyang@mhalaw.com

August 21, 2007

VIA E-MAIL & FIRST CLASS MAIL

John Borst
209 Navajo Avenue
Paso Robles, CA 93446

Pascual Padilla
1155 Mary Hill Road
Paso Robles, CA 93446

Dave Soper
620 Queenanne Road
Paso Robles, CA 93446

Re: Proposition 218 and August 7, 2007 Ordinance Adopting Water Rate Increase

Dear Mr. Borst, Mr. Padilla and Mr. Soper:

At the August 7, 2007 Paso Robles City Council meeting you requested a written response to each of your objections/challenges to the Council adoption of a \$12 monthly water rate increase as violating specific provisions of Proposition 218. Following is a brief summary of Proposition 218 and the Nacimiento Project, as well as the City's responses to your specific objections.

Background – Proposition 218

Proposition 218 added articles XIII C and XIII D to the California Constitution. *See id.* Article XIII D specifies various restrictions and requirements for assessments, fees, and charges that local governments impose on real property or on persons as an incident of property ownership. *Id.* Relevant to the present water rate increases, Proposition 218 imposes additional notice and majority protest procedures for fees "imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service." Cal. Const. art. XIII D, § 2(e).

Until recently, there had been some dispute as to whether water rates or user fees were "property-related fees" subject to Proposition 218. The California Supreme

Sacramento
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9th Floor
Sacramento CA
95814-4692
tel 916.444.3900
toll free 800.403.3900
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Oakland
1901 Harrison Street
9th Floor
Oakland CA
94612-3501
tel 510.273.8780
toll free 800.339.3030
fax 510.839.9104

Yuba City
422 Century Park Drive
Suite A
Yuba City CA
95991-5729
tel 530.674.9761
fax 530.671.0990

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Court resolved this dispute in *Bighorn Desert View Water Agency v. Verjil*, 39 Cal. 4th 205 (2006). In *Bighorn*, the Court held that consumption based water rates are "property-related fees" subject to Proposition 218, reasoning that:

[D]omestic water delivery through a pipeline is a property-related service within the meaning of this definition [of a property related fee]. Accordingly, once a property owner or resident has paid the connection charges and has become a customer of a public water agency, all charges for water delivery incurred thereafter are charges for property related services, whether the charge is calculated on the basis of consumption or is imposed as a fixed monthly fee.

Id. at 217. The notice, hearing and protest requirements provide that such property-related fees may not be imposed or increased unless a local government conducts a majority-protest proceeding no less than 45 days after mailing notice to all fee payers. Cal. Const., art. XIII D, §6(a). New or increased fees and charges subject to Proposition 218 must also receive voter approval. Cal. Const., art. XIII D, § 6(c). However, fees for sewer, water, and refuse collection services are expressly *exempt* from the voting requirement. *Id.*¹ In addition, Proposition 218 provides that "property ownership" includes "tenancies of real property where tenants are directly liable to pay the assessment fee, or charge in question. Cal. Const. art. XIII D, § 2(g).

Following *Bighorn*, a recent California appellate court held that a groundwater augmentation charge imposed on water customers to finance the cost of constructing a pipeline and other water service improvements was a property-related charge subject to Proposition 218's notice and hearing requirements. *Pajaro Valley Water Mgmt. Agency v. Amrhein*, 150 Cal. App. 4th 1364 (2007).

Nacimiento Project

The City and several other public entities contracted with the San Luis Obispo County Flood Control and Water Conservation District on August 17, 2004 regarding the financing, construction and operation of a water pipeline project to transport water from Lake Nacimiento to the City for the use and benefit of the City's lands and

¹ In addition to article XIII D, the Legislature adopted the Proposition 218 Omnibus Implementation Act to clarify any of Proposition 218's inconsistencies with preexisting statutes affecting local government finance. Gov't Code §§ 53750 - 53754. The Omnibus Act imposes the same notice, protest, and hearing requirements on public service agencies as article XIII D. Gov't Code § 53753.

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inhabitants. The Contract requires the City to make semiannual payments for its allocation of costs in connection with the financing and operation of the Project. In addition, the City is constructing a water treatment facility. Engineers currently estimate the cost of the pipeline at \$190 million and the cost of the treatment facility, including operation and maintenance at \$1.5 million – resulting in a new reoccurring annual cost to the City of \$7.1 million. *See* Ordinance 935 N.S. (the "Ordinance") and staff report.

To pay for the pipeline and the treatment facility projects, the City must raise its water rates. Based upon the recent decisions in *Bighorn* and *Pajaro Valley*, the City determined that the water rate increase was a property-related fee, requiring compliance with Proposition 218's 45-day notice and hearing requirements. As explained below, the City complied with all requisite procedures in adopting the Ordinance.

Specific Objections to the Adoption of the Ordinance

1. Identification of Parcels – "Apparently, not all parcels were identified. Only an *approximate* 10,000 is stated on the financial analysis; the number of parcels is not stated on the mailed Notice."

Response: Proposition 218 does not require that the notice identify the exact number of parcels upon which the fee will be imposed. The notice is required to contain: (1) the amount of the fee or charge proposed to be imposed upon each parcel; (2) the basis upon which the amount of the proposed fee or charge was calculated; (3) the reason for the fee or charge; and (4) the date, time, and location of the public hearing on the proposed fee or charge. Cal. Const., art. XIII D, § 6(a)(1). The total number of affected parcels need not be stated in the notice. Proposition 218 simply requires that the agency imposing the fee identify the affected parcels so that it knows to whom the requisite notice should be sent. The City identified all persons and parcels upon which the water rate increase would be imposed and notices were sent to all such persons and parcels. As noted above under "Background," Proposition 218 defines "property ownership" to include tenancies where tenants are directly liable to pay these charges.

2. Written Notice to Record Owners – "This may not have been done, as all parcels were seemingly not identified."

Response: See response to previous comment.

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3. Amount of Fee – "The total amount of the fee or charge was not stated, that is, only a monthly fee was stated on the Notice."

Response: Proposition 218 provides that the "amount of the fee or charge proposed to be imposed upon each parcel shall be calculated" and that this amount be included in the written notice. Cal. Const., art. XIII D, § 6(a)(1). The City complied with this requirement by including a table in the notice that showed the current monthly water rates, the proposed monthly \$12.00 increases beginning October 1, 2007 and future proposed increases each July 1 thereafter through July 1, 2010. There is nothing in the language of Proposition 218 or the applicable cases that requires the City to state the increase in a particular manner such as an annual versus monthly amount.

4. Basis Upon which the Fee Was Calculated – "This was not done in the Notice mailed. That is, the life duration of the monthly fee, nor the number of parcels to be charged is not stated. Nor is the total dollar amount required for the 'Nacimiento Project' stated on the Notice."

Response: The basis upon which the rate increase was calculated is summarized in the notice as follows: "Based upon current cost estimates for the Nacimiento Pipeline and Treatment Facility Projects, the total fixed rate required on July 1, 2010 to meet debt service obligations and operation costs is \$60 per customer per month." The notice further explains that no increases for basic water services is required. There is no requirement in the plain language of Proposition 218, nor have we found any cases, requiring the City to state the number of parcels to be charged or the total dollar amount of the project in the notice. That said, the total cost of the Projects was more fully explained in the Ordinance and accompanying staff report, which were also available to the public prior to the July 17, 2007 hearing 72 hours in advance. Specifically, engineers currently estimate the cost of the pipeline at \$190 million and the cost of the treatment facility, including operation and maintenance at \$1.5 million – resulting in a new reoccurring annual cost to the City of \$7.1 million. As to the duration of the water rate increase, the \$60 monthly rate increase will continue (assuming future incremental increases proposed for July 1, 2008 through July 1, 2010 are adopted) will cease once the cost of the service has been repaid as Proposition 218 prohibits fees or charges from being used for "any purpose other than that for which the fee or charge was imposed." Cal. Const., art. XIII D, § 6(b)(2).

5. 45-Days Notice – "When did everyone receive the Notice? Persons did receive the Notice less than 45 days prior to the public hearing."

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Response: The date when the notices were actually received is not relevant under Proposition 218. Rather, Proposition 218 requires the City to "conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice or the proposed fee or charge . . ." Cal. Const., art. XIII D, § 6(a)(2) (underlining added.) The City mailed the notice on June 1, 2007 and conducted the requisite public hearing on July 17, 2007 – 46 days after the notices were mailed. As such, the City complied with the 45-day notice requirement.

6. Revenues Derived from the Fee Shall Not Exceed the Funds Required to Provide the Property Related Service – "As the number of new customers increase, assuming they will [be] billed the same \$60 fee as present customers, revenues will exceed funds required over the anticipated life of a 30 year bond discussed as needed for the pipeline project."

Response: It is impossible to project the exact number of customers that will use the City's water services in any given year. As a result, the water rate increase at issue is based upon current estimates of water customers and estimated number of customers over the next few years. To account for these projections, the City will review the water fees "no less than bi-annually in conjunction with the update of the City's budget" to ensure that the fees then in existence do not exceed the costs of providing water service within the City." *See* Ordinance, Sec. 2. In the event the collected fees exceed the costs for which they are to be used, the City will take appropriate steps to reduce the fees accordingly.

7. Revenues Derived Shall Not Be Used for Any Purpose Other than That for which the Fee Was Imposed – "What exactly will the 60 dollar monthly fee charged for the Nacimiento project be used for?"

Response: The increased water fees will be used to pay for the cost of constructing the Nacimiento water pipeline and a water treatment facility, as well as operating and maintenance expenses. As explained in the notice, the "sole purpose of the proposed rate increases is to provide adequate revenues to meet debt and operating expense obligations for the pipeline and treatment facility."

8. Proportional Cost of Service – "According to the Howard Jarvis Tax Association, fees and charges must be proportional to the actual use of the service. The monthly fee stated on the Notice does not appear to be proportional to the actual use of the new services. Instead, a flat fee is charged irrespective of type of customer, e.g., household, hotel, school, etc., and actual number of water customers involved in this multi-city project."

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Response: The fixed rate increases are proportional. As explained in the staff report regarding the proposed rate increase, around July 1, 2010, the construction of the pipeline and the City's treatment facility will be completed and operational. Debt service payments on the bonds to be sold in September 2007 will begin as well as the ongoing fixed operational and maintenance costs of both components. These fixed costs are estimated at \$7.1 million annually. It does not matter how much water is delivered to Paso Robles or how much water is consumed by individual customers. These costs are fixed and the City must have a permanent, recurring revenue stream in place. Given these fixed obligations and the fact that the pipeline and treatment facility will provide water to all customers, the fixed fees are proportional. However, as has been indicated at the City council meetings, the staff will be proposing an alternative rate structure that would be based, at least in part, upon consumption. Nevertheless, any proposed rate structure must generate the same total amount of revenues to cover the costs described above.

9. Standby Charge – "On the Notice a fee is being charged for the future use of a new and different service Water Treatment facility. This future use fee appears to be a legal violation. Further, no mention is made on the Notice as to whether or not the \$60 fee for the Nacimiento project is for immediate actual use."

Response: The water rate increase is not a standby charge. As explained in the *Pajaro Valley* case, a groundwater augmentation charge imposed to finance the construction of a pipeline was not a standby charge even though the fees were to be used for construction of the pipeline, meaning the pipeline was not available for immediate use. As the *Pajaro Valley* court explained, an assessment or standby charge under Proposition 218 is a "levy or charge upon real property." 150 Cal. App. 4th 1364, 1381 (2007). The groundwater augmentation charge, however, was not imposed "upon real property," but instead, was a charge "upon an activity – the extraction of groundwater." *Id.* The fee was not secured by a lien on the property. *Id.* at 1382.

Likewise, the City's water rates for the Nacimiento projects are not secured by a lien upon the property, nor are the fees charged to all property owners. Rather, the increased charge must be paid by the City's water customers – *i.e.*, those who use water, not property owners. Therefore, the City's Nacimiento fee is not a standby charge or an assessment within the meaning of Proposition 218.

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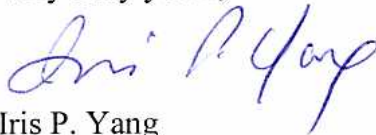
10. Voter Approval. "The project fee stated on the notice is not an ordinary or basic fee for water service. Hence, an election, not a 'majority protest,' seems required for voter approval of any proposed water project fees to be imposed or increased."

Response: Voter approval is required to impose or increase a property-related fee, except that fees for "water . . . services" are expressly exempt from the vote requirement. Cal. Const., art. XIII D, § 6(c). We found no decisions interpreting the scope of the exemption for water services. However, the Proposition 218 Omnibus Implementation Act defines "water" broadly to mean "any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water." Gov't Code § 53750(m). Clearly the pipeline and treatment facility projects fall within this broad definition and are thus exempt from Proposition 218's voter approval provision.

Conclusion

We hope the above responses prove helpful. Please let me know if you have any additional questions.

Very truly yours,



Iris P. Yang
City Attorney

IPY:jjh

cc: Paso Robles City Council
James L. App, City Manager
Michael Compton, director of Administrative Services
Doug Monn, Director of Public Works

EXHIBIT "A"

Schedule of Carry-over Appropriations
from
Fiscal Year 2006-2007

<u>Department</u>	<u>GL Account</u>	<u>Description</u>	<u>Appropriation</u>
City Manager's Office	100-130-5212-120	GPS equipment, Software	\$ 6,500
City Manager's Office	100-130-5224-120	GIS Parcel coding and development	32,000
City Manager's Office	100-130-5454-120	GIS Equipment	9,000
City Manager's Office	100-130-5235-120	Admin Svcs Web Component	1,000
City Manager's Office	100-130-5235-120	Microsoft Licenses	45,000
City Manager's Office	100-130-5235-120	LRS On Line Registration System	40,000
City Manager's Office	100-130-5235-120	Police Online Crime Reporting System	9,000
City Manager's Office	100-140-5235-125	Kermani & Associates - OES & FEMA Consulting	15,300
City Manager's Office	100-130-5235-773	Salinas River Project - Develop Master Plan for	27,200
City Manager's Office	110-130-5224-116	Recruitment for AS Director	10,400
City Manager's Office	110-910-5452-542	Salinas River Parkway Project	393,000
City Manager's Office	112-130-5454-120	RCI 8 Port Master Console	2,000
City Manager's Office	112-130-5454-120	Cisco 3620 w/SMART net	1,100
City Manager's Office	112-130-5454-120	Cisco 3621 w/SMART net	1,100
City Manager's Office	112-130-5454-120	Cisco Catalyst 3548 XL	3,500
City Manager's Office	112-130-5454-120	Cisco Catalyst 3548 XL	3,500
City Manager's Office	112-130-5454-120	Compaq ML370 P4-3.0 2GB Servers	48,900
City Manager's Office	112-130-5454-120	Network Color Printer AS 4600	2,600
City Manager's Office	112-130-5454-120	Network Printer AS 8150	3,600
CMO - Admin Services	112-140-5454-230	Canon Copier 7130 F	1,700
CMO - Police Services	112-210-5454-136	HP procurve 5348xl network switch	12,300
CMO - Police Services	112-210-5454-136	HP 4600 Color Network Printer	2,700
CMO - Lib & Rec Services	112-411-5454-183	Cisco 3621 router 3524 switch	3,200
CMO - Lib & Rec Services	112-411-5454-183	Compaq Pro. ML370 P4-3.0 2GB	9,700
CMO - Lib & Rec Services	112-411-5454-185	Canon Copier/Fax/Printer IR3300	10,300
CMO - Lib & Rec Services	112-411-5454-199	Cisco 2620 Router 2924 switch	2,600
CMO - Comm Development	112-710-5454-212	Blueprint copier	8,000
CMO - Admin Services	600-140-5454-127	HP Laserjet 8150 w/stacker/sheet	5,200
CMO - Public Works	602-310-5454-166	Cisco 2620 Router	4,000
CMO - Public Works	602-310-5454-166	Ricoh Copier 1015	3,500
Administrative Services	112-140-5454-125	PC for AS Director	1,800
Administrative Services	112-140-5454-125	HdL BL Software	11,100
Administrative Services	206-140-5454-230	Copier	1,700
Administrative Services	206-140-5452-131	Bus Headway Signs	77,000
Administrative Services	206-140-5235-131	Implement Marketing Program	55,000
Administrative Services	600-140-5454-127	Printer	6,700
Police Services	124-210-5103-136	Grant - Overtime Wages	10,000
Police Services	124-210-5103-136	Grant - Benefits	700
Police Services	124-210-5103-136	Grant - Benefits	900
Police Services	124-210-5103-136	Grant - Benefits	200
Police Services	124-210-5103-136	Grant Supplies	1,700
Police Services	124-210-5103-136	Grant Professional Services	50,400
Public Works	100-310-5454-292	Tractor w/front loader & Broom	44,400
Public Works	100-310-5224-538	Storm Water Management Plan	16,600
Public Works	100-310-5224-768	Geothermal Resource Reasibility Study	11,000
Public Works	110-910-5452-541	Flamson RTC	31,800
Public Works	200-910-5452-787	Hwy 101/46E PAED/PSR	540,600
Public Works	213-910-5224-788	Hwy 101/46W PAED	315,600
Public Works	309-710-5224-222	Hwy 101/46W Theatre Drive Realignment	403,700
Public Works	225-910-5224-539	River Road Plan Line	51,500
Public Works	229-910-5452-544	Contract Management for NW Treatment Plant	68,600
PW - Community	600-310-5235-165	Water Well Use Policy	10,300
Public Works	600-310-5454-165	Tractor w/front loader & Broom	9,600
Public Works	601-310-5224-164	Interim WWTP Operations Management	63,000
Public Works	601-310-5454-164	Tractor w/front loader & Broom	9,600
Library & Rec Services	100-411-5102-285	Skate Park Attendants	37,000
Community Development	100-710-5212-209	Zoning Code Update	9,200
Community Development	100-710-5224-301	Gateway Plan	4,600
Community Development	100-710-5224-771	Purple Belt Plan	19,300
Community Development	100-910-5224-596	GP Fiscal Impact Model	15,200
Community Development	110-710-5224-781	Downtown Parking Plan	8,000
Community Development	200-910-5452-545	Airport Road/Hwy 46E Signal Study	15,000
Community Development	213-910-5224-302	4th & Pine Realignment Plans	2,500

EXHIBIT "A"

Schedule of Carry-over Appropriations
from

<u>Department</u>	<u>GL Account</u>	<u>Description</u>	<u>Fiscal Year 2006-2007</u>	<u>Appropriation</u>
Community Development	227-710-5235-211	Seismic Mitigation Grants		41,300
Community Development	227-910-5452-536	Carnegie Library Rehab		150,000
Community Development	227-910-5452-598	2nd Baptist Homeless Ministry		1,300
Community Development	232-710-5224-209	Chandler Ranch Area Specific Plan		33,100
Community Development	309-710-5224-222	Hwy 101/46W Traffic Study		401,200
Community Development	701-810-5235-597	Oark Park Senior Housing Project		29,900
				<u>\$ 3,270,600</u>
		100 General Fund		\$ 342,300
		110 Emergency & Contingency Fund		443,200
		112 Equipment Replacement Fund		121,300
		124 Police Grant Fund		63,900
		200 Gas Tax Fund		555,600
		206 Transit Operations Fund		133,700
		213 Traffic Mitigation Fund		318,100
		225 Borkey Specific Plan Fund		51,500
		227 CDBG Fund		192,600
		229 Nac Water Treatment Plant Fund		68,600
		232 Chandler Ranch Specific Plan Fund		33,100
		309 Hwy101/46W CFD Fund		804,900
		600 Water Operations Fund		31,800
		601 Sewer Operations Fund		72,600
		602 Airport Operations Fund		7,500
		701 Low/Moderate Income Housing Fund		29,900
				<u>\$ 3,270,600</u>

RECEIVED
CITY CLERK'S OFFICE

AUG 16 2007

CITY OF PASO ROBLES

Thursday, August 16, 2007

To: Paso Robles City Council Members: Mayor Frank Mecham, Mayor Pro
Tem Gary Nemeth, Duane Picanco, Fred Strong, John Hamon

Cc: City Manager Jim App
Community Development Director Ron Whisensand

Re: Vacancy on the Planning Commission

This short note is to express my interest in serving on an interim basis on the
Planning Commission to fill the vacancy created by the unfortunate passing
of Mike Menath.

You all know me and have seen me in action in the community. I have
attended planning commission meetings over the past two years in
preparation of being prepared to serve.

My thanks and best regards,



Bob

Bob Fonarow

bfonarow@charter.net

805-227-4424