

TO: City Council
FROM: James L. App, City Manager
SUBJECT: Water Rates
DATES: April 7, 2009

NEEDS: For the City Council to consider water rate adoption alternatives in light of a referendum petition challenging Ordinance No. 953 N.S. which adopted new rates.

- FACTS:**
1. Since 2007, the City has presented 4 alternative rate plans to the community, including the recently approved and substantially lower “pay-as-you-go” plan, only to encounter minority opposition each time. All proposals followed the procedures required by Proposition 218, and none received majority protests.
 2. The current “pay-as-you-go” rate proposal is the most sensitive of the proposals to current economic conditions and yet still would allow phased use of Nacimiento water.
 3. The adopted rates propose no increase until January 2010. The initial increase would be \$0.43 per 748 gallons (= 1 unit), and only \$0.25 each year thereafter through the end of 2014.

In 2010, the average household water bill (18 units of water) would increase from \$41.76 to \$49.50. This compares to rates currently charged by other area agencies as follows:

<i>Agency</i>	<i>Date of Rate</i>	<i>Average Use Charge</i>
<i>Templeton</i>	<i>Current</i>	<i>\$ 29.74</i>
<i>Atascadero</i>	<i>Current</i>	<i>\$ 34.66</i>
<i>Paso Robles</i>	<i>Current</i>	<i>\$ 41.76</i>
<i>Paso Robles</i>	<i>2010</i>	<i>\$ 49.50</i>
<i>San Luis Obispo</i>	<i>Current</i>	<i>\$ 93.66</i>
<i>Cambria</i>	<i>Current</i>	<i>\$ 98.76</i>
<i>Morro Bay</i>	<i>Current</i>	<i>\$102.89</i>

4. Since 2007, the Concerned Citizens for Paso Robles (CCPR) has opposed every water rate proposal, notwithstanding drought, perilous water supply circumstances faced by the State and the City, and an adopted rate proposal that is reasonable and modest and still allows use of water that the City needs and must pay for.
 - The Federal Government has ordered California to reduce its use of Colorado River water.
 - U.S. Fish & Wildlife Service has ordered significant reductions in water deliveries from the Sacramento Delta and State Water Projects water due to sensitive species impacts.

- The State is warning of drastic reductions of water deliveries from the State Water Project due to diminished snow pack and water storage levels.
 - The Governor has declared a statewide drought emergency and ordered conservation measures to reduce water usage by 20%.
 - The State Water Resources Control Board has issued a letter warning it may reallocate Salinas River water due to drought conditions.
 - The State Water Resources Control Board also is evaluating plans to seize control of unregulated groundwater basins – the Paso Robles Groundwater Basin is among its top five candidates.
 - A current engineering examination of the Paso Robles Groundwater Basin indicates pumping exceeds 90% of safe annual yield.
 - City groundwater basin well production has been declining over the past 10 years despite the addition of new, and ongoing rehabilitation of existing, wells.
 - City River well production is below historical levels by 25%.
 - Community-wide summertime peak demand will exceed supply by an estimated 25%. Mandatory conservation measures will be required.
 - Nacimiento water can offset the projected deficits, and improve water quality.
 - Nacimiento water will be available mid-2010.
 - The community is obligated to pay for Nacimiento water whether it is used or not,
 - However, Nacimiento water cannot be used until a treatment plant is built.
 - Construction and operation of a treatment plant is not possible until there is a water rate established to pay for it.
 - The water fund will run out of money in Fiscal Year 2013/14 unless a water rate is established to pay the costs of providing water.
5. CCPR's referendum petition garnered just over the 10% minimum percentage of registered voter signatures, which means the Council must either repeal Ordinance 953 N.S. or call an election.
 6. It is not possible to increase the City's supply and quality of water without increasing costs. Therefore, repealing Ordinance 953 N.S. will not result in more affordable rates and would require the City to go through the lengthy Proposition 218 process once more, which could result in yet another challenge by CCPR.

7. The Council's only other alternative is to call an election to consider the current “pay-as-you-go” rate proposal. An election will cost rate payers approximately \$60-\$100,000, and can not be held for at least three months.
8. Additionally, the costs to rate payers of preparing the 4 alternative proposals to date has been very high -- \$900,000 and approximately 3,500 staff hours have been spent since 2007 to develop the separate proposals, provide public education and respond to repetitive arguments from just a few individuals.
9. Should the current proposal fail, yet another alternate rate will need to be developed. The estimated cost to prepare and process another rate plan is \$70,000 (plus a \$60-100,000 election) – which again would have to be paid by rate payers.
10. The individuals who have opposed the rates included in Ordinance 953 N.S. as well as prior rate proposals - all of which followed Proposition 218 procedures and none of which received majority protests - recently filed suit against the City seeking refunds of earlier increases in water and sewer rates as allegedly having been imposed in violation of Proposition 218.

ANALYSIS &

CONCLUSION: Water is a commodity. It is priced accordingly – the full cost of facilities and operations to extract, treat and deliver is built into the charge. There is no tax revenue support.

The City faces a serious drought as well as unprecedented constraints on historically reliable water sources. Supply is not adequate to meet existing demands. These conditions mean that aggressive conservation measures to reduce water use by at least 25% will be required. Matters could get worse.

If rates to cover the costs of providing water are not adopted, the city's water customers will:

- not be able to use Nacimiento water; &
- not have enough water to meet their needs, &
- have to pay for Nacimiento water even if it is not used; &
- run out of money in the water fund in Fiscal Year 2013/14.

POLICY

REFERENCE: Integrated Water Resource Plan; Urban Water Management Plan; Water Master Plan; Nacimiento Water Contract.

FISCAL

IMPACT:

Rate payers are being forced to fund the costs of minority opposition including:

- **\$900,000** to date for preparation of 4 water rate alternatives, public education, mailings and responding to objections, plus
- **\$60-100,000** for an election; plus,
- **Thousands of staff hours** (away from other priorities); plus
- **Litigation expense.**

In addition, if an adequate rate is not established, the water fund will run out of money in Fiscal Year 2013/14.

- OPTIONS:**
- A. Adopt Resolution No. 09-XXX Certifying the Petition for Referendum Seeking the Repeal of Ordinance No. 953 N.S. Adjusting Water User Fees as Adopted by the City Council on February 3, 2009, and Calling a Special Election for the Purpose of Submitting a Referendum to the Voters to Ratify or Reject to the City Council's Adoption of Ordinance No. 953 N.S., and direct staff to prepare election options for Council action.
 - B. Repeal Ordinance No. 953 N.S. and direct staff to prepare additional water rate proposal for Council consideration.
 - C. Amend, Modify or Reject Options Above.

Attachment: Resolution No. 09-XXX

RESOLUTION NO. 09-_____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
CERTIFYING THE PETITION FOR REFERENDUM SEEKING THE REPEAL OF
ORDINANCE NO. 953 N.S., ADJUSTING WATER USER FEES, AS ADOPTED BY
THE CITY COUNCIL ON FEBRUARY 3, 2009, AND CALLING A SPECIAL
ELECTION FOR THE PURPOSE OF SUBMITTING A REFERENDUM TO THE
VOTERS TO RATIFY OR REJECT THE CITY COUNCIL'S ADOPTION OF
ORDINANCE NO. 953 N.S.

WHEREAS, the City Council adopted Ordinance No. 953 N.S. on February 3, 2009 amending section 14.04.020 of the City's Municipal Code to adjust water user fees;

WHEREAS, the City Clerk attested to the adoption of Ordinance No. 953 N.S. on February 5, 2009;

WHEREAS, pursuant to Elections Code section 9237, if a petition for referendum is submitted to the elections official of the legislative body of the city within 30 days of the date of attestation by the City Clerk, and is signed by not less than 10 percent of the registered voters of the city, the effective date of the ordinance shall be suspended and the legislative body shall reconsider the ordinance;

WHEREAS, a petition for referendum seeking the repeal of Ordinance No. 953 N.S. was submitted to the City Clerk on March 3, 2009, which is within 30 days from the date the City Clerk attested to the adopted ordinance;

WHEREAS, pursuant to Elections Code section 9240, the San Luis Obispo County Clerk examined the petition for referendum and determined the validity of 1,728 of the signatures on said petition, which is slightly more than 10 percent of the voters of the City;

WHEREAS, pursuant to Elections Code section 9241, if the City Council does not entirely repeal the ordinance against which the referendum petition is filed, the City Council shall submit the ordinance to the voters; and

WHEREAS, pursuant to Elections Code sections 1410 and 9241, the election shall be held at the next regular election occurring not less than 88 days after the date of the order of election, or at a special election called for that purpose not less than 88 days after the date of the order of election.

THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Certification of Results of Examination by County Clerk. The City Council hereby certifies the results of the County Clerk's examination of the signatures contained in the petition for referendum seeking the repeal of Ordinance No. 953 N.S.

SECTION 2. Calling of the Special Election. Pursuant to the laws of the State of California relating to municipal referenda and municipal elections, including municipal elections consolidated with other elections, the City Council of the City of El Paso de Robles hereby calls a special municipal election to be held at a date to be determined by the City Council, for the purpose of placing on the ballot the following measure:

"MEASURE _____

Shall the City Council's approval of Ordinance No. 953 N.S., increasing monthly water user rates effective January 1, 2010, where the rate for water users shall be a combination of a fixed rate plus a variable rate based on consumption, and where the variable rate component shall be further adjusted every January 1 up to, and including, January 1, 2014, be ratified?

Yes: _____ No: _____"

A full and complete copy of Ordinance No. 953 N.S. is attached hereto as Exhibit 1 and incorporated herein by this reference.

SECTION 3. The City Council hereby directs City Staff to prepare special election options for action by the City Council.

SECTION 4. In all particulars not recited in this Resolution, said special election shall be conducted as provided by law for the holding of municipal elections in the City and the consolidation of municipal elections with other elections.

SECTION 5. The City Council hereby directs the City Attorney to prepare an impartial analysis of the measure in accordance with section 9280 of the Election Code showing the effect of the measure on existing law and the operation of the measure.

SECTION 6. Rebuttal arguments may be submitted as provided for in section 9285 of the Elections Code of the State of California. The provisions of said section 9285 are hereby adopted and shall apply to this election.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this April 7, 2009, by the following roll call vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Duane Picanco, Mayor

ATTEST:

Cathy David, Deputy City Clerk

ORDINANCE NO. 953 N.S.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES
AMENDING SECTION 14.04.020 OF THE CITY OF EL PASO DE ROBLES
MUNICIPAL CODE TO ADJUST WATER USER FEES

WHEREAS, the City Council has adopted the Integrated Water Resources Plan and approved participation in the Nacimiento Water Project to help assure a high quality and continuous supply of water to its citizens; and

WHEREAS, current water rates and water capacity charges generate revenues to provide drinking water to residents and businesses from ground water with an allowance for a portion of initial Nacimiento Water Project expenditures; and

WHEREAS, the existing water rates were set before the costs of the Nacimiento Water Project were fully known; and

WHEREAS, the water to be provided by the Nacimiento Water Project and the associated improvements to the City water system are necessary to improve quality and supplement the limited ground water supply especially during peak summertime demand periods, and also to provide adequate distribution, treatment, and water storage capacity; and

WHEREAS, the Nacimiento Water Project infrastructure is designed to have the capacity to serve both existing City water customers as well as those resulting from new development; and

WHEREAS, the City hired the firm of Kennedy/Jenks Consultants to undertake a comprehensive review of the City's water rate revenues and costs of water operations which was presented to the City Council in July 2008; and

WHEREAS, upon further consideration and study and public input, the City Council determined in September 2008 that the initially proposed water user rates would be unduly burdensome upon water customers and directed staff to consider an alternative approach; and

WHEREAS, Kennedy/Jenks presented a revised study, dated September 29, 2008, (the "Revised Water Rate Study") analyzing an alternative pay-as-you-go approach that would phase in water system improvement costs over a 17-year period rather than a 10-year period, and use other available revenues to avoid incurring the additional costs incurred with issuing bonds; and

WHEREAS, the alternative approach would help ensure that users pay for operations and improvements that serve the existing community, while new development would pay for those improvements that offset their impacts; and

WHEREAS, the Revised Water Rate Study recommends that the costs of capital improvements and water utility operating expenses be paid for with a combination of (i) water rates that are charged to existing customers and (ii) water connection fees/capacity charges that are charged for new development; and

WHEREAS, the City Council believes a combination of a fixed and variable rate structure for water users is the most equitable method of helping pay for a reliable, well-maintained; infrastructure system and reliable water source; and

WHEREAS, the City Council, on October 21, 2008, authorized staff to mail the notices required by Proposition 218 to all property owners and water customers and set January 20, 2009 as the date for a public hearing on the proposed adoption of new water user rates; and

WHEREAS, Section 53756 of the Government Code, which took effect January 1, 2009, authorizes an agency providing water service to adopt a schedule of adjustments to fees, which schedule may be for up to a period of five (5) years; and

WHEREAS, notices were mailed to all property owners and water customers on October 27, 2008; and

WHEREAS, in light of current economic conditions, the City Council has determined that the proposed July 1, 2009 increase in water user rates should be deferred, and that existing water user rates should remain in effect until January 1, 2010; and

WHEREAS, at the public hearing on January 20, 2009, the Deputy City Clerk attested that written protests by the owners of a majority of the affected properties had not been presented; and

WHEREAS, the staff report and the Water Rate Study, and other public and written testimony presented at the public hearing are incorporated herein by reference;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES ORDAIN AS FOLLOWS:

SECTION 1. Subdivision C of Section 14.04.020 of the Paso Robles Municipal Code is hereby amended to read as follows:

"C. FEES—WATER USAGE RATES. The monthly rates to be charged and collected for all water consumption including bulk water delivery, or fire hydrant usage from every person, school, firm, or corporation shall be charged at rates established by ordinance of the City Council and adopted in accordance with the procedures required by law.

Commencing with the effective date of this Ordinance No. 953, the rate for water users shall be a combination of (i) a fixed rate, plus (ii) a variable rate based on consumption. The variable rate component shall be further adjusted every January 1st thereafter as set forth in the following table:

Monthly Fixed Rate	Existing	1/1/2010	1/1/2011	1/1/2012	1/1/2013	1/1/2014
All Meters	\$18.00	\$18.00	\$18.00	\$18.00	\$18.00	\$18.00

Variable Consumption Charges (\$/HCF*)

Usage Rate (all users except as set forth below)	\$1.32	\$1.75	\$2.00	\$2.25	\$2.50	\$2.75
Single Family 0-5 Units*	\$1.32	\$1.49	\$1.70	\$1.91	\$2.13	\$2.34

*One Unit is equivalent to 748 gallons, or one Hundred Cubic Feet ("HCF")

The water usage fees shall further be reviewed no less than biennially in conjunction with the update of the City's budget to ensure that the water user charges then in existence do not exceed the costs of providing water service within the City."

SECTION 3. Severability

If any action, subsection, sentence, clause or phrase of this ordinance is, for any reason, held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 4. Publication

The City Clerk will certify to the passage of this Ordinance by the City Council of the City of El Paso de Robles, California, and cause the same to be published once in a newspaper of general circulation, published and circulated in the City of El Paso de Robles.

SECTION 5. Effective Date.

This Ordinance will take effect thirty (30) days after its final passage.

Introduced at a regular meeting of the City Council held on January 20, 2009 for first reading by the City Council of the City of El Paso de Robles, and adopted on the 3rd day of February, 2009 by the following vote:

AYES: Gilman, Hamon, Steinbeck, Strong and Picanco

NOES:

ABSTAIN:

ABSENT:

Duane Picanco, Mayor

ATTEST:

Cathy David, Deputy City Clerk