



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

CITY COUNCIL MINUTES

Tuesday, October 21, 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 Pat Sheean

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

PUBLIC COMMENTS

- Annie Robb, Director of Library and Recreation Services, introduced Rebecca Horne, Chair of the 2008/2009 Youth Commission
- Norma Moye introduced a new merchant within the downtown core, "Earthtones Gifts & Gallery"
- John Borst, proposed water rates.

The City Manager Jim App provided copies of correspondence between the City Attorney and the Howard Jarvis Taxpayer's Association (copy attached).

AGENDA ITEMS TO BE DEFERRED

The City Manager App Council that Agenda Item No. 13 was recommended for continuance by staff.

PRESENTATIONS

By General Consent, Mayor Mecham pulled Item No. 5 from the Consent Calendar and presented the proclamation designating October 2008 as "Energy Efficiency Awareness Month" to Pacific Gas & Electric (PG&E) spokesman, Tom Jones.

PUBLIC HEARINGS

1. Amend Established Underground District for Overhead Utilities

D. Monn, Director of Public Works

On September 16, 2008 the City Council adopted a resolution which proposed amending the location of Underground District No. 5 to Riverside Avenue, 10th Street to 24th Street, noticed the affected property owners, and set October 21, 2008 for the Public Hearing.

Mayor Mecham opened the public hearing. Speaking from the public was Karl Hanson, Paul Viborg and Bill Culver. 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 adopt Resolution No. 08-155, to:

- a. Amend Underground District No. 5 to cover Riverside Avenue from 10th Street to 24th Street; and
- b. Waive any applicable electrical permit and inspection fees associated with any undergrounding, modification, or changeover caused as a result of the implementation of the undergrounding; and
- c. Set dates, estimated to occur in 2011, related to the undergrounding of the utilities.

Motion passed by the following unanimous roll call vote:

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

NOES:

ABSTAIN:

ABSENT:

2. Long Term Airport Lease – 3077 Rollie Gates Drive

M. Williamson, Assistant City Manager

The City Council introduced an Ordinance authorizing the a long term lease for a period of up to 99 years for property located at 3077 Rollie Gates Drive.

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

Councilmember Strong, seconded by Councilmember Picanco, moved to introduce Ordinance No. 949 N.S., authorizing the a long term lease for a period of up to 99 years for property located at 3077 Rollie Gates Drive, to allow the development expansion of an existing medical device component manufacturing facility, known as Specialty Silicone Fabricators Inc.; and set November 4, 2008 for adoption of said Ordinance.

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. Kathy Barnett requested that Item No. 3 be pulled for discussion. There were no further comments from the public, either written or oral, and the public discussion was closed.

3. **(Pulled for Discussion following Item No. 15).** Approve City Council minutes of October 7, 2008
4. Approve Warrant Register: Nos. 80207—80288 (10/03/08) and 80289—80401 (10/10/08)
5. **(Presented Earlier)** Proclamation designating October 2008 as Energy Efficiency Awareness Month
6. Adopt Resolution No. 08-156 approving updated and reformatted Classification descriptions for the Emergency Services Department I.A.F.F. positions.
7. Adopt Resolution 08-157 authorizing an 11-month contract with Blue Cross for employee group medical coverage, offering two health plan options, as provided for in current or side letter employee group contracts.
8. Adopt Resolution No. 08-158 accepting the recordation of Parcel Map PR 07-0294, a three-lot commercial subdivision located at the southerly terminus of Hughes Parkway (Dry Creek Partners).
9. Adopt Resolution No. 08-159 authorizing acceptance of University of California School of Public Health, California Office of Traffic Safety State grant funds of up to \$15,000 for reimbursement of personnel costs associated with enforcement operations targeting seatbelt violations
10. Adopt Resolution No. 08-160 authorizing the approval of the Security Information Policy, or “Red Flag” policy, as required by the Federal Trade Commission. The FTC is requiring the formal adoption by City Council of a policy and procedure to deal with identity theft. According to the FTC, since the City defers payment by its customers when water is sold to customers day-by-day, but paid for at the end of the billing cycle, the City is a creditor.
11. Approve the dissolution of two Ad Hoc Committees as the work of these committees is now complete. (ADA Transition Plan and Gateway Design Standards)

Consent Calendar Items Nos. 4-11 were approved on a single motion by Councilmember Strong, seconded by Councilmember Hamon.

Motion passed by the following unanimous roll call vote:

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

DISCUSSION

12. Proposed Water Rate Methodology

D. Monn, Public Works Director

Mayor Mecham opened the public hearing. Speaking from the public was Tom Flynn, Karl Hansen, Kathy Barnett, John Borst, Tom Rusch, and Tom Hardwick. 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 select a pay-as-you-go rate methodology and authorized staff to proceed with property owner and water customer notification consistent with requirements of the Proposition 218 process (for property related fees).

Motion passed by the following unanimous roll call vote:

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

13. Library/City Council Conference Room – Audio, Video and Control Systems Replacement

D. Monn, Public Works Director

The item was recommended for continuance to clarify items and develop additional options for replacement of the City Hall Council audio, video, and control systems.

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

By General Consent on a motion by Councilmember Strong, seconded by Councilmember Hamon, Council moved to continue the item to the November 18, 2008 City Council meeting.

14. Extension of Contract with 2 Point Media

D. Monn, Public Works Director

The City Council considered amending its contract with 2 Point Media to continue providing public information services through completion of the water rate and capacity charge studies.

Mayor Mecham opened the public hearing. Speaking from the public was John Borst, and Dennis Cassidy. 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 adopt Resolution No. 08-161 to extend the services provided by 2 Point Media associated with the water user rate studies and amend the existing contractual arrangements on a time and materials basis.

Motion passed by the following unanimous roll call vote:

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

By General Consent Council moved to bring the item back at the November 18, 2008 City Council meeting, to allow staff time to provide estimates of anticipated hours to complete the public information assistance regarding water rates.

15. Ice Cream Vendor Permit

J. Throop, Administrative Services Director

The City Council granted permission to T & C Aloha Ice Cream to conduct business within the City for the remainder of Fiscal Year 2009.

Mayor Mecham opened the public hearing. Speaking from the public was Timothy Lee Buchanan, the Applicant. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Hamon, seconded by Councilmember Strong, moved to adopt a revised Resolution No. 08-162 to:

1. allow for T & C Aloha Ice Cream to conduct business from a mobile ice cream unit only after successful completion of a background check by the PRPD, and obtaining all necessary permits and licenses; and
2. allow permission to operate a mobile ice cream unit for the time remaining in Fiscal Year 2009 for residential areas of the City only, and by invitation to special events occurring within other zones the City Limits; and
3. direct staff to coordinate an amendment to the City Municipal Code that directs approval of these requests to the Administrative Services Department; and
4. direct staff to update the City's Municipal Code related to vendors/peddlers.

Motion passed by the following unanimous roll call vote:

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

3. **(Pulled for Discussion).** Approve City Council minutes of October 7, 2008

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

By General Consent, Council approved the Minutes of October 7, 2008.

COUNCIL COMMENTS (Including oral reports on conferences attended)

ADJOURNMENT:

Social

Friday, October 24, 2008, 4:00 PM
San Luis Obispo County Superior Court – Grand Opening Ceremony
North County Courthouse,
901 Park Street, Paso Robles

Monday, October 27, 2008 5:00 PM
Mid-State Fair Board of Directors
Reception for PCCHA at the
Paso Robles Event Center

Saturday, November 1, 2008 6:30 PM
PCCHA Sponsors Dinner, at the
Paso Robles Event Center

Meetings

Thursday, October 23, 2008 7:00 PM
The Adjourned Regular Meeting to
Interview Applicants for Appointment to
Citizens Airport Advisory Committee, at
the Library/City Hall Conference Center,
1000 Spring Street

Tuesday, November 4, 2008
The Regular Meeting at 7:30 PM on, 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.**

From: Eric Eisenhammer [mailto:eric@hjta.org]
Sent: Monday, October 20, 2008 11:02 AM
To: Iris Yang
Subject: Your fax to HJTA

Ms. Yang,

I just wanted to reply to the fax you sent to our office. I apologize that you had not received my letter earlier. I had faxed it on the day I wrote it to the Concerned Citizens for Paso Robles and was under the understanding that they were going to forward it – they later asked me to send a hard copy, but I wasn't aware that it had not been forwarded previously. I was asked by one of CCPR's members to write a letter after reading the document they prepared, however you are correct that it is my understanding as well that my letter only expresses how HJTA believes capital expenditures should be funded vs. how they must be funded. I apologize for any confusion, and I hope this clarifies things.

Thank you,
Eric Scott Eisenhammer
Howard Jarvis Taxpayers Association
921 11th Street
Suite 1201
Sacramento, CA 95814
(916) 444-9950
(916) 444-9823 FAX
Email: Eric@hjta.org

Deborah Robinson

From: Jim App
Sent: Monday, October 20, 2008 8:32 AM
To: 'jedu@yahoo.com'; 'jborst@oco.net'
Cc: Council; trusch@tcsn.net; Executive Managers; Iris Yang; Jon Seitz; Deborah Robinson; Borst John; Borst John; Franklin, Daniel J.; Fransen, Donald S, Jr.; Gilman, Nick; Nemeth, Gary; Norman, James Scott; Picanco, Duane J.; Steinbeck, Ed; Strong, Fred
Subject: FW: Letter to HJTA
Attachments: DMDOCS1-#1139479-v1-MHA_Lt_HJTA_10-17-08--signed_pdf.PDF

Dear Mr. Borst:

Attached is a letter from the City Attorney to the Howard Jarvis Taxpayers Association. We are copying you as you and the Concerned Citizens appear to have arranged for, and delivered, the HJTA letter to the City on Friday October 17 – even though the letter is addressed to the City and dated October 7. The letter was not delivered to the City except through you (and confidentially from a private source earlier in the morning of 10/17). In fact, your delivery cover letter included a note that you were requesting HJTA to deliver a copy of the letter to the City – a letter addressed to the City and dated 10 days earlier?.

Interestingly, the electronic copy the City received via a private source included a fax transmission header indicating the letter had been faxed from HJTA to a private party as early as October 6 – presumably to the Concerned Citizens - (the day before the date of the letter and eleven days before you delivered it to the addressee – the City?)

The HJTA letter purports to be a legal opinion, yet HJTA never contacted the City for facts concerning the issue at hand, and the author does not represent himself to be an attorney. In fact, his letter appears to be based solely on the Concerned Citizens views (as authored apparently by you).

Regardless, your transmission, the HJTA letter, CCPR position paper, and the City Attorney's letter to HJTA will be included in the official records of correspondence regarding Tuesday night's (October 21) discussion of water rates.

Jim App
City Manager



Iris P. Yang
Attorney at Law

Sacramento Office
916.325.4576 tel
916.444.3826 fax
iyang@mhalaw.com

October 17, 2008

VIA FACSIMILE AND FIRST-CLASS MAIL

Timothy Bittle
Director of Legal Affairs
Howard Jarvis Taxpayers Association
921 11th Street, Suite 1201
Sacramento, CA 95814

Trevor Grimm
General Counsel
Howard Jarvis Taxpayers Association
921 11th Street, Suite 1201
Sacramento, CA 95814

Re: 10/7/08 HJTA letter to City of Paso Robles

Gentlemen:

I am the City Attorney for the City of Paso Robles. Today, the City received a letter from Concerned Citizens for Paso Robles ("CCPR") which requests that "Mr. Eisenhammer...send a copy of the enclosed Howard Jarvis Taxpayers Association letter to the Paso Robles City Council and the City Manager under separate cover (via U.S. Mail)." Attached to CCPR's letter is a letter from Eric Scott Eisenhammer, Legal Assistant, dated October 7, 2008, to the Paso Robles City Council and City Manager.

First, for whatever reason, the City never received a copy of Mr. Eisenhammer's letter until today, as an enclosure with the CCPR letter. If HJTA had sent the letter to the City 10 days ago, there certainly would be no need for the Concerned Citizens for Paso Robles to ask HJTA to do so now. I am enclosing a copy of the CCPR letter and its attachment for your convenience.

Second, Mr. Eisenhammer's letter purports to represent HJTA's legal opinion that "the capital cost portion of the proposed water rates should not be levied as a 'fee' but as an 'assessment' or special tax.' The letter goes on to assert that the "California State

Sacramento
555 Capitol Mall
9th Floor
Sacramento CA
95814-4692
tel 916.444.3900
toll free 800.403.3900
fax 916.444.8334

Oakland
1901 Harrison Street
9th Floor
Oakland CA
94612-3501
tel 510.273.8780
toll free 800.339.3030
fax 510.839.9104

www.mhalaw.com

1139430v1 33444/0013



Timothy Bittle
Trevor Grimm
October 17, 2008
Page 2

Constitution and associated case law is clear in regards to how the capital cost of your City's proposed public improvement projects should be funded."

Unfortunately, the letter is entirely devoid of any specific citations to the Constitution or any cases that support that position. We are not aware of any requirement, either in the Constitution or in any California appellate or Supreme Court cases, that mandates that public agencies fund capital improvements through a particular mechanism. Our understanding of the law in this area is that public agencies have some discretion to determine which financing mechanism is appropriate. With respect to water service specifically, we believe the City has the legal authority to finance capital improvements to its water system through water user fees, rather than an assessment or special tax. As the California Supreme Court determined in *Bighorn-Desert Water Agency v. Verjil* (2006) 39 Cal.4th 205 that water user fees are "property-related fees," the operation of a water service system necessarily involves capital improvement costs.

If HJTA is aware of any cases that are contrary to the City's position, please advise us as soon as possible. If we do not receive a response to this request, we will assume that Mr. Eisenhammer's letter represented an expression of HJTA's preference of how such capital improvements should be funded, rather than its legal opinion of how they must be funded.

Thank you.

Very truly yours,

Iris P. Yang

IPY:jjh
Enclosure

cc: Paso Robles City Council
James L. App, City Manager

Concerned Citizens for Paso Robles

Oct. 17, 2008

RECEIVED
CITY CLERK'S OFFICE
OCT 17 2008
CITY OF PASO ROBLES

Mayor Frank Mecham
City of El Paso de Robles
1000 Spring Street
Paso Robles, CA 93446

Dear Mayor Mecham,

Greetings! The members of Concerned Citizens for Paso Robles believe the 2 enclosed documents merit your and the other Council members close and immediate attention. It is the intention of CCPR to enter each document into the official record at the next City Council meeting (i.e., on Oct. 21, 2008). We have also requested Mr. Eisenhammer to send a copy of the enclosed Howard Jarvis Taxpayers Association letter to the Paso Robles City Council and City Manager under separate cover (via U.S mail).

Should you wish to contact us for any reason, please call 468-4214.
Thank for attending to this matter.

Sincerely,

*Concerned Citizens
for Paso Robles*

**P.O. Box 2223 Paso Robles, CA 93447
805-468-4214
www.paso218.org**

HOWARD JARVIS, Founder (1903-1986)
JON COUPAL, President
TREVOR GRIMM, General Counsel
TIMOTHY BITTLE, Director of Legal Affairs



HOWARD JARVIS
TAXPAYERS ASSOCIATION

SACRAMENTO OFFICE:
921 11th Street, Suite 1201
Sacramento, CA 95814
(916) 444-9950, Fax: (916) 444-9823
www.hjta.org

October 7, 2008

Paso Robles City Council and City Manager
1000 Spring Street
Paso Robles, CA 93446

Dear Council Members and City Manager,

Concerned Citizens for Paso Robles (CCPR) is a citizen's group formed in part to ensure that taxes, assessments and fees imposed by the City of Paso Robles for municipal services conform to state and local laws, including California's Proposition 218 "Right to Vote on Taxes Act." One of CCPR's members has contacted the Howard Jarvis Taxpayers Association (HJTA) regarding the lawfulness of the revenue-raising/financing mechanism the City has chosen to fund selected capital improvement projects related to its enterprise water service.

That CCPR member (who is also a member of the HJTA) has expressed to the City Council that the capital cost portion of the proposed water rates should not be levied as a "fee" but as an "assessment" or "special tax." The Howard Jarvis Taxpayers Association strongly and unequivocally agrees. That is, we have reviewed CCPR's September/October 2008 6-page document and concur with what is written therein. The California State Constitution and associated case law is clear in regards to how the capital cost of your City's proposed public improvement projects should be funded.

The Howard Jarvis Taxpayers Association is quite aware of property-owner rights set forth in California's Constitution, and in Appellant and Supreme Court case law related to Proposition's 13, 62 and 218. We strongly advise the City Council and Manager to implement the capital cost portion of the proposed water rates as an assessment or a special tax.

Sincerely,

Eric Scott Eisenhammer
Legal Assistant

Concerned Citizens for Paso Robles is an association formed in part to ensure that taxes, assessments, and fees imposed by the City of Paso Robles for municipal services conform to state and local laws -- including California's Proposition 218 "Right to Vote on Taxes Act". Thus, this letter is in regards to the lawfulness of the revenue-raising/financing mechanism the City has chosen to fund selected public improvement projects related to its enterprise water service.

We and hundreds, if not thousands in our community, are of the opinion that the City's currently proposed water rates should not be levied as a "fee" but as an "assessment" or "special tax." We believe this strongly and unequivocally. The California State Constitution and associated case law is clear in regards to how the capital cost of a public improvement project should be funded.

First, according to CALIFORNIA GOVERNMENT CODE SECTION 53750 (b) an

"Assessment" means any levy or charge by an agency upon real property that is 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 improvement, the maintenance and operation expenses of the public improvement, or the cost of the service being provided. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment," and "special assessment tax."

Second, in Silicon Valley Taxpayers Association v. Santa Clara County Open Space Authority, 2008, the California Supreme Court states:

Capital cost is defined as "the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency." Art. XIII D, § 2, subd. (c)

The public improvement projects identified in the City's 2008 Kennedy/Jenks Water Rate & Revenue Analysis report clearly fall within this definition of capital cost. The public improvement projects identified in that report are public improvement projects having a capital cost. For example, the June 28, 2008 (and later revisions) Kennedy/Jenks' cover letter/preface to the report reads:

There are several important factors associated with the performance of the City's water fund that impact the study findings. First and foremost is the need to plan for the funding of the new Nacimiento water supply. The capital, debt, and operational costs associated with the City's transition to this source of supply will continue to place

pressure on the City's water rates for several years.

And on page 1 of the report it then goes on to read,

...the City is now in the implementation phase of a comprehensive long range water system improvement program....

Likewise, Attachment B, page B-2 of Doug Monn's 9/16/08 letter to Jim App on the subject of "Community Water Rates and Capacity Charges" states:

Another aspect of water system planning has evolved since the July 1, 2008, proposal. The planned capital improvement projects were originally staged over 10 years. A 17 year program (i.e. through build-out) is now under consideration.

The total capital cost of this 17-year program to rate payers is \$189,564,000. This amount includes \$65,050,000 in debt financing for the Nacimiento pipeline. (Source: *Kennedy/Jenks Water Rate and Revenue Analysis Pay-As-You-go Approach Revised Final Report*, Project No. 0883005, "Table 4: Proposed Capital Improvement & Debt Financing Program," Sept. 29, 2008)

Again, the public improvement projects identified in the Kennedy/Jenks report(s), as well as in Monn's 9/16/08 memo, are public improvement projects having a capital cost.

Third, all City 2008 Kennedy/Jenks Water Rate & Revenue Analysis reports identify several public improvement projects as capital costs, immediate and future, to be funded by the proposed water rates -- the Nacimiento pipeline and a new water treatment plant to name but two.

Fourth, in a pre-Proposition 218 the California Supreme Court in *Knox v. City of Orland* (1992) explained the nature of a *special assessment*. A special assessment is a "compulsory charge placed by the state upon real property within a predetermined district, made under express legislative authority for defraying in whole or in part the expense of a permanent public improvement therein" ¹ The capital improvement projects identified in the 2008 Kennedy/Jenks report clearly identifies and provides the rationale for compulsory charges to be levied upon water customers by the City. Those compulsory charges have the purpose of "defraying in whole or in part the expense of a permanent public improvement therein" In addition, the Supreme Court ruled in *San Marcos Water Dist. v. San Marcos Unified School Dist.* (1986) 42 Cal.3d 154, 228 Cal.Rptr. 47; 720 P.2d 935, and again stated in *Richmond v. Shasta Community*

¹ Thus, the City of Inglewood, CA, e.g., defines a special assessment as "A compulsory levy made against certain properties to defray all or part of the cost of a specific capital improvement or service deemed to benefit primarily those properties." (Source: City of Inglewood web site, Glossary of Government terms, http://www.cityofinglewood.org/help_index/glossary.asp . Accessed 7/24/08.)

Seventh, “while a special assessment may, like a special tax, be viewed in a sense as having been levied for a specific purpose, a critical distinction between the two public financing mechanisms is that a special assessment must confer a special benefit upon the property assessed beyond that conferred generally.” (*Knox, supra*, 4 Cal.4th at pp. 141-142.) “Benefits” of the Nacimiento Water Project capital improvements have been published in Oct. 2007 and Jan. 2008 Paso Robles water mailers. Similarly, these same benefits (and more) are stated on Monn’s 9/16/08 memo referred to above. Briefly, the alleged benefits are to: diversify supply, increase reliability, enhance quality, and meet demand. Nonetheless, special 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 Orland, supra*, 4 Cal.4th at pp. 142-143; *Silicon Valley Taxpayers Association v. Santa Clara County Open Space Authority*, 2008)

Eighth, the City to date has been unable to identify measurable benefits required for the levy of an assessment on water customers. Thus, City officials have then but only one other financing or revenue-raising mechanism under Proposition 218 to use for funding its capital improvement projects -- a special tax. Indeed, the projects identified in the 2008 Kennedy/Jenks report have all the earmarks of a special tax.

For example, as stated previously by the City, “*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.*” (Source: Paso Robles Proposition 218 Notice of Public Hearing, June 2007.) The City’s desire to solely raise revenues to meet capital, debt and operating costs for the pipeline and water treatment plant is again confirmed in the City’s June (and later revised) 2008 Water Rate & Revenue Analysis report by Kennedy/Jenks Consultants. In addition, the water rates presented in that report appear in the July 2008 Proposition 218 Notice of Public Hearing sent to City water customers.

With respect to the above-identified purpose, the Courts have spoken on how a revenue-raising mechanism with a specific purpose can be characterized:

In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted. (*Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, 240 [1 Cal.Rptr.2d 818])

The essence of a special tax “is that its proceeds are earmarked or dedicated in some manner to a specific project or projects” (*Neecke v. City of Mill Valley* [1995] 39 Cal.App.4th 946, 956).

Additionally, Proposition 218 defines “special tax” as “*any tax⁴ imposed for specific purposes, including taxes imposed for specific purposes, and placed into a general*

⁴ Generally speaking, a tax is a monetary imposition of a governmental legislative body on persons or

purpose of raising revenue for the *water* fund. The regulatory effect of the Nacimiento Water Project is incidental, being one expected benefit among many. Consequently, the proposed NWP fee or rates represent in whole or part a disguised or hidden tax.⁵

Tenth, the definition of special tax under Proposition 218 means that a tax with an identified purpose requires a two-thirds vote (See *Howard Jarvis Taxpayers Assn. v. City of Roseville* [2003] 106 Cal.App.4th 1178); and, as with general taxes, no local government may impose, extend, or increase any special tax until such tax is submitted to the electorate and approved. Cal. Const., art. XIII C, § 2(b). The imposition, extension or increase of special taxes requires a two-thirds vote of the electorate voting in an election on the tax. Cal. Const., art. XIII C, § 2(d). Consequently, the capital improvement costs (as identified in the Kennedy/Jenks 2008 Water Rate & Revenue Analysis reports and Monn's 9/16/08 memo) if not levied as an assessment do lawfully require two-thirds voter approval for project funding, extension or increase.

Finally, Proposition 218's underlying purpose is to limit government's power to exact revenue from taxpayers without their consent and to curtail the deference traditionally accorded legislative enactments on fees, assessments, and charges. The Concerned Citizens for Paso Robles construes article XIII D, section 4, subdivision (f) — the "burden . . . to demonstrate" provision — liberally in light of the Proposition's other provisions, and concludes for the reasons stated above that the City errors in its attempt to so levy water rates as fees or charges under Proposition 218 Article XIID Section 6 to finance capital costs. The proper and lawful financing mechanism for funding City capital improvement water enterprise projects is through an assessment or a special tax.

Prepared by John Borst, Paso Robles, CA

Date: September/October 2008.

Approved by CCPR members for distribution. (See www.paso218.org)

⁵ On Aug. 3, 2004 City sewer users were told they would be asked to pay 50% of the NWP cost due to the wastewater problem. That is,

Of the cost for Nacimiento Water 50% is being allocated to new development. Given the water quality issue as it relates to existing wastewater discharges, current and future sewer users are being required to pick up the remaining 50% cost. (City staff report, *Public Hearing - Sewer and Water Development Impact Fees*)

Yet, in 2008 only *water* customers are being asked to pay via a proposed "fee." In addition, the fees/rates now under consideration by the City will generate more revenue than is actually needed each month to achieve wastewater regulatory compliance.