

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

CITY COUNCIL MINUTES

Tuesday, July 1, 2008 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

INVOCATION – Led by Patrick Sheean

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

PUBLIC COMMENTS - None

AGENDA ITEMS TO BE DEFERRED (IF ANY) - None

PRESENTATIONS- None

PUBLIC HEARINGS

1. Appeal of Conditional Use Permit 07-001 (Downtown Brewing Co.)

R. Whisenand, Community Development Director

By unanimous voice vote on a motion by Councilmember Strong, seconded by Councilmember Picanco, the City Council continued discussion an application filed on behalf of the Downtown Brewing Company appealing conditions of approval associated with CUP 07-001 (Planning Commission Resolution No. 08-020; APNs 009-106-015, 016, 017 and 009-103-012, 013). The item was continued to the August 5, 2008 Council meeting.

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2. Code Amendment 08-001 Floodplain Management Ordinance

R. Whisenand, Community Development Director

By unanimous voice vote on a motion by Councilmember Strong, seconded by Councilmember Picanco, the City Council continued the public hearing of an amendment to the City's Floodplain Management Ordinance (Chapter 21.14 of the Zoning Code) to comply with the most recent FEMA regulations for participation in the National Flood Insurance Program. The item was continued to the July 15, 2008 Council meeting.

3. Urban Water Management Plan

D. Monn, Director of Public Works

The City Council held a final Public Hearing and adopted the 2005 Urban Water Management Plan (UWMP). Iris Priestaf, Todd Engineers presented the staff report.

Mayor Mecham opened the public hearing. Speaking from the public was Mike Gibson and Kathy Barnett. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Hamon, seconded by Councilmember Nemeth, moved to adopt Resolution No. 08-095 approving the Final 2005 UWMP, and directing staff to file this Plan with the California Department of Water Resources.

Motion passed by the following unanimous roll call vote:

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

4. Proposed Water Rate Structure and Water Capacity Charge

D. Monn, Director of Public Works

The City Council selected a revised water rate structure, authorized staff to proceed with property owner and rate payer notification, and considered water capacity charges. Christine Halley and Jim Throop presented the staff report.

Following the presentation from staff, the Council recessed for 10 minutes at 8:35 PM and reconvened at 8:45 PM.

Mayor Mecham opened the public hearing. Speaking from the public was Beth Quaintance with the Salvation Army, Carl Hansen, William Tuck, Jerry Bunin, with Home Builders Association, Vince Vanderlip, Dale Gustin, Ken T?, Pasqual Padilla, Kathy Barnett, John Borst, Tom Flynn, Paso Robles Cemetery Board of Trustees, Jerry Greene, Tom Roush, Greg Rachunuk, Phil Dirks. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Strong moved to select the variable (or, market) rate structure and the motion failed for lack of a second.

Councilmember Nemeth, seconded by Councilmember Hamon, moved to adopt Resolution No. 08-096 that identified the fixed-variable water rate structure, and authorized the initiation of the Proposition 218 procedures to send out public notices regarding the proposed water rate structure.

Motion passed by the following unanimous roll call vote:

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

Councilmember Nemeth, seconded by Councilmember Hamon, moved to continue the proposed water capacity charge discussion to the August 19, 2008 Council meeting.

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

- 5. <u>Approve City Council minutes of June 17, June 18, and June 19, 2008</u>
- 6. <u>Approve Warrant Register: Nos. 77950–78145 (06/13/08) and 78146–78311 (06/20/08)</u>
- Receive and file Advisory Body Committee minutes as follows: Library Board of Trustees meeting of May 8, 2008 Parks & Recreation Advisory Committee meeting of March 11, 2008 Promotions Coordinating Committee meeting of February 27, 2008
- **8.** <u>Adopt Resolution No. 08-097</u> approving the Paso Robles Waste Disposal rate adjustment by the Consumer Price Index of 3.2%, pursuant to the August 2006 exclusive franchise agreement.
- **9.** <u>Adopt Resolution No. 08-098</u> awarding a bid for patrol rifles to the low bid contractor, Rock River Arms, Incorporated
- **10.** <u>Adopt Resolution No. 08-099</u> authorizing a one-year agreement with the Paso Robles Unified School District to share the cost of a police officer assigned to work as a School Resource Officer.

Consent Calendar Items Nos. 5-10 were approved on a single motion by Councilmember Strong, seconded by Councilmember Nemeth, with Councilmember Picanco abstaining on Warrant Register Item No. 078096, and Mayor Mecham abstaining on Item No. 8, and Warrant Register Item No. 078251.

Motion passed by the following unanimous roll call vote:

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

DISCUSSION

11. Agreement for Participation in Regional SWAT Team

L. Solomon, Chief of Police

The City Council authorized an agreement for the City to participate in the San Luis Obispo Regional Special Weapons and Tactics Team, and related agreements. Expenses to support the Police Department SWAT team are included in the current budget. The formation of the Regional SWAT team will not require additional funds.

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

Councilmember Hamon, seconded by Councilmember Strong, moved to authorize an agreement for the City to participate in the San Luis Obispo Regional Special Weapons and Tactics team (Regional SWAT), and to sign subsequent agreements, as approved by the City Attorney.

Motion passed by the following unanimous roll call vote:

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

CORRESPONDENCE

Responses to J. Borst questions submitted at the June 17, 2008 Council Meeting

- 1. Groundwater Rights Urban Water Management Plan
- 2. Educational Outreach participation

COUNCIL COMMENTS (Including oral reports on conferences attended)

Councilmember Strong reported on recent League of California Cities committee meetings.

ADJOURNMENT:

Social	Meetings
Friday, July 4, 2008	<u>Thursday, July 10, 2008</u>
Independence Day Celebration	Adjourned Regular Meeting Interview Advisory Body Applicants, at 7:00 PM, at
at Barney Schwartz Park	Library/City Hall Conference Center, 1000 Spring Street

Tuesday, July 15, 2008

Regular Meeting, at 7:30 PM, at Library/City Hall Conference Center, 1000 Spring St

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.



CITY OF EL PASO DE ROBLES











Public Hearing July 1, 2008 Todd Engineers

lodd Engineers

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Urban Water Management Plan

- Water Supply and Demand
- Water Shortage Contingency Plan
- Water Demand Management Measures

Water demand is projected to double.

From 7,414 acre-feet per year in 2005 to 16,400 acre-feet per year in 2025



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Groundwater supply is limited.

- Groundwater levels are declining
- Declines are especially prevalent in the subbasin that serves the City
- Localized groundwater declines have greatly impacted the City's water production capability



The City's reliance on the groundwater basin continues to increase.

- Overall Declines of 3,300 acre-feet per year from 1997 to 2006 or a total of 29,800 acrefeet
- In 2007, City groundwater basin pumping reached 4,103 acre-feet.

Unable to Meet Peak Demands



In the near term, the City is responding with well work, irrigation management, and public outreach



In the long term, the City is developing two new water supply sources



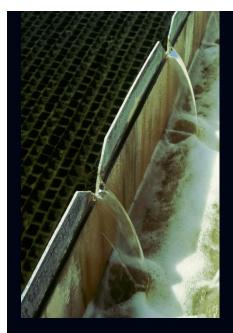
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The City will import 4,000 afy of Lake Nacimiento water by 2010.

- A new source to meet seasonal + long-term demand
- Independent of local groundwater
- Reliable in drought

Reduced water hardness for City customers, with water quality benefits to groundwater and recycled water



The City is planning for water recycling.

- A new source to meet irrigation demand and release potable water for higher uses
- Reduces peak summer demands for potable water
- Reliable in drought

Conclusions

- The City is facing increasing water demands.
 - Summer peaking is a near-term problem and places the City at risk.
 - A portfolio of water strategies is needed.
 - Groundwater
 - Lake Nacimiento
 - Water recycling for irrigation
 - Water conservation

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For more information

- www.PasoRoblesWaterProject.com
- 2005 Urban Water Management Plan
- Summary of Key Findings

(provide in CC Agenda packet and available on the above website)

or visit the City library



Todd Engineers

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City of El Paso de Robles Water Rates and Capacity Charges



July 1, 2008

Jim Throop, Admin Services Director Christine Halley, Water & Utilities Engineer

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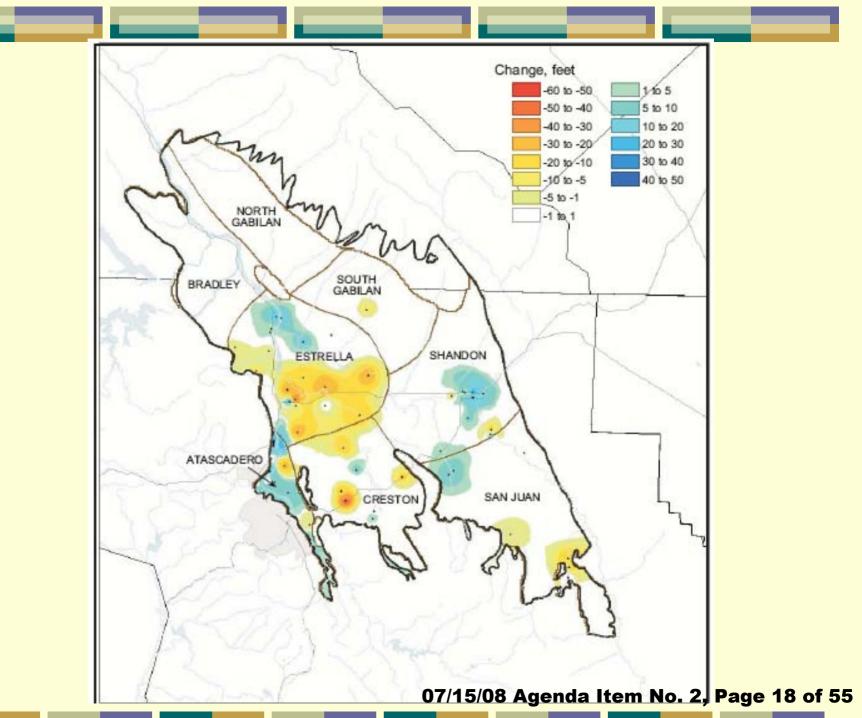
Water Supply in 1990's

100% well water
Drill-as-you-go
High water usage
Very low water rates (lowest in State)

Photo courtesy of Stephen Wallace

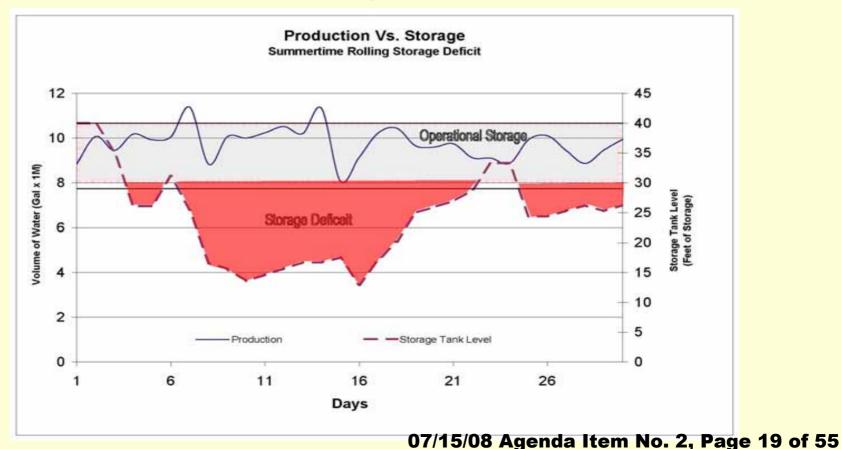
2002 Turning Point

- Paso Robles Groundwater Basin Study concluded basin approaching overdraft
- Pumping levels dropping
- Water rights actions
- Nacimiento feasibility established
- Water quality study 02/03



Paso Robles Water Today

- Tough to meet summertime demands
- Staffed for basic operations
- Nacimiento on the way



What Lies Ahead



- System upgrades needed now
- General Plan projects 44,000 pop.
- Aging infrastructure needs maintained

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Water Resources are Related

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Water System Improvements

- Nacimiento deliveries
- Distribution system improvements
- Staff for treatment plant and system maintenance



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Key Findings

- Debt service on Nacimiento Water
 Project must be covered
- Annual water operations cost expected to double

- Water treatment plant financing
- Provide staffing to meet regulator and customer expectations

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2008 Water Rate Study

- Current water rate is \$18 fixed rate (Naci) + \$1.28 per HCF
- All pay same fixed rate regardless of meter size
- Lifeline rate now in place

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Alternative Rate Structures

All fixed
All variable
Combination



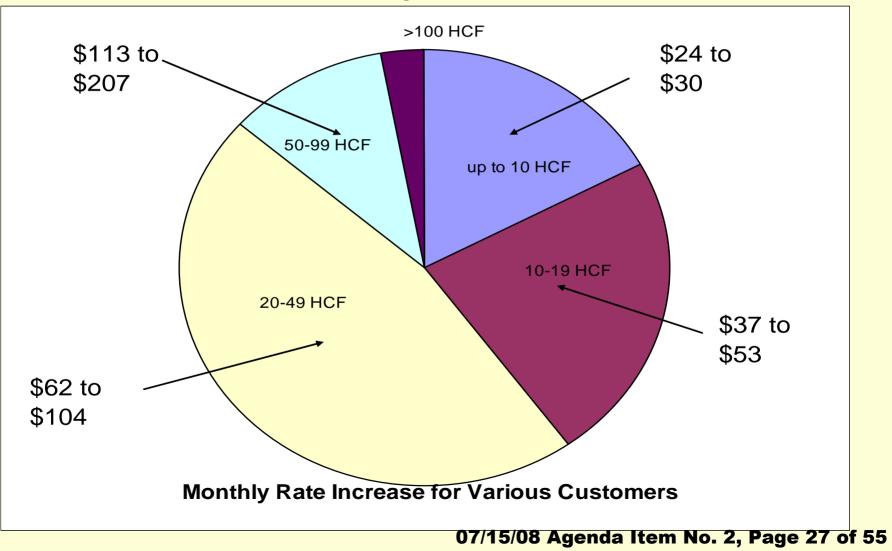
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Proposed Rate Structure

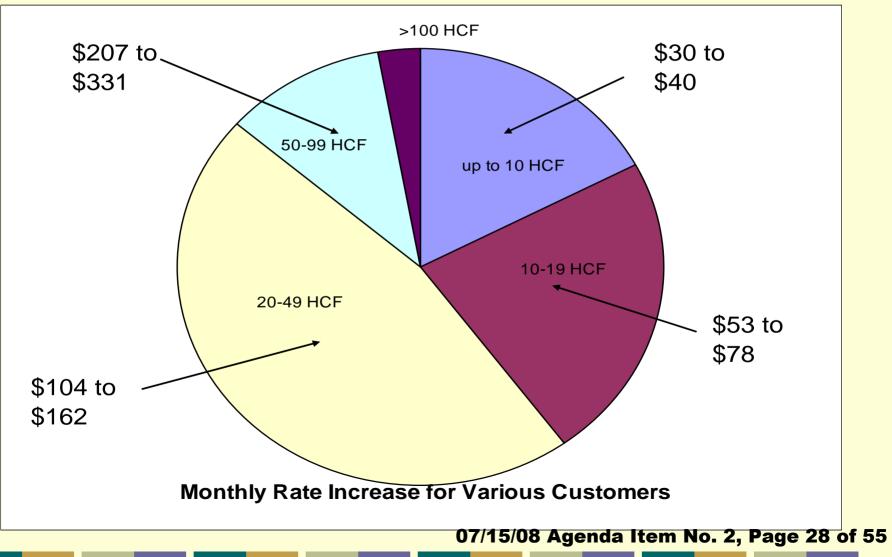
		Proposed Monthly Service Charge					
Meter Size (inches)	Current Rate	January '09	January '10	January '11	January '12	January '13	
5/8" & 3/4"	\$18	\$18.00	\$19.98	\$22.48	\$24.95	\$24.95	
1"	\$18	\$25.2	\$27.97	\$31.47	\$34.93	\$34.93	
1-1/2"	\$18	\$32.40	\$35.96	\$40.46	\$44.91	\$44.91	
2"	\$18	\$52.20	\$57.94	\$65.18	\$72.36	\$72.36	
3"	\$18	\$198.00	\$219.78	\$247.25	\$274.45	\$274.45	
4"	\$18	\$252.00	\$279.72	\$314.69	\$349.30	\$349.30	
6"	\$18	\$378.00	\$419.58	\$472.03	\$523.95	\$523.95	
8"	\$18	\$522.00	\$579.42	\$651.85	\$723.55	\$723.55	
			Proposed Co	ensumption Cl	narge (\$/HCF)		
Usage Rate	\$1.28	\$2.56	\$4.22	\$4.86	\$5.00	\$5.15	
Usage Rate fo	or Households	6					
0-5 HCF	\$1.28	\$2.18	\$3.59	\$4.13	\$4.25	\$4.39	
> 5 HCF	Same as Usage Rate above						

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2009 Adjustments

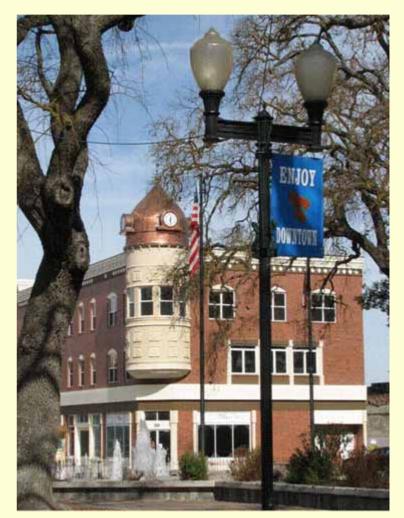


2010 Adjustments



2008 Connection Fee Study

- Current connection fee is \$9,119 per residence
- Proposed rate is \$17,386 per residence
- Larger meters pay proportionally more



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New Development Impacts

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½ Nacimiento supply
½ water treatment plant
100% additional supply costs

Proposed Capacity Charges

Connection Size	Current Charge as of	Proposed Charge as of			
	July 1, 2008	January 1, 2009	January 1, 2010	January 1, 2011	
5/8" and 3/4"	\$9,119	\$17,386	\$21,719	\$28,687	
1"	\$15,226	\$29,035	\$36,271	\$47,812	
1-1/2"	\$30,364	\$57,895	\$72,324	\$95,625	
2"	\$48,601	\$92,667	\$115,762	\$152,999	
3"	\$97,292	\$173,860	\$217,190	\$286,874	
4"	\$152,002	\$289,825	\$362,056	\$478,123	
6"	\$303,914	\$579,475	\$723,894	\$956,246	
8'	\$486,280	\$927,195	\$1,158,274	\$1,529,994	
10"	\$699,100	\$1,332,985	\$1,665,196	\$2,199,366 1 No. 2, Page 31 o	

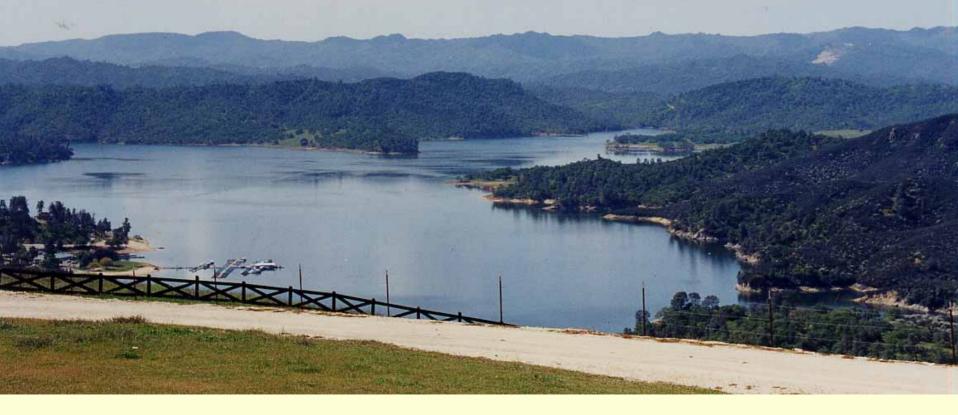
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Conclusion

- Nacimiento supply and treatment plant needed to meet customer demands
- Move toward supply ownership
- Secure better quality supply
- Set revenues to fund capital projects

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Questions and ideas



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BRYAN W. WENTER, AICP

July 1, 2008

VIA E-MAIL

Honorable Mayor Frank Mecham and Members of the City Council City of Paso Robles 1000 Spring Street Paso Robles, CA 93446

Re: City of Paso Robles, Nacimiento Water Project Proposed Water Rate Structures and Capacity Charge Increases Agenda Item #4

Dear Mayor Mecham and Members of the City Council:

This firm represents the Home Builders Association of the Central Coast ("HBACC") in connection with the City of Paso Robles' proposal to increase water user rates and water capacity or connection charges to fund the Nacimiento Water Project. We apologize in advance for the need to provide this letter at such a late date, but this matter has arisen without any notice to us, and our recent requests for a continuance of tonight's public hearing were rejected.

As you will hear tonight, HBACC communicated early and openly with the City about these issues last year, but only learned through a June 19, 2008 article in The Tribune about today's City Council hearing to consider the significant increases proposed, and the July 15, 2008 hearing at which it is planned to consider a resolution adopting such increases. The lack of City outreach to a key stakeholder, and the consequent limited time for us to review the information purportedly justifying these dramatic increases¹ has been so significant that our client, which still desires to work productively with the City, directed us to send this letter before it had any chance to review the comments contained herein.

¹ In particular, we have preliminarily reviewed the 59 page City staff report, which includes Water Rate and Revenue Analysis prepared by Kennedy/Jenks Consultants, Revised Draft Projected Water Supply Plan and 10-Year CIP prepared by TJ Cross Engineers, and Water Capacity Charge Study prepared by HF&H Consultants, LLC.

Honorable Mayor Frank Mecham and Members of the City Council July 1, 2008 Page 2

As it has in the past, to assist in its analysis the HBACC retained Brion & Associates, a well-regarded urban economics consulting firm whose report is attached hereto. While the issues identified at this stage in the analysis represent the HBACC's initial concerns, collectively they make the impact on the City's rate payers unknown. Thus far, it appears that the proposed increases are plagued by legal deficiencies that undermine the justifications upon which the increases are based. Among other things, the proposed increases appear to violate constitutional legal requirements codified in the state's Mitigation Fee Act (Govt Code section 66000, et seq). Importantly, the legislature has expressly recognized that imposing fees for public facilities in excess of constitutional and statutory limits improperly adds to the costs of providing much-needed housing in California, and has condemned such practices. *See* Government Code § 53395(b). So that we can adequately and productively address these issues with the City, the HBACC requests that the July 15 hearing date be postponed.

I. OVERVIEW OF LEGAL PRINCIPLES LIMITING WATER RATES AND CAPACITY CHARGES

A. DEVELOPMENT FEES IN GENERAL

The City's proposed rate and capacity increases are subject to the underlying legal principles that limit development fees and exactions in general. Such constitutional limitations provide the boundaries between permissible police power regulation and unconstitutional regulatory "taking" of property for which just compensation must be paid. U.S. Const. amend. V. The U.S. Supreme Court has identified at least two constitutional constraints on such fees and exactions imposed as conditions of property development: (1) the "rational relationship" test which requires the fee to be reasonably related to adverse impacts attributable to proposed development; and (2) the "rough proportionality" requirement under which such requirements must be "roughly proportional" to the costs or impacts imposed on the public agency as a result of the proposed development activity. *Nollan v. California Coastal Comm.*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

While developers are expected to provide or pay for infrastructure needed to serve their development projects and to mitigate adverse impacts on public facilities that are attributable to such new development, California law also recognizes and enforces limits on fees or exactions that can be imposed for public facilities. The courts have held that developers cannot

"be required to shoulder the entire burden of financing public facilities for all future users. '[T]o impose the burden on one property owner to an extent beyond his [or her] own use shifts the government's burden unfairly to a private party' It follows that facilities fees are justified only to the extent that they are limited to the cost of increased services made necessary by virtue of the development. The [public agency] imposing the fee must therefore show that a valid method was used for arriving at the fee in question, 'one that established a reasonable

Honorable Mayor Frank Mecham and Members of the City Council July 1, 2008 Page 3

relationship between the fee charged and the burden posed by the development.' " Shapell Industries, Inc. v. Governing Board of the Milpitas School District, 1 Cal.App.4th 218, 234-35 (1992) (citing Bixel Assoc. v. City of Los Angeles, 216 Cal.App.3d 1208, 1219 (1989)).

B. WATER CONNECTION FEES AND CAPACITY CHARGES

The Mitigation Fee Act applies to fees imposed by a local agency, such as the City, on development projects to fund public facilities. Gov't Code § 66000 et seq. The Act specifically limits water connection fees and capacity charges and requires the City to determine that a reasonable relationship exists between the fee's use and the type of development project upon which the fee is imposed, Gov't Code § 66001(a), the need for the public facility funded by the fee and the type of development project upon which the fee is imposed, Gov't Code § 66001(a), the need for the public facility funded by the fee and the type of development project upon which the fee is imposed, Gov't Code § 66001(b). Moreover, section 66013 of the Act provides that "fees for water connection or sewer connections, or ... capacity charges ... shall not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed." *See also Rincon del Diablo Municipal Water Dist. v. San Diego County Water Authority*, 121 Cal.App.4th 813, 818 (2004).

II. INITIAL COMMENTS ON PROPOSED WATER RATE STRUCTURES AND CAPACITY CHARGE INCREASES

A. The City's Burden to Provide Evidence Justifying the Proposed Increases

To lawfully impose the proposed fee increases, the City must, at a minimum provide evidence of the estimated reasonable cost of the services or facilities actually planned to be provided with the proceeds of the fees. *See, e.g., Shapell Industries, Inc. v. Governing Board of the Milpitas School District*, 1 Cal.App.4th 218 (1992); *Bixel Assoc. v. City of Los Angeles*, 216 Cal.App.3d 1208 (1989); *Russ Building Partnership v. City and County of San Francisco*, 199 Cal.App.3d 1496 (1987); *Beaumont Investors v. Beaumont-Cherry Valley Water District*, 165 Cal.App.3d 227 (1985); *J.W. Jones Companies v. City of San Diego*, 157 Cal.App.3d 745 (1984). The City has the burden to produce evidence in the administrative record to demonstrate the propriety and amount of the proposed fees. *Bixel Associates*, 216 Cal.App.3d 1208 (fire hydrant connection fees held invalid due to insufficient evidence to justify allocation of costs to new development); *Oildale Mutual Water Co. v. North of the River Municipal Water Dist.*, 215 Cal.App.3d 1628 (1989) (water service fee held invalid where the district failed to demonstrate that its fee did not exceed the reasonable costs of service).

Here, it appears that the City has fallen grossly short of the threshold requirement that it provide evidence to justify the sharp increases in connection fees. Specifically, the connection fee would dramatically increase from the current of approximately \$9,100 per equivalent meter

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unit ("EMU") to almost \$29,000 per EMU—a 222% increase. Because documents that claim to justify these figures fail to include the underlying data upon which they should be based, it is impossible to see how they show the estimated reasonable cost of the facilities planned to be provided. The public is in the dark about how the City and its consultants reached the conclusion that the current connection fee should more than triple.

B. The "Buy-In" Approach Must be Fair and Equitable

The proposed fee increase includes a "buy-in" component that was not contained in the City's earlier nexus studies. The "buy-in" approach to infrastructure fees is uncommon in California because it is premised on the assumption that the existing community has already built and paid for, and that facilities have excess capacity available to be used by and sold to new development. Such circumstances do not frequently occur in California's rapidly-developing communities, where new development typically must pay for the marginal costs of creating new capacity to accommodate its needs. This major change from past practice is highly suspect, legally vulnerable, and raises important questions that have not been answered. For example, what is the basis for adding existing improvements into the fee structure given that many of the improvements are fully funded, may not serve new development, and are old? A fundamental principle of setting fees for public facilities is that fees on new development or new connections cannot include any costs that are attributable to the costs of repairing, replacing, or otherwise curing existing deficiencies. *Bixel Associates*, 216 Cal.App.3d at 1218-9.

Even in states where the use of this "buy-in" approach is more common, however the courts have required that such buy in charges must be "fair and equitable" and "uniform and nondiscriminatory," and have invalidated buy in charges that failed to meet these standards. *See, e.g., State ex rel Waterbury Dev. Co. v. Witten*, 377 N.E.2d 505 (Ohio 1978) (invalidating town's \$500 "equity value" portion of water connection charge as not reasonably related to costs of providing water service); *Deerfield Estates v. Township of East Brunswick*, 286 A.2d 498 (N.J. 1972) (invalidating arbitrary connection charges imposed on developer); *Driefels v. South Panorama Sanitary Dist.*, 474 N.W.2d 567 (Iowa 1991) (invalidating \$1,500 connection fee to be imposed on new homes to fund system wide improvements as discriminatory buy-in charge). We are not aware of any reported California case that has approved such a "buy in" approach to calculating water capacity charges or connection fees.

The buy-in methodology the City seeks to rely on here is problematic in several ways and is therefore legally questionable. Among other things, the consultant's reports have increased the value of the existing facilities in their 2007 study from \$30.1 million to \$177.2 million today, which represents a nearly 500% increase. Some \$73.5 million of this value is now being allocated to new development even though most of the system does not serve new development. Moreover, the reports fail to show that the existing system has any capacity for new development to buy into or that the system is adequate to serve such development. It also appears that the proposed buy-in would reimburse existing users so that they are provided a return on investment.

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Honorable Mayor Frank Mecham and Members of the City Council July 1, 2008 Page 5

This approach improperly assumes that the existing system is in the nature of an "investment" and that existing users should get the benefit of inflationary increases in the costs of construction, regardless of what the existing users actually spent to build the system and how they financed it.

III. CONCLUSION

Coupled with the more detailed analysis prepared by Brion & Associates, the foregoing comments highlight HBACC's initial concerns with the proposed fee increases. HBACC continues to seek a productive working relationship with the City, and requests a delay in the July 15 hearing so that these concerns can be addressed after all of the relevant documentation has been fully considered and a legally defensible fee program can be developed.

Sincerely,

MORGAN MILLER BLAIR

BU. net

BRYAN W. WENTER, AICP

BWW:

Attachment: Letter from Brion & Associates dated July 1, 2008

cc: Jim App, City Manager
 Jim Throop, Administrative Services Director
 John Falkenstien, P.E., City Engineer
 Jerry Bunin, HBACC
 Daniel A. Muller, Esq.



BRION & ASSOCIATES

July 1, 2008 Jerry Bunin Government Affairs Director Home Builder's Association of the Central Coast 811 El Capitan Way, Suite 120 San Luis Obispo, CA 93401-3333

Subject: Review of City of Paso Robles Water Connection Fee Study by HF&F (June 2008) and Water Rate User Fee Study by Kennedy/Jenks (June 2008); B&A 2310-08

Dear Jerry,

I have received the two studies listed above and prepared a very preliminary review of these materials. As you know, I received these documents on June 25th and I understand that you forwarded them to me as soon as you received them. The City is expected to go to Council with these two studies on July 1, 2008 and my comments and questions will be sent directly to the City. Therefore as you requested, given the tight time frame, you are unlikely to have time to review my comments beforehand and have indicated that I should just forward them to the City. The water connection fee is proposed to increase to about \$28,700 per EMU. The current water connection fee is about \$8,900 per EMU and the proposed rate in 2007 was about \$12,500 per EMU. As you know my firm prepared a detailed assessment of the City's analysis and their consultants' studies in 2007 and we raised significant questions about the proposed water connection fee. At that time, we felt that a more reasonable and legally defensible connection fee should be about \$9,200 per unit or EMU.

In September 2007 you submitted a detailed letter listing very specific questions and comments regarding the entire water nexus study. Today, the city sent you a letter that purportedly addresses those comments and questions. However, all of the responses are vague and general in nature. Further, that letter does not mention that the current study proposes an even more severe increase in the water connection fees. I will provide some specific responses to that letter as part of my comments on the 2008 HF&H Study.

I have the following general comments to make before getting into the more substantive comments on the two studies.

• The following represent our preliminary comments and questions regarding the proposed fee increases. Given that these documents were released to the public just over a week before the hearing, does not allow us adequate time to review them in any detail. Further, the 2008 HF&H Study does not provide any appendices or back up data for us to review. There are only the most general summary numbers in the letter. Thus, we reserve the right to submit

2641 Barndance Lane • Santa Rosa, CA 95407 • tel/fax 707.570.1477 • joanne@brionassociates.com

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additional comments as more data and information is provided on these two fee studies.

- A letter from HF&M does not constitute a nexus study or a water connection fee study sufficient to meet the requirements of The Mitigation Fee Act. There is no supporting information to justify the proposed water connection fee.
- We are certain that our comments and questions will have direct impacts and implications on the water user rate study and the resulting proposed rates. To the extent that project costs are being allocated to new development unfairly, as appears to be the case, implies that both existing and new rate payers will have to make up the difference and that their user fees will need to increase. These impacts and potential increased rate implications are unknown at this time.
- Given the complexity of the studies, the lack of detailed supporting data, the magnitude of the connection fee increase 129% increase over the proposed 2007 rate and 222% increase over the existing rate, we strongly suggest that the City Council postpone the July 15th hearing at which time, the fee studies and new rates are scheduled to be adopted.

Table S-1 summarizes the improvement costs and other assumptions from the City's' four recent water connection fee studies, including three prepared by HF&F, and one by Foresight Consulting.

Review of "Water Capacity Charge Study, Public Review Draft" dated June 20, 2008 by HF&H Consultants, LLC – prepared for City of Paso Robles¹

The HF&F Study comprises a 9-page letter to the City Manager, Jim App. The letter proposes a new connection fee that is more than triple the current fee and greater than double the 2007 proposed fee. HF&F is the same firm that prepared the 2007 Study. This new letter includes no appendices, lists of project costs, or detailed supporting information used to create the water connection fee. This letter does not constitute an adequate fee study with which the City can establish a water connection fee. The study does not provide adequate detail on the cost assumptions, debt service, growth assumptions and cost allocations between new and existing development to allow the reader to validate the reasonableness of the proposed fee increase. Given that this new fee is more than double the proposed 2007 rate and \$20,000 higher than the existing fee, makes the entire study suspect.

¹ The City's letter to the HBA references a HF&H Study of June 25, 2008; we have reviewed a letter dated June 20, 2008 as part of this effort and assume it is the most current study.

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Table S-1 Comparison of Capital Costs by Study Sewer and Water Fee Critique City of Paso Robles	Study							
ltem	HF&H 2001 Nexus Study (1)	Foresight 2004 Update (2)	Percent Increase over 2001	HF&H 2007 Update (3)	Percent Increase over 2004	HF&H 2008 Update Total Costs (5)	HF&H 2008 Update New Dev (5)	
Water Improvements\$1,7Water Supply/Wells\$1,7Water Supply/Wells\$1,7Storage Reservoirs\$17,8Transmission Projects\$17,8Existing Facilities - Buy-InNacimiento Treatment/Pipeline ProjectAdditional Water Supply	\$1,710,000 \$6,970,000 \$17,820,000 \$Project	\$48,180,000 \$13,890,000 \$21,660,000	2718% 99% 22%	\$6,070,000 \$22,700,000 \$50,906,000 \$30,078,354 \$85,000,000 \$7,479,500	-87% 63% 135%	\$12,296,241 \$26,479,662 \$177,202,353 \$233,960,000 \$60,000	\$5,105,730 \$11,003,580 \$73,572,954 \$97,232,730 \$60,000,000	39% 24%
Recycled Water Storm Drainage Total Water Costs Increase over 2007 Amount of Water Allocated to New Development	\$26,500,000 \$18,840,000	\$83,730,000 \$53,200,000	216% 282%	\$202,233,854 \$101,121,355	142% 90%	\$509,938,256 152% \$246,914,994	\$246,914,994 144% 144%	
% of Total Costs Water Connection Fee per EMU	71%	64%	-8%	50% \$12,518		48% \$28,687	129%	
 City of Paso Robles; Final Report, Water and Sewer Development Impact Fee Study 11-26-2001. Prepared by Hilton, Farnkopf and Hobson LLC. It does not appear that any existing projects have been allocated to new development. Foresight Consulting Services; Final Letter Report-Updated Water and Sewer Connection Fees, Paso Robles, CA. May 24, 2004. It does not appear that any existing projects have been allocated to new development. Draft Report: Water and Sewer Connection Fee Update, City of Paso Robles. August 9, 2007 Prepared by Hilton, Farnkopf and Hobson LLC. Mater Resources Plan Integration and Capital Improvement Program. Prepared for City of El Paso de Robles by TJ Cross Engineers, February 2007. This Study does not make allocations to new development. From Page 7, Figure 3. Facility Costs and Capacity Charges, Water Capacity Charge Study, Public Review Draft, June 20, 2008, by HF&H Consultants, LLC. Costs to new development are estimated based on cost per EMU noted time new development EMUs of 8,610, as show in headers of Figure 3. Sources: City of Paso Robles; HF&H Consultants, LLC; Brion & Associates. 	ort, Water and Sewe ting projects have be Final Letter Report- ting projects have be r Connection Fee Up ion and Capital Impr cations to new devel v Costs and Capacity estimated based on c th Consultants, LLC	d Sewer Development Impact Fee Study have been allocated to new development. Report-Updated Water and Sewer Connec have been allocated to new development. Fee Update, City of Paso Robles. August al Improvement Program. Prepared for Ci development. apacity Charges, Water Capacity Charge ed on cost per EMU noted time new deve is, LLC; Brion & Associates.	mpact Fee Stud ew developmen und Sewer Com ew developmen o Robles. Augu n. Prepared for n. Prepared for capacity Charg ted time new de iates.	y 11-26-2001. Pre- att. nection Fces, Paso att. ist 9, 2007 Prepare City of El Paso de City of El Paso de çe Study, Public Re velopment EMUs	pared by Hilto Robles, CA. N d by Hilton, F. Robles by TJ eview Draft, Ju of 8,610, as sl	n, Farnkopf and H Aay 24, 2004. arnkopf and Hobse Cross Engineers, I une 20, 2008, by H 10w in headers of I	obson LLC. n LLC. ebruary 2007. F&H Consultants, LLC. igure 3.	

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The City's recent letter to the HBA, dated June 26, 2008 but provided on June 30, 2008, makes no mention of the huge change in costs and fee rates and purports that this new study is merely an update of the 2007 analysis.

We have the following preliminary comments on the 2008HF&H Study.

1. The value of existing facilities used for the "buy-in" calculations from the 2007 HF&H study to the 2008 study has increased from \$30.1 million to \$177.2 million or almost 500%. The 2007 Study's Buy-In fee was about \$4,700 per EMU unit and now it is \$8,550 per EMU with no justification or explanation.

We do not believe that a Buy-in fee is justified or appropriate in the City, as we stated in 2007. The City's prior water fee studies in both 2001 and 2004 did not include a buy-in fee. Only as of 2007, has the City considered adopting a buy-in fee. We will comment more specifically, later in this letter.

In September 2007, we had comments and questions on the validity of the original \$30 million value of existing facilities from last year's study by HF&H and believe that the portion of the existing system which would actually serve new development should be valued at \$14.5 million. The study now values the same facilities at \$177 million or \$8,554 EMU. About \$73.5 million of this "value" is being allocated to new development in a Buy-In fee. Most of this system does not serve new development, which will be placed primarily on the east side of the river. The study also does not establish that the system has any existing "capacity" which new development is buying into or that the existing system has not deteriorated and is not in need of improvement and replacement, which is the case in most cities.

How could the same consultant, within the bounds of one year, change their mind concerning the value of existing improvements which serve new development, increasing that value from \$30 million to \$73.5 million? This buy-in charge represents 30% of the proposed new fee of \$28,900.

There is no explanation provided of how this valuation could have changed so drastically and dramatically. No details are provided to allow us to validate any of the analysis or cost estimates. The cost estimates have increased by 489% since the 2007 study.

There is a statement about how existing users are being "reimbursed" for their expenditures and being provided a "return on investment." New development will also pay user fees. I am curious if the new user fee rate study reduces existing development's user fee rates, which would account for this additional buy-in charge, which equals about 35% of the total \$509 million water improvement plan. The City's letter suggests that existing rate payers need to receive a return on their investment. However, connection fees paid for the prior system improvements; the existing rate payers did not finance the system solely through user fees.

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The rhetoric in the City's justification of the charge of a buy-in fee blurs private sector economics with public sector economics. Cities are not in the business of expecting a "return on investment" and neither are existing residents and businesses. Residents and businesses pay for public infrastructure to serve their needs. The need of new growth's impact is paid for through impact fees and connection fees. User fees are expected to pay for service, operations and maintenance and capital replacement.

As discussed under the KJ User Rate Study, the consultant states that the City does assume depreciation of existing facilities, first and foremost, which the City Public Works Director suggests isn't appropriate, and then KJ suggests that the City "fund" this expense through some type of capital replacement charge. Ostensibly, this buy- in fee should be applied to that cost, if in fact, that was the true reason for charging that cost, but the KJ study merely applies the buy-in fee towards the annual debt service or non operating expenses. Thus, the buy-in fee is being charge as another means of increasing the connection fee, in appropriately.

2. HF&H's new approach to allocating costs to new development masks existing deficiencies and imbeds them in the calculation of the connection fee in a manner that does not allow the reader to make or verify these calculations.

The prior 2007 study includes a series of appendix tables, outlining the detailed improvement items, and assigned a cost allocation factor to each improvement. The reader could then determine whether they agreed with this assumption. The new approach takes total costs at a "buildout" year, and divides them by the total EMUs at this year, and then assigns an average cost per EMU that does not vary by existing development and new development. This is a clever technique for allocating existing deficiencies to new development and it is not possible for the reader to clearly understand which portion of the new fee is related to existing deficiencies. It has the appearance of being a simple calculation but in reality imbeds many assumptions and inappropriate cost allocations in the analysis. We strongly recommend that the City and HF&H return to the prior method of determining the fees. The fact that the fee increased so significantly from 2007 to 2008, suggests that the embedding of existing deficiencies is taking place.

3. Total Water project costs have increased from \$202 million to \$509 million in one year and new development's share of these costs has increased from 50% in 2007 to 69% in 2008, without any explanation or justification.

The total water plan costs in the water connection fee study are now \$509 million, which represents an increase of 247% increase from the 2007 study. The 2007 study costs represented a 152% increase over the 2004 study. The 2004 study costs presented a 216% increase over the 2001 study, which was prepared by HF&H as well. Total water project costs in 2001 were \$26.5 million and now are \$509 million, or a 1,824% increase. We

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understand, logically, some of this cost increase is related to the new Nacimiento project. The Nacimiento project cannot explain or justify the entire increase, however.

There was very little change in the development forecasts or EMU estimates from the 2007 to 2008 studies to account for the shift of costs from 50% new development to almost 70%. The prior study provided more detail on how new development was being allocated the individual improvement costs. This study does not.

4. The EMU charge for new development to buy into the existing system is higher than the average of all the surrounding cities entire water connection fees, which is \$8,087.

The cost of the **buy-in fee**, at \$8,554 per EMU, is actually slightly higher than the average of the other cities' **total** water connections fees, which as staff notes is \$8,087. Staff's comparison is misleading as they put the new fee for Paso Robles at \$17,386 in their memo to City Manager, dated July 1, 2008. In reality, the fee will increase to over \$28,000 in a couple of years. This is the fee rate that most new units will pay and should be compared to other cities water connection fees. The City's proposed rate is about **\$20,000 higher** than all of its competitors for new development. The City fails to recognize that this new fee will have significant economic impacts on the City's ability to attract new development.

In all my experience reviewing fee studies, I have never seen a water connection fee that was even close to this proposed rate. The shear magnitude of the connection fee compared to other cities, alone makes it suspect. The East Bay Municipal Water District's water connection fees are considered the highest in the Bay Area and are about \$13,000 per single family unit.

5. None of our original comments or questions from September 2007 has been addressed in this new study.

There is even less detail and documentation provided in the 2008 HF&H Study than that provided in the 2007 study. In the 2007 study, at least, we could recreate all their calculations on a line item basis and decide if we agreed with it or not. Now, we can verify only the most basic and simple calculations, but cannot point to any specific improvement costs or assumptions because we don't have any detail to review.

The tone of the new Public Works Director's memo suggests he neither reviewed nor considered our comments from 2007. It also appears that these comments and questions were not provided to HF&F or if so, they chose to ignore them.

In our assessment last year, we felt that the connection fee proposed at about \$12,800 should actually be about \$9,200 or 28% less. This new 2008 proposed fee is over twice the 2007 proposed fee, with neither explanation nor reference to the 2007 study.

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The Public Works Director's letter to the HBA dated June 26, 2008 suggests that our original comments were considered in the preparation of the new HF&H Study. This seems unlikely, because the proposed analysis, cost allocations, and documentation are less detailed than what was provided in 2007. The City's letter, rather than responding to our specific comments, goes into a lengthy discussion and justification for the City to charge new development for improvements which are already completely funded and built, make a profit from the situation, and charge new development a premium for buying into a system which will not serve most of the new development on the east side of the City. The overall tone, general nature of the response and vagueness suggests that the City is not interest in addressing our comments or concerns.

The City has stated in a letter to the HBA in February 2008: it would organize a developers' workshop to review our comments and discuss the new connection fee study. The City did not follow through with this offer and in fact, has kept the development community in the dark as to its intention to adopt a \$28,600 connection fee per EMU. The HBA was made aware of this fee increase by an article in the local paper. The City has now offered to set up a meeting on July 9th to discuss our concerns, but will move forward with the July 15th hearing to adopt the fee studies and proposed fee rates as planned. It is obvious that the City has no intention of seriously considering our questions and concerns as there would not be adequate time to review the studies, in order to integrate our input between July 9th and July 15th.

Review of "City of Paso Robles Water Rate and Revenue Analysis – Public Review Draft" dated June 23, 2008, prepared by Kennedy/Jenks Consultants

We have had only a short time to review the water user rate study and have the following general comments and questions. We expect to delve more deeply into these questions and comments before the July 9th meeting with the City and will provide more detailed discussion of these comments by then.

6. The City's water rate study discusses the use of depreciation of existing capital improvements throughout the study, and shows "expenses" for this depreciation, which equals about \$850,000 in FY 06-07. The City Public Works Director states it is not appropriate to depreciate existing facilities for the purposes of calculating a "buy-in" fee. In subsequent years, depreciation is estimated at \$1.5 million. It states that the City should consider capturing this cost through the user fees. It is interesting that the "buy-in" charge which is part of the new connection fee, at \$8,550 per EMU, should be appearing in the user fee rate study to cover this cost, IF indeed this is the actual purpose of this buy-in fee. This inconsistency needs to be explained by staff and their consultants.

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- 7. The City's letter, in response to our comments, suggests that conservation is not significant enough to impact demand and the sizing of required facilities, while the City's consultant, Kennedy/Jenks goes into quite a bit of discussion of how conservation, lower demand as a result of higher rates, etc. is factored into the analysis of the new user rates.
- 8. The KJ Study implies a total debt service cost of the Nacimiento pipeline at about \$126 million while the HF&H Study puts the cost at \$144.2 million. Combined with the treatment plant cost differences, the two studies are off by \$20 million.
- 9. It states that the proposed \$28,687 connection fee will be increased at 5.5% per year based on the construction index. It is not necessary to increase the portion of the connection fee based on the debt service payments. The improvements funded with this portion of the fee have been constructed and thus, will not occur in the future at higher inflated construction costs as would be the case with a normal pay-as-you-go improvement plan. Therefore, the proposed fee will be overcharging new development over the life of the General Plan, and this overcharge will be significant. If the water fund analysis depends on this fee rate increase, then this is a significant and perhaps fatal flaw in the analysis because the fee cannot be increased at 5.5% per year. Only the portion of the fee that covers project costs that have not been constructed should be increased based on a construction cost index. About 40% of the proposed fee is related to the Nacimiento project, and another 25% is related to water supply purchases. Water purchases are also not subject to changes in construction costs and should include a separate inflation factor, based on the CPI, which has been substantially less than the ENR.
- 10. The proposal to adjust the fixed meter charge to account for meter size is a good proposal to ensure that users pay their fair share of costs. Larger users with larger meters generate more costs for the City.
- 11. The KJ study presents information on other cities monthly water charges assuming an average use of 30 HCF per month. This compares the City's proposed rates assuming the first year's increase charge per HCF of \$2.56, which results in a monthly charge of about \$92. The analysis assumes that the actual costs will be \$4.13 and higher per HCF after the first year and thus, the comparison is misleading and makes it appear that Paso Robles new user rates will be comparable to the current average of other cities. As shown on Table 9 of the KJ Study, a user that uses 30 HCF per month in FY 10/11would pay \$168 per month, which is almost double the average of \$95 per month for all the other cities.

In closing, in a comparison of the two studies, the User Rate Study by Kennedy Jenks provides more detail and supporting information than the HF&H Study; both studies would significantly benefit from including all the supporting tables and data used in the

Jerry Bunin HBA of the Central Coast June 30, 2008 Page 9 of 9

analyses. I do not believe that the HF&H Study meets any of the requirements of The Mitigation Fee Act. I hope you find this information useful in our efforts to work with the City. If you have questions or comments, please call me at 707-570-1477 or email me at joanne@brionassociates.com.

Sincerely,

Joanne Brun

Joanne Brion Principal

cc: Dan Muller, Morgan Miller Blair Bryan Wenter, Morgan Miller Blair

Jim App on 6-16-08 says:

(Source: Letter to NF: pasorobleswaterproject.com) vested authority. Further, capital project decisions are not subject to Proposition 218 provisions." "The actions of the City Council current and past are entirely consistent with their duty and voter

Yet California Government Code Section 53750 states:

For purposes of Article XIIIC and Article XIIID [Proposition 218] and this article:

or the cost of the service provided improvement, the maintenance and operation expenses of the public improvement, based upon the special benefit conferred upon the real property by a public improvement or service, that is imposed to pay the CAPITAL COST of the public "Assessment" means any levy or charge by an agency upon real property that is

City of Oakland, supra, 4Cal, 4th at pp. 142-143.) property assessed receives no special benefit beyond that received by the general public. (Knox v reliability, enhance quality, and meet demand. Assessments may in reality be special taxes if the Jan. 2008 Paso Robles water mailers. Briefly, the alleged benefits are to: diversify supply, increase "Benefits" of the Nacimiento Water Project's capital cost have been published in Oct. 2007 and

The Nacimiento pipeline and a new City water treatment plant are CAPITAL projects, and as such require a ballot vote under Proposition 218 to authorize funding

The choice is clear, have Mr. App and the City Council members comply with Proposition 218 law!!!

visit www.paso218.org

Applying Prop 218 Law: A Capital Cost Example Salinas Valley Water Project Engineer's Report, Jan. 2003

Download at http://www.mcwra.co.monterey.ca.us/welcome_svwp_n.htm

Page ES-1 reads as follows:

Executive Summary

This Engineer's Report has been prepared to describe the technical basis for a new assessment that would, if passed, **fund the capital and operation and maintenance costs** of the recommended Salinas Valley Water Project (SVWP). The Salinas Valley Water Project includes:

- Operation and maintenance of the existing reservoirs;
- · Construction of the Nacimiento Dam Spillway Modifications; and
- Construction of the Salinas River Diversion Facility.

The Monterey County Resources Agency (MCWRA) would implement the project to meet the water supply goals of the Salinas Valley, which include:

- Halting seawater intrusion;
- Continuing conservation of winter flows for recharge of the Salinas Valley basin through summer releases;
- Providing flood protection;
- Improving long-term hydrologic balance between recharge and withdrawal; and
- Providing a sufficient water supply to meet water needs through the year 2030.

The purpose of this Engineer's Report is to document an assessment methodology developed by MCWRA for a special assessment that could fund the proposed project. This report includes a general description of the project, documentation of the assessment methodology, delineation of the zones of benefit, and the proposed assessments. **Proposition 218 requires this type of report in order to provide voters with factual information needed to decide whether or not to approve a new special assessment**.

Project Description

The proposed project consists of three distinct components that will meet the identified project goals. The three project components are:

- Operation and maintenance of the existing reservoirs;
- · Construction of the Nacimiento Dam Spillway Modifications; and
- Construction of the Salinas River Diversion Facility.

---- --- --- --- --- --- --- ---

Like in the Salinas Valley Water Project example, the Nacimiento water pipeline and proposed water treatment plant are *capital costs* (being a structural addition to Paso Robles' present water system) and as such, <u>a ballot vote</u>, *not* a majority protest procedure, is required on City funding decisions under Proposition 218 law. Assessments may in reality be *special taxes* if the property assessed receives no special benefit beyond that received by the general public. (Knox v.City of Oakland, supra, 4Cal, 4th at pp. 142-143.) If the alleged benefits to "diversify supply," "increase reliability," " enhance quality," and "meet demand" can't be shown in an Engineer's Report, then funding the capital cost requires a special tax and 2/3 voter approval.

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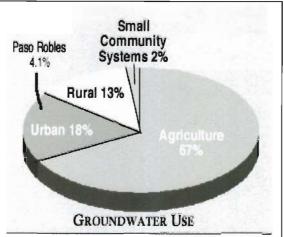
Nacimiento Water Rates UNFAIR TO CITY RESIDENTS

visit www.paso218.org

Water Pumped from Paso Robles Groundwater Basin*--

Paso Robles Total: 3,400 AFY (acre feet per year) Basin Total: 83,000 AFY

City's % of Basin Total = <u>3400</u> = .041 = 4.1% 83,000



Nacimiento Water Project Cost to City to maintain Basin's 30.5 million acre feet of water storage:

\$11.08 million x 30 years = \$332,400,000**

Paso Robles' "fair share" (4.1%) of NWP cost based on City's March 2008 mailer:

\$332,400,000 x .041 =

\$13,628,400

City Water Customer's "fair" share of \$13,628,400 based on 10,267 connections is \$44.25 a year or **\$3.69** monthly for 30 years (versus City's 2011-12 proposed \$<u>143</u> aver. monthly bill for 25 HCF.***)

Just say NO to the Nacimiento water rates

References: *Paso Robles City March 2008 Water Mailer and June 2008 Water Rate Study; **Includes City's cost of NWPipeline plus interest, and the expense of a new water treatment plant, and their operation. ***Annual increases in billing rate will continue after FY 2011-12.

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<u>A Critique of the Paso Robles Water Rate Study</u> by J. Borst, PhD July 1, 2008 On page 2 of Agenda item 4 (CC meeting 7/1/08) Mr. Monn makes the following statement:

For the water capacity charges, the recommended charges would pay for <u>one-half</u> of the City's current entitlement in the Nacimiento Water Project and <u>one-half</u> of the proposed water treatment plant costs.

What do the numbers from the water rate study say about his claim:

Total revenue needed in FY 2011-12 to cover the cost of service according to page 29 is **\$18,159,719**. Yet the numbers from the water rate study suggest that capacity charges will *not* be paying for $\frac{1}{2}$ of the City's water project costs as Monn states. On the contrary, <u>City water customers are being asked to pay for the FULL entitlement (4000 afy) and water treatment plant</u>, and more!

As an example, using the charges for single family residences only, here's why this is the case:

On page 17 of the water rate study it states 25 hundred cubic feet of water was the average customer per month use in 2007. Using that average we can then determine anticipated total revenues for the City in FY 2011-12. Referring to the chart on page 3 of the water rate study report is the water rate structure for 2011-2012. For 2011 the **Fixed flat rate** is **\$22.48** and the **Variable rate** is **\$4.86**; and for 2012 the rates are **\$24.95** and **\$5.00**, respectively. Rates for 6 months of each charge apply for FY 2011-2012.

To calculate total revenue for FY 2011-12 we do the following:

<u>First</u>, we need to get the total \$ monthly cost per customer. Multiply the average water use per month, 25, by $$4.86 + $5.00 \div 2$ to get the average monthly variable rate cost: $25 \times $4.93 = 123.25 . Then add to it the monthly fixed/flat service charge, $$22.48 + 24.95 \div 2 = 23.72$. This then comes to a monthly customer cost of \$146.97 (\$123.25 + 23.72). Subtract the difference between rates for the first 5 units used (i.e., \$3.70) from \$146.97 and you get \$143.27 a month per customer.

Second, to get the yearly cost per customer we now must multiply \$143.27 times 12 months. This comes to a yearly cost of \$1719.24.

<u>Third</u>, to get the approximate total revenue collected from all city water customers we multiple the number of customers expected to exist in FY 2011-12 (9957 current customers + 60 more customers in 2009-10 + 100 more in 2010-11 + and 150 more in 2011-12 = 10,267) times \$1719.24. Consequently, total revenue planned for collection in FY2011-12 comes to \$17,651,437 (10,267 x \$1719.24). Or, to use the figure of 30 as the monthly customer usage stated by Mr. Monn in his report, repeating the same procedure above results in a total FY 2011-12 revenue of \$20,811,620 (or \$168.92 a month per customer).

Given the above, the conclusion is new development capacity charges are *NOT* paying for <u>one-half</u> of the City's current entitlement in the Nacimiento Water Project and <u>one-half</u> of proposed water treatment plant costs. Water customers <u>are</u> being asked to pay the *full* cost of the entitlement and water treatment plant. That is, if total revenue of \$18,159,719 is needed in fiscal year 2011-12, and that amount is collected entirely from water customers' monthly billings, new development in effect, by way of capacity charges, has NOT contributed ½, if anything. This conclusion raises two disturbing questions: One, just what will be done by the City with those capacity charges collected if development is not paying ½ the costs (~\$3.6Mil or \$5.5Mil w/O&M)? There appears to be no accounting for it given what water customers are being asked to pay. And second, will the revenues collected from customer billings (not to mention adding capacity charge revenues) exceed the cost to provide the water service? Based on FY 2011-2012 numbers, and certainly with additional bill paying water customers (every 300 more after FY 2011-2012 means at least \$515,000 yearly in new revenue), it appears to be the case -- now and in the future.

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Council Comment Councilman Fred Strong 7/1/08

I was in Sacramento last week attending League of California Cities' Policy Committee meetings. I am a member of the Revenue and Taxation (R&T) as well as the Housing, Community and Economic Development (HCED) policy committees, plus various sub-committees including the National Standardized Sales and Use Tax Agreement (SSUTA) and pending on the Model Transient Occupancy Tax Ordinance (TOTO).

The SSUTS sub-committee discussed the conflicts with California law, the role of the Board of Equalization and the need for better analysis of potential costs and benefits to California under variations of current rules. The committee will have a conference call on results from these requests on August 14.

What I see as of interest to Paso Robles at this time is that we may be losing up to \$500,000/year in sales taxes that are going places other than here.

The Revenue and Taxation Committee dealt with the current status of Budget through interactive discussion with the State an Assemblyman Chuck Calderon, Chairman of the Assembly Revenue and Taxation Committee, and staff analysis. The opinions expressed indicated that most designated city funds are safe although they may be delayed. However, COPS money is still threatened as are any undesignated redevelopment agency increments. However, both the Assembly and Senate are proposing increases to transit funding. There was a consensus that no budget would be approved before the State runs out of money. That date was estimated to be August 1, 2008

I made the motion, and the committee approved the position, to support legislation preventing further pirating of sales taxes by one jurisdiction from another through a "loop hole" in the current law. The case in point was the City of Fillmore allowing a desk and computer to replace offices with people, which still existed, in three other jurisdictions to take their sales taxes away with an 85% rebate to the out-of-state consultant who arranged the contract with a major out-of-state manufacturer of medical equipment. That effort took an average of \$2 million per year out of the revenues of the City of Livermore and similar amounts from three other cities. The replacement office was purportedly an unmanned cubicle in an office building in Fillmore. Since all sales within the state would be routed through that computer its location would be eligible for, and receive, the local sales tax increment.

We also had a presentation and debate by both sides of a November Initiative which would dedicate additional portions of State money to numerous public safety efforts removing from the Legislature the ability to spend that money where it might otherwise be needed.

I made the motion, and the committee approved, a "no position" stance on this matter. So much discretion has already been removed that the State is having trouble keeping many other needed programs funded. While passing the initiative would "guarantee" funding perpetually, defeating it would **not** take any funding away from those programs. It would allow a shift in priorities according to current needs of the future.

A presentation and request by national representatives of the California Hotel & Lodging Association, Hilton Hotels and Starwood Hotels and Resorts preceded my motion to establish a sub-committee to work with the industry on a suggested model Transient Occupancy Tax ordinance for cities within California.

It was pointed out that many cities put things in their ordinances that come into conflict with other state and federal legislation. Also, that there is very limited consistency about what is subject to the tax. Some cities tax cancellations, military stays, parking fees, on site sales of special services, etc. A model ordinance would serve as a template or suggestion not a mandate. My motion to establish the sub-committee was unanimously approved.

The HCED committee meeting started with multiple discussions of regionalization in the planning process, especially regarding

transportation planning as it relates to land use planning. The Chairman of the Assembly Transportation Committee, Mark DeSaulnier, interacted with the committee on his AB2870 Bill on Regional "blueprints" and regionalism in general. After stating the staff position, and before the topic was opened to the committee, staff outlined what my objections had been at the previous meeting prior to tabling the topic and responded to those concerns to protect local control and eliminate any mandatory aspects of regional blueprinting.

Staff presented a draft "scoping plan" for consideration. It would: 1. give local governments input into the regional process; 2. allow the region to proceed and make a recommendation to the State; 3. allow the State to then approve a regional plan; 4. give any local general plan and/or project that was in agreement with the approved regional plan an easier, and less costly, California Environmental Quality Act (CEQA) process.

During discussion I objected to the creation of incentives to surrender local jurisdiction and control over our own city's growth and development process. I suggested that before any approval of even a "suggested" blueprint there be an additional interaction, through "meet and confer", between the State and each local jurisdiction affected, after the regional approval and forwarding to the State. The committee had extensive discussion and the legislative representatives were urged to consider the discussion in amending any proposed legislation.

Principles, which the League is encouraging, are:

- 1. Voluntary approach to regionalism.
- 2. Local innovation in establishing Green House Gases (GHG) reduction plans.
- 3. Better coordination between Blueprints, Regional Transportation Plans (RTP) and Regional Housing Needs Allocations (RHNA).
- 4. Establishment of a revolving fund for planning mandates.
- 5. Establishments of performance indicators not necessarily tied to vehicle miles traveled.
- 6. Infrastructure "needs" should have clear definitions.
- 7. More stability in transportation funding.
- 8. State permit streamlining.

9. Reduce unnecessary Housing Element enforcement.

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- 10. Align LAFCO, RTA and RHNA procedures to avoid conflicts.
- 11. Increase funding for maintenance of existing infrastructure and transportation systems.
- 12. Reassess proposals to increase landfill diversion goals.
- 13. Continue a working relationship between the League and the Land Use Subcommittee of the California Action Team.

The committee also reconsidered a previous position regarding Airport Land Use Commissions (ALUC) provided that requirements to have a 2/3 approval are retained to overturn an ALUC land use decision.

There was an update on pending legislation in the area of group homes and mobile homes as well as a presentation urging cooperation with the Institute For Local Government's Climate Change Best Practices Framework.

Apart from the committee meetings, I also met with a high official of the California Department of Corrections and Rehabilitation (CDCR) regarding the current status of the repurposing of the former youth authority facility at Airport and Dry Creek roads and a possible reentry facility on the northwest quadrant of the State property.

I learned that efforts are moving forward to keep a strong local involvement with CDCR. I was also given a copy of a new release entitled, "Integrated Strategy to Address Overcrowding In CDCR's Adult Institutions". I learned that our City Manager was given a copy about 10 days ago and I have had my copy reproduced and delivered to every other member of the City Council.

That document reveals that the Paso Robles' repurposing has been moved up to be the number one State priority in that area of endeavor.