



# CITY OF EL PASO DE ROBLES

*"The Pass of the Oaks"*

## CITY COUNCIL MINUTES

Tuesday, January 19, 2016

### 5:00 PM – CLOSED SESSION

Paso Robles City Hall Large Conference Room  
1000 Spring Street, 2<sup>nd</sup> Floor, Paso Robles

- **Conference with Real Property Negotiators**

Pursuant to Government Code section 54956.8

Property: Pioneer Park (Eastern Portion), 19<sup>th</sup> and Riverside Drive, Paso Robles

City Negotiator: Meg Williamson

Negotiating parties: Paso Robles Event Center (Ag. Dist.16)

Under negotiation: Price and terms of payment

### CITY COUNCIL RECESSED TO REGULAR CITY COUNCIL MEETING at 5:50PM

#### *No reportable action*

### 6:30 PM – CONVENE REGULAR MEETING

Paso Robles Library/City Hall Conference Center  
1000 Spring Street, Paso Robles

#### CALL TO ORDER

#### PLEDGE OF ALLEGIANCE

#### INVOCATION / PERFORMANCE BY MARTIN LUTHER KING JR. CHOIR

**ROLL CALL** Councilmembers Steve Gregory, John Hamon, Fred Strong, Jim Reed, and Mayor Steven Martin

**STAFF INTRODUCTIONS** The Mayor welcomed City Manager Thomas Frutchev who was sworn in at a public ceremony earlier that day.

#### PRESENTATIONS

1. [Drought Conservation Progress Report](#)

D. McKinley, Director of Public Works

Director McKinley spoke about January water conservation efforts, which currently are 18% over the target, and the overall yearly status of City usage.

2. [Proclamation – Paso Robles High School Principal Recognition - Randy Nelson](#)

S. Martin, Mayor

Mayor Martin read and presented a proclamation to retiring Paso Robles High School Principal, Randy Nelson.

3. [Proclamation – Paso Robles High School Cross Country Athletes](#)

S. Martin, Mayor

Mayor Martin and the Councilmembers presented awards to the Paso Robles High School Cross Country Athletes.

#### PUBLIC COMMENTS

This is the time the public may address the Council on items other than those scheduled on the agenda.

- Dale Gustin spoke about the Martin Luther King Jr. choir.
- Clark Rudy spoke about water rates.

## AGENDA ITEMS TO BE DEFERRED (IF ANY) –

- The Water Rate Protest Public Hearing (item #4) will be rescheduled to March 15, 2016.

## PUBLIC HEARINGS –

### 4. Water Rate Protest Hearing

D. McKinley, Director of Public Works

For the City Council to reschedule a public hearing and consideration of introduction of an ordinance establishing revised water rates to March 15, 2016, at the earliest.

Mayor Martin opened the public hearing. Speaking from the public were Karl Hansen, Debbie Mullens, John Borst, Tom Flynn Jr., Gary Duniven, Kathy Barnett and John Doe. There were no other comments, either written or oral, and the public hearing was closed.

A motion was made by Councilman Strong and seconded by Councilman Gregory to reschedule the public hearing for revised Water Rates to March 15, 2016.

Motion passed by the following roll call vote:

AYES: Strong, Gregory, Hamon, Reed, Martin

NOES:

ABSTAIN:

ABSENT:

## CONSENT CALENDAR

ITEMS ON THE CONSENT CALENDAR ARE CONSIDERED ROUTINE, NOT REQUIRING SEPARATE DISCUSSION.

### 5. Approve City Council Minutes from 1/4/2016 and 1/5/2016

D. Fansler, City Clerk

### 6. Approve Warrant Registers

J. Throop, Director of Administrative Services

### 7. Advisory Body Minutes

Parks and Recreation (11/9/15)

Senior Citizen (11/9/15)

Youth Commission (12/2/15)

### 8. Read, by title only, Ordinance 1022 N.S. – Amending the Municipal Code Regarding Septage and Hauled Waste

D. McKinley, Director of Public Works

### 9. Pulled for Discussion

### 10. Pulled for Discussion

### 11. Adopt Resolution 16-006 Accepting the Offer of Dedication of Open Space – Lot 35 in Tract 2571

J. Falkenstien, City Engineer

### 12. Adopt Resolution 16-007 Authorizing the City Manager to Execute a Consultant Agreement with Associated Transportation Engineers (ATE) – Beechwood Specific Plan

W. Frace, Director of Community Development

### 13. Comprehensive Annual Financial Report (CAFR) – Receive and File for Fiscal Year ending June 30, 2015

J. Throop, Director of Administrative Services

## PUBLIC COMMENT

- Jim Reed asked that item 10 be pulled for discussion
- Kathy Barnett asked that item 9 be pulled for discussion.

Consent Calendar items 5, 6, 7, 8, 11, 12 & 13 were approved on a single motion by Councilman Gregory and seconded by Councilman Strong.

Motion passed by the following roll call vote:

AYES: Gregory, Strong, Hamon, Reed, Martin  
NOES:  
ABSTAIN:  
ABSENT:

## DISCUSSION

### 14. Use of an Urban State Highway Act (USHA) Grant for 2016

D. McKinley, Director of Public Works

For the City Council to determine how to program a USHA Grant from SLOCOG.

Mayor Martin opened the public discussion. Speaking from the public were Matt Masia, Robin Johnson, Dale Gustin, Kathy Barnett and Karl Hansen. There were no other comments, either written or oral, and the public discussion was closed.

A motion was made by Councilman Gregory and seconded by Councilman Hamon to program the 2016 Urban USHA Grant, in the amount of \$120,000, to install a total of 4 lighted crosswalks at 13<sup>th</sup> and Pine and 13<sup>th</sup> and Park Streets.

Motion passed by the following roll call vote:

AYES: Gregory, Hamon, Reed, Strong, Martin  
NOES:  
ABSTAIN:  
ABSENT:

### 15. Nacimiento Water Full Allocation CEQA Determination

W. Frace, Director of Community Development

In accordance with the California Environmental Quality Act (CEQA), this is a request for the City Council to consider adopting a Negative Declaration for the Nacimiento Water Project – Paso Robles Reserve Water Full Allocation and approve and accept the City's full allocation of Reserve Water.

Mayor Martin opened the public discussion. Speaking from the public were Dale Gustin, Karl Hansen and Kathy Barnett. There were no other comments, either written or oral, and the public discussion was closed.

A motion was made by Councilman Gregory and seconded by Councilman Strong to adopt Resolution 16-008 Certifying the Negative Declaration for the Nacimiento Water Project – Paso Robles Reserve Water Full Allocation and Approving and Accepting the City's Reserve Water Full Allocation.

Motion passed by the following roll call vote:

AYES: Gregory, Strong, Hamon, Reed, Martin  
NOES:  
ABSTAIN:  
ABSENT:

### 16. Applicant Interview Appointment – Planning Commission Vacancies

W. Frace, Director of Community Development

For the City Council to consider setting a date for interviews of candidates for filling vacancies on the Planning Commission.

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

A motion was made by Councilman Strong and seconded by Councilman Gregory to set a date of Thursday, February 4, 2016 at 6:30 p.m. for interviewing applicants and making appointments to the Planning Commission.

Motion passed by the following roll call vote:

AYES: Strong, Gregory, Hamon, Reed, Martin

NOES:  
ABSTAIN:  
ABSENT:

**17. Applicant Interview Appointment – Housing Authority Vacancies**

W. Frace, Director of Community Development

For the City Council to consider setting a date for interviews of candidates for filling vacancies on the Paso Robles Housing Authority Board of Commissioners.

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

A motion was made by Councilman Strong and seconded by Councilman Gregory to set a date of Thursday, February 4, 2016 at 6:30 p.m. for interviewing applicants and making appointments to the Housing Authority Board of Commissioners.

Motion passed by the following roll call vote:

AYES: Strong, Gregory, Hamon, Reed, Martin  
NOES:  
ABSTAIN:  
ABSENT:

**ITEMS PULLED FROM CONSENT AGENDA FOR DISCUSSION**

**9. Read, by title only, Ordinance 1023 N.S. – Amending the Municipal Code Regarding Marijuana Cultivation**

W. Frace, Director of Community Development

For City Council to consider a Zoning Ordinance amendment to regulate the cultivation or medical marijuana within the City limits in response to the State of California's Medical Marijuana Regulation and Safety Act.

Mayor Martin opened the public discussion. Speaking from the public were Kathy Barnett, Karl Hansen and Dale Gustin. There were no other comments, either written or oral, and the public discussion was closed.

A motion was made by Councilman Gregory and seconded by Councilman Hamon to read, by title only, Ordinance 1023 N.S. amending the Municipal Code Regarding Marijuana Cultivation.

Motion passed by the following roll call vote:

AYES: Gregory, Hamon, Reed, Strong, Martin  
NOES:  
ABSTAIN:  
ABSENT:

**10. Read, by title only, Ordinance 1024 N.S. – Landscape and Irrigation Ordinance (Turf Amendment)**

W. Frace, Director of Community Development

For the City Council to consider an amendment to the recently updated Landscape and Irrigation Ordinance (Section 21.22B), to add language that would allow for the installation of up to 25-percent of turf in new and rehabilitated single family residential front yards, subject to complying with the water use and irrigation documentation requirements.

Mayor Martin opened the public discussion. Speaking from the public were Dale Gustin and Karl Hansen. There were no other comments, either written or oral, and the public discussion was closed.

A motion was made by Councilman Strong and seconded by Councilman Gregory to read, by title only, Ordinance 1024 N.S. amending the Landscape and Irrigation Ordinance (Turf Amendment).

Motion passed by the following roll call vote:

AYES: Strong, Gregory, Hamon, Reed, Martin  
NOES:  
ABSTAIN:  
ABSENT:

## COUNCIL BUSINESS & COMMITTEE REPORTS

### 1. Current Council Committee Activities Reports (if any).

The Mayor and Councilmember spoke about their committee and other council related activities.

#### Councilmember Strong:

1. Read and submitted to the record a report on his recent activities and the State and National level on behalf of Paso Robles.

#### Councilmember Gregory suggested:

1. The Building Board of Appeals appointments be re-agendized so the City Council could reconsider which Board members were appointed to the two and four year terms.
2. The Council consider an amendment to the Building Board of Appeals Ordinance to create two additional "alternate" positions.

**\*Both suggestions were approved by a straw vote.**

3. Commented that Succession Planning is one of the next key items in the Airport Business Improvement Plan, and suggested that he and Councilman Hamon, as the liaisons to the Airport Advisory Committee, support bringing in spokespersons from airports that are run by a Board of Directors and Commissions so that more can be learned about how these systems of Airport Management work. Airport management options would be explored and ultimately be brought back to the City Council. The Council consensus was for staff to meet with Airport Council Liaison members to identify an appropriate process and approach to reviewing alternative forms of airport management systems.

#### Mayor Martin suggested:

1. The Mayor would like to place a discussion on a future agenda about using city facilities as crisis shelters.

**\*Councilmembers agreed.**

## ADJOURNMENT OF REGULAR MEETING

A motion was made by Councilman Gregory and seconded by Councilman Reed to adjourn regular meeting.

Motion passed by the following voice vote:

AYES: Gregory, Reed, Strong, Hamon, Martin

## ADJOURNMENT OF REGULAR MEETING AT 9:04 PM TO:

- DOWNTOWN CITY PARK REHABILITATION PROJECT GROUND BREAKING – 10:00AM ON THURSDAY, JANUARY 21, 2016 IN THE DOWNTOWN CITY PARK, 12<sup>TH</sup> STREET, PASO ROBLES.
- REGULAR PLANNING COMMISSION MEETING - 6:30PM ON TUESDAY, JANUARY 26, 2016 IN THE LIBRARY/CITY HALL CONFERENCE CENTER, 1000 SPRING STREET, PASO ROBLES.
- OAK PARK SITE TOUR FOR PHASE II – 2:00 ON WEDNESDAY, JANUARY 27, 2016 AT THE OAK PARK PHASE II DEVELOPMENT SITE, PARK STREET, PASO ROBLES.
- REGULAR CITY COUNCIL MEETING - 6:30PM ON TUESDAY, FEBRUARY 2, 2016 IN THE LIBRARY/CITY HALL CONFERENCE CENTER, 1000 SPRING STREET, PASO ROBLES.

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

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Any writing or document pertaining to an open session item on this agenda which is distributed to a majority of the City Council after the posting of this agenda will be available for public inspection at the time the subject writing or document is distributed. The writing or document will be available for public review in the City Clerk's Office, 1000 Spring Street, Paso Robles, CA, during normal business hours, and may be posted on the City's web site at [www.prcity.com/government/citycouncil/agendas.asp](http://www.prcity.com/government/citycouncil/agendas.asp).

All persons desiring to speak on an agenda item are asked to fill out Speaker Information Cards and place them at the Staff Table prior to public discussion of that item. Each individual speaker will be limited to a presentation total of three (3) minutes per item.

**AMERICANS WITH DISABILITIES ACT** Any individual, who because of a disability needs special assistance to attend or participate in this meeting, may request assistance by contacting the City Clerk's Office (805) 237-3960. Whenever possible, requests should be made four (4) working days in advance of the meeting.

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*Submitted for the  
record on 1/19/2016 at 7:08 P  
John Borst*

# **RAISING THE COST OF WATER: A CRITIQUE OF THE CITY PROPOSED FIXED AND USAGE BASED RATES, 2017-2021**

**BY JOHN BORST, Ph.D.**

**Paso Robles, CA**

**1/05/16**

**Paso Robles City Council Meeting  
January 19, 2016**

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# **RAISING THE COST OF WATER: A CRITIQUE OF THE CITY PROPOSED FIXED AND USAGE BASED RATES, 2017-2021**

**BY JOHN BORST, Ph.D.**

**1/05/16**

***Overview:*** Based on an analysis of the Paso Robles city documentation that purports to justify City Resolution 15-135, which calls on all water utility customers to “pay more” for consumption/usage, the accompanying 11 page critique discusses **nine key questions** that are posed to the reader, with each one discussed in turn. This manner of presentation sheds light upon and refutes any claims that the City’s proposed 2017-2021 actions to raise water rates are either legitimate or lawful. The 9 key questions addressed in this “white paper” are:

- 1. Is excessive water reliability needed to provide Paso Robles customers water service?**
- 2. Is the current \$4.40 per unit water usage rate sufficient to cover City water service costs?**
- 3. Is the proposed fixed rate increase proportional to the cost to provide B&A services?**
- 4. Does using the M-1 manual and pre-determined usage budgets allow the City to avoid doing an actual cost of service?**
- 5. Is a property assessment under Proposition 218 Article XIII D Sec. 4 required of the City to fund the proposed 4 MGD water treatment plant?**
- 6. Is a real property assessment under Article XIII D Sec. 4 required to fund a “regular replacement program” to mitigate the risk of failure of “many water lines that need to be replaced”? (Notice of Public Hearing, 11/3/15)**
- 7. Is a property assessment as recognized in Article XIII D Sec. 4 required by the City to fund the costs of replacing the 21<sup>st</sup> Street Reservoir?**
- 8. Financially, who benefits least from the City’s proposed water rate hikes?**
- 9. Have all necessary parcels been identified for the lawful imposition of the proposed water rates?**

***In sum, answers to these 9 questions in the pages which follow shows the City’s current water rate proposal, and its proposed financial burden upon utility users, offers no trustworthy or credible assurance that Paso Robles City water customers will be free of any illegal collection, spending, or future taking of their money.***



# RAISING THE COST OF WATER: A CRITIQUE OF THE CITY PROPOSED FIXED AND USAGE BASED RATES, 2017-2021

BY JOHN BORST, Ph.D.

1/05/16

*Based on an analysis of the Paso Robles city documentation that purports to justify City Resolution 15-135, which calls on all water utility customers to “pay more” for consumption/usage, for your consideration in the text below are **nine key questions** that are posed, and then discussed. This manner of presentation will shed light upon and refute any claims that the City’s proposed 2017-2021 actions to raise water rates are either legitimate or lawful.*

*In the end, the rate structure and increases that are proposed by the City appear largely to be about funding a 4 MGD [million gallons per day] water treatment plant, a case of crony capitalism at its best whose construction favors the pocketbooks of wealthy high volume users (like a hotel or golf course, developers, and large contractors) at the expense of those who benefit least (low volume users/the single family resident). Also noted and discussed are other capital improvement projects requiring the levy of a property assessment or, possibly, the imposition of a future special tax.*

*In sum, the present critique shows that the City’s current water rate proposal, and its proposed financial burden upon utility users, offers no trustworthy or credible assurance that City water customers will be free of any illegal collection, spending, or future taking of their money.*

## 1. Is excessive water reliability needed to provide Paso Robles customers water service?

The City of Paso Robles owns and operates approximately 174 miles of waterlines, 4 storage facilities, and 7 booster stations to distribute potable water (i.e. drinking water) throughout the City. A system of 20 wells and water from Lake Nacimiento supplies drinking water. And a surface water treatment plant is able to process 2.4 MGD or **2,688 acre feet a year** (1 acre foot per year [acre-ft./yr.] = 892.75 gallons US per day [gal/day].  $2.4 \text{ MGD} / 892.75 = 2,688 \text{ acre-ft./year}$ ).

According to the Water Consultancy’s Oct. 22, 2015 report to the City titled, *Water Rate and Revenue Analysis Final Report*, for fiscal year 2015-16 Paso Robles water customers are expected to consume **4,758 acre feet of water from all online water well sources**. With the **2.4 MGD (or 2,688 acre feet a year)** water treatment plant in operation beginning Fiscal Year 2016-17 (the first year of 5 proposed rate increases) through Fiscal Year 2020-21 (the last year of 5 proposed rate increases), water customers will potentially use **13,440 acre feet of Nacimiento water** ( $2,688 \text{ acre feet a year} \times 5 \text{ years} = 13,440$ ).

Further, drawing on groundwater for the 5 years that are covered by the proposed rate hikes, at 4,758 acre feet a year means that the City’s water well production,

which water costs less than Nacimientto surface water, would produce at least **23,790** acre feet of water over that period.

Thus, in Fiscal Year 2016-17 **combined water production** of City wells and the 2.4 MGD water treatment plant is a potential **7,446 acre feet of water** (4,758+2,688). This amount exceeds what customers require for continued water service during any given year of the City's 5 years of proposed rate increases. For example, in Fiscal Year 2016-17 the **excess** water production from these 2 water sources is **1,744** acre feet of water ( $7,446 - 5,702 = 1,744$ ) beyond that amount of water actually required by customers for continued service to their parcels (5,702 acre feet for FY 2016-17 is the projected consumption amount stated in the Water Consultancy's *Oct. 22, 2015 Final Report*).

When combining acre-feet production totals from Paso Robles' above two identified water sources for the 5 years of proposed rate increases, a total of **37,230** (23,790 + 13,440) acre-feet of water is produced. Additionally, the Water Consultancy's *Final Report* states the projected volume of acre-feet of water that is to be consumed over these 5 years of rate increases. For this period only 30.459 acre-feet of water is the amount required to provide continued water service to customers. (11-03-15 CC Agenda Item 2 Page 38 of 49)

The addition of the proposed extra 4 MGD (i.e. 4,481 acre feet of water per year) in production capacity to the present water treatment plant's 2,688 acre feet a year and the City's 4,758 acre-feet per year of well production capacity<sup>1</sup> -- will increase water reliability significantly. But more importantly, an extra 4,481 acre feet a year of water (at a cost of \$29,308,100) is not essential or needed by current Paso Robles water customers, or any of the low consumption users (single family homes, small businesses and apartment dwellers), for their continued water service anytime into the foreseeable future (Gov. Code 53756 limits a schedule of rate increases to the 5 years). The Oct. 22, 2015 Final Report does not identify any actual increased water demand specific to existing users' parcels to meet their present or anticipated future water service needs.

Consequently, *revenues derived from the City's proposed water rate increases exceed the funds required to provide for the property water needs or service to citizens and homeowners for each and every year of the 5 years the proposed usage unit rate and fixed rate increases, allegedly to add greater water reliability & surface water*

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<sup>1</sup> Actually, City well water production capacity is likely greater than 4,481 acre-feet a year. For example, in 2004 roughly 7519 acre feet a year of water was projected based on data taken from the Paso Robles *Water Quality Strategy Report*, Section 2, page 4.

treatment plant production capacity beyond 2.4 MGD. The financial burden proposed by the City for this is the cost of the 4 MGD water treatment plant.

Further, funds to pay for these unnecessary increases in water capacity continue to be generated from a usage unit rate. Likewise for all budgeted operational and capital expenses that will continue during the 5 year term of the Ordinance -- for items such as Depreciation Expense; Groundwater Management Sustainability (legal planning); the 4 MGD water treatment plant, Billing and Administration; Naciminto Debt Service, Water Production and Distribution, etc. Therefore, the proposed fixed charge increases are beyond, in addition to, or duplicative of the usage unit funding source. This is a violation of citizens' rights as provided by California Constitution Article XIII D Section 6(b)(1 & 3) [Proposition 218].

## **2. Is the current \$4.40 per unit water usage rate sufficient to cover City water service costs?**

While there are a wide range of rate-related strategies that could be used to generate Water Operations funds, the Water Consultancy's Oct. 22, 2015 report claims on page 16 to have evaluated both the City's proposed rate structure (which adds a \$5 fixed charge and increases the usage rate to \$4.97<sup>2</sup> in FY 2016-17) and the option of continuing the proportionate \$4.40<sup>3</sup> all variable uniform rate structure now in use. Petitioner's review of that October report shows no substantive evaluation of the variable uniform rate structure; though a chart titled "Projected Revenue Plan Without Further Rate Adjustments" in Appendix A (11-03-15 CC Agenda Item 2 Page 38 of 49) shows one scenario of the fiscal impact of continuing the \$4.40 rate for a future 5 years on the City's Water Operations Fund.

According to that chart, continuance of the \$4.40 water rate that is now in use indicates sufficient revenues will be generated to fund water operations and capital costs through at least Fiscal Year 2019-20. Consequently, the City's proposed rate increases, both fixed and variable, for at least each of the first 4 fiscal years of the five year plan, when levied on water customers -- in comparison to the less costly \$4.40 usage rate now in place, will lead to revenue that exceeds the actual rate required (i.e., \$4.40) in fees or charges sufficient to generate those revenues necessary to provide City water service. This kind of excessive extraction of fees or charges from City water customers violates California citizens' Article

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<sup>2</sup> Strangely, the usage unit rates printed on the Notice of Public Hearing (e.g. \$4.97) are about 3% higher for every fiscal year than those listed on p. 21 in the Water Consultancy's *Final Report*.

<sup>3</sup> The proportionate \$4.40 rate is based on the simple principle, the more you use the more you pay. The more you use the City water system, the more one contributes or pays proportionately to operate and maintain the water system/service.

XIII D Sec. 6(b)(1) & (3) rights.

**In addition**, according to the Water Consultancy's Oct. 22 *Final Report*, the City is requesting more funding (\$2,060,000) for its 2.4 MGD water treatment plant<sup>4</sup>. An Independent accounting audit should be made as to what monies were previously paid on this contracted project so that water customers are not being double billed. If double billing is the case, an additional violation of the utility users' Proposition 218 rights (Article 13D Sec. 6(b)(1) & (3)) results. That is (1) *revenues derived from the City's fees or charges will exceed the funds that are required to provide the property related service; and, (3) the amount of the fee or charges to be imposed upon water customers will exceed the proportional cost of service that is attributable to their parcels.*

### ***3. Is the proposed fixed rate increase proportional to the cost to provide B&A services?***

The City is proposing to initiate/levy a "fixed charge" to cover the cost of utility Billing and Administration (B&A) over and above the consumption based or "usage unit rate" now in place. City documents and the consultant's report state, "an initial fixed charge of \$5.00 per account per month is proposed. This fixed charge is designed to cover the current cost of utility billing and administration. A service provided by the water utility that is evenly shared amongst all users" (11-03-15 CC Agenda Item 2 Page 30 of 49, or p. 19 in the Consultancy's Oct. 22, 2015 report.)<sup>5</sup>

A key concern with this fixed fee or rate (and schedule of rates) is that its increase over each of the five years is not proportionate with the cost to provide Billing and Administration services. That is, B&A costs according to the consultant's report are projected to increase in 2017-18 by 3.87%; in 2018-19 by 3%; in 2019-2020 by 8.6%; and in 2020-21 by 3%. (The 8.6% figure is inexplicable given that in the past 5 years the average increase in B&A has been around 3% and in the City's proposed rates, increases continue to be about 3% in 4 of the next 5 fiscal years.)

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<sup>4</sup> Construction of the 2.4 MGD water treatment facility already appears to be paid in full from Water Fund cash reserves: "This construction contract [to Cushman Contracting Corp.] is a planned Project cost that will be paid for from the Water Fund cash reserves. The Current Water fund Balance is \$17.832M and award of this contract will reduce this amount to \$6.864M." (Source: 02-18-14 CC Agenda Item 10 p. 2)

<sup>5</sup> The problem with this idea is quite transparent. The City already has in place systems to bill each customer and systems to measure water usage. Therefore, the City is proposing a basis for an increase in expenses (beyond inflation) that is not necessary and is part of on-going processes. Further, if, for example, new computer or accounting systems were needed, those would be one-time charges, not a recurring charge over 5 years.

However, the City's proposed fixed rate increases are not proportional to the calculated rate of B&A increases to fund B&A services. Indeed, instead of increases of 3%, we now see fixed rate increases of 25%, 20%, 16.7%, and 14.3%, respectively. These excessive charges in the City's rate structure results in another violation of California's Proposition 218, Article 13D Sec. 6(b)(1 & 3). Lawful rate increases must be proportional to increased costs to provide B&A services for the 5 fiscal years.

Next, the Water Consultancy's report provides no supporting information for the claim that Billing and Administration is "a service provided by the water utility that is evenly shared amongst all users." The *Final Report* on page 4 identifies 6 types of water accounts. No actual cost of service breakdown for each type and/or level of account is provided to establish the accuracy of that claim. Hence, to ask all water customers to pay the same fixed rate is without merit and an ungrounded assertion. **Indeed**, even within accounts there are cost differences. To cite one example, a water customer can send in a check, pay in person, or transfer the amount due by automatic debit from their bank account. Thus, each manner of bill payment will have a different processing cost associated with it. A legitimate fixed fee or charge would encompass and make explicit all those B&A cost of service differences by type/level of account. *Otherwise, to charge all customers the same fixed fee results in B&A costs being disproportionately allocated across accounts. This circumstance violates Article 13D Sec. 6(b)(3).*

Petitioner contends because there is no supporting cost of service data by type or level of account in the Water Consultancy's report to back up its claim B&A is a service "evenly shared amongst all users," *revenues derived from the City's fixed fees or charges actually exceed for water customers (including the Petitioner) the funds required to provide that property related service. Therefore, the fixed rates imposed upon water customers (including the Petitioner) for the B&A cost exceeds their proportional cost of the service attributable to the parcel.* Each statement expresses a City violation of Article 13D Sec. 6(b)(1) and (3), respectively.

Lastly, at an average family/residential consumption of 9 units or 9 HCF of water a month (the average monthly usage identified by the Water Consultancy), and given approximately 28 cents of each HCF of water sold goes to budget Water Billing and Administration ( $\$0.2776 \times 2,483,881 \text{ HCF} = \$689,500$ ), that means about \$2.52 (9 x .28) for each affected month of fiscal year 2016-17 will be collected on average from residential customers via the City proposed usage unit rate. To then charge customers an additional \$5.00 fixed charge on top of that \$2.52 collected for monthly B&A service exceeds the City's stated cost (\$5) to provide that service, which is, therefore, an added tax of \$2.52 or \$5 on each residential account. Either instance violates Article 13D Sec. 6(b)(1, 2 & 3).

#### 4. Does using the M-1 manual and pre-determined usage budgets allow the City to avoid doing an actual cost of service?

The Water Consultancy expresses that they used the principles and methods contained in American Water Works (AWWA) M-1 Manual to establish the City's proposed water rates. However, in *Capistrano Taxpayers Association v. City of San Juan Capistrano* the Appellate Court explained in April 2015, "The M-1 manual might show working backwards [from pre-determined usage budgets] is reasonable, but it cannot excuse utilities from ascertaining cost of service now that the voters and the Constitution have chosen cost of service."

In general, the Water Consultancy's report is **based on projected predetermined-usage budgets**<sup>6</sup> (e.g., water sales) rather than on an effort to impose the actual costs of operating the Water Utility proportionately upon customers' **parcels** during any period of the rate increases. The failure to proportionately calculate and apply actual water costs associated with the specific features, and maybe even unique features, of one's parcel, or type and level of parcel account, appears to apply throughout the Water Department's budgeted costs that are presented in the Water Consultancy's Oct. 22, 2015 *Final Report*.

Accordingly, the City and its Water Consultancy must carry the burden imposed by another part of Proposition 218 (Art. XIII D, § 6, subd. (b)(5)) – to demonstrate through using real life customer parcel data it has complied with the requirement that water fees do not exceed the cost of service attributable to a parcel.

"Proposition 218 requires public water agencies to calculate the *actual* costs of providing water at various levels of usage. Article XIII D, section 6, subdivision (b)(3) of the California Constitution, as interpreted by our Supreme Court in *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 226 (Bighorn) provides that water rates must reflect the "cost of service attributable" to a given parcel." (*Capistrano Taxpayers Association v. City of San Juan Capistrano*, 2015). The City's water rate proposal fails to meet that requirement.<sup>7</sup>

Both the Notice of Public Hearing and the Water Consultancy's Oct. 22, 2015 *Final Report* fail to meet this burden of demonstrating Constitutional compliance. The actual costs of service that are attributable to a given parcel are absent from the calculation of the City's proposed water rate increases. This is a violation of Article

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<sup>6</sup> E.g., "The rates were calculated by dividing projected revenue requirements by estimated annual water sales over the five year planning period." (11-3-15 City Notice of Public Hearing).

<sup>7</sup> As the court pointed out in *Howard Jarvis Taxpayers Ass'n v. City of Fresno* (2005) 127 Cal.App.4th 914, 923, the calculations required by Proposition 218 may be "complex," but "such a process is now required by the California Constitution."

XIII D Sec. 6(b)(5).

**5. Is a property assessment under Proposition 218 Article XIII D Sec. 4 required of the City to fund the proposed 4 MGD water treatment plant?**

At the November 3, 2015 City Council Meeting, the Public Works Director to the City Manager presented the Water Consultancy's October 22, 2015 *Final Report* which states: *"the two single largest near-term CIP projects are designed to mitigate the risk of the deteriorated 21st Street Reservoir, and continue to improve water supply reliability with the integration of the Nacimienta water supply."* (11-03-15 CC Agenda Item 2 Page 21 of 49).

**First**, given the 4 MGD water treatment plant proposed for construction by the City will "improve water supply reliability" (increase water production or supply up to an additional 4MGD or 4,480.5 AFY) with the integration of the Nacimienta water supply; *and*,

**Second**, an "Assessment" means any levy or charge upon real property by an agency for a special benefit conferred upon that real property (Article XIII D Sec. 2[b]; see also footnote <sup>8</sup> below); *and because*,

**Third**, "improved water supply reliability" is a **special benefit**<sup>9</sup>, a direct advantage or distinct water treatment benefit able to supply up to 4 MGD or 4,480.5 AFY of water over and above any general benefits conferred on Paso Robles water customers' real properties within the Water District or to the public at large; *this necessarily dictates*,

**Fourth**, that any charge levied upon water customers by the city of Paso Robles for the construction of the proposed \$29 million 4 MGD water treatment plant must, under California Proposition 218, be lawfully adopted and/or collected as a ballot-approved real property assessment.<sup>10</sup>

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<sup>8</sup> E.g., Water reliability, Water quality, and Fire protection are the special benefits identified in Monterey County's *Granite Ridge Regional Water Supply Project Proposition 218 Engineer's Report* (2008).

<sup>9</sup> "Special benefit" means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute "special benefit." (Article XIII D, Section 2, subd. (i))

<sup>10</sup> The Proposition 218 Omnibus Implementation Act, adopted in 1997 after the passage of Proposition 218, defines assessment as "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 City of Paso Robles has not performed any of its duties mandated under Article XIII D Section 4 to enact an assessment to raise funds from its water customers to pay for the proposed construction of a 4MGD water treatment plant designed to improve water supply reliability.

**6. Is a real property assessment under Article XIII D Sec. 4 required to fund a “regular replacement program” to mitigate the risk of failure of “many water lines that need to be replaced”? (Notice of Public Hearing, 11/3/15)**

Clearly, under Proposition 218, a property assessment is required to fund such a replacement program for City water customers. That is:

■ **Where 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 expense of the public improvement, or the cost of the service being provided.”* (Gov. Code, § 53750, subd. (b)); **and**

■ **“mitigate the risk of water line failure”** is a **“special benefit,”** a regular program of water line replacement (at a cost of \$28.8 million) providing a direct advantage or distinct benefit over and above any general benefits conferred on Paso Robles water customers’ real properties within the Water District or to the public at large; **and**

■ **“capital cost”** means *the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency,* (Article XIII D Sec. 2(c)); **then** a ballot-approved assessment is required to lawfully authorize funding for a “regular replacement program.” If, on the other hand, such a program will be entirely of general benefit to the public at large, then the levy of a future special tax<sup>11</sup> appears required to fund the program.

The City of Paso Robles has not performed the duties mandated by Article XIII D Section 4 to enact an assessment to raise funds from water customers to pay for the replacement program to mitigate the risk of failure of “many water lines that need to be replaced.”

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*the capital cost of the public improvement, the maintenance and operation expense of the public improvement, or the cost of the service being provided.”* (Gov. Code, § 53750, subd. (b)).

<sup>11</sup> *“Special tax” means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund. (Article XIII D Sec. 1(d))*



## **7. Is a property assessment as recognized in Article XIII D Sec. 4 required by the City to fund the costs of replacing the 21<sup>st</sup> Street Reservoir?**

Clearly, under Proposition 218 Article XIII D Sec. 4, the City must meet the Constitutional requirements of a real property assessment to fund replacement of the 21<sup>st</sup> Street Reservoir as it will provide particular benefits to those living near that Reservoir. That is:

■ **Where 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 expense of the public improvement, or the cost of the service being provided.”* (Gov. Code, § 53750, subd. (b)); **and**

■ **“mitigate the risk of deterioration” is the “special benefit,”** (i.e. the benefit to be provided to particular Paso Robles water customers for the replacement of the 21<sup>st</sup> Street Reservoir is a distinct benefit over and above any general benefits conferred on Paso Robles water customers’ real properties within the Water District or to the public at large); **and**

■ **“capital cost” means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency,** (Article XIII D Sec. 2(c)); **then** a ballot-approved assessment is required for the City to lawfully authorize the financial burdens to be imposed upon utility users to replace the 21<sup>st</sup> Reservoir. [If, on the other hand, such a replacement will be entirely of general benefit to the public at large, then the levy of these financial burdens appears to be a special tax, which would have to be approved in an election by a two-thirds citizen majority.]

The City of Paso Robles has not performed any of its duties mandated under Article XIII D Section 4 for an assessment to raise funds from its water customers to mitigate the risk of (further) deterioration of the 21<sup>st</sup> Street Reservoir (or the duties for a special tax election).

## **8. Financially, who benefits least from the City’s proposed water rate hikes?**

Doing relatively simple math, the Nov. 3, 2015 Notice of Public Hearing permits one to determine if anyone’s water rates exceed the cost of their services, and thus violate Proposition 218 law.

First, note the proposed rate increases over the 5 years printed on the Notice of Public Hearing add up to an increase of 45% in water system costs. However, someone using 1 unit of water a month for 5 years will actually see their cost of water increase by 68% (\$9.97 to \$16.76); and someone using 2 units a month will see their cost of water increase 57% (\$14.94 to \$23.52).

It is not until a utility user is using an average of 7 units of water a month that they will actually see a proportionate “benefit” (paying less than their 45% fair share) in their cost of water, i.e., \$39.79 to \$57.32 equals a 44% rate increase; and 45% minus 44% = 1% underpayment.

Similarly, someone averaging 40 units per month over the 5 years will see their proportion or share of water costs drop to 37.59%; and large commercial parcels averaging 400 units of water per month would see their share of water costs *drop* to 36.17%. Thus, each of these parcels will underpay by about 7.4% and 8.8%, respectively. Said differently, the less you use, the more you (proportionately) pay.

Because any customer’s parcel averaging less than 7 units of water per month is paying more than a 45% fair share of future water systems costs, one can say the cost of service attributable to their parcel proportionately exceeds that required to provide the service. This is a violation of Article XIII D Sec. 6(b)(1 and 3).

## **9. Have all necessary parcels been identified for the lawful imposition of the proposed water rates?**

Article XIII D Sec. 6 of Proposition 218 imposes duties upon the City to increase financial burdens. It reads, in part:

*“SEC. 6. Property Related Fees and Charges. (a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:*

*(1) The parcels upon which a fee or charge is proposed for imposition shall be identified....”*

The Water Consultancy’s *Final Report* in Table 3-1 on page 14 projects the number of water accounts established from FY2016/17 to FY2020/21. Over that five-year period 1,240 new accounts (11,997 minus 10,757) are proposed/recognized for imposition of the water rates. But, in regards to those 1,240 accounts, Petitioner contends the *Final Report* or the City hasn’t actually, specifically identified their associated parcels. If this contention is true, and the *Final Report* does not appear to claim otherwise, to propose/recognize the presence of 1,240 such accounts (i.e.,

accounts without identifiable parcels) in any calculation of the City proposed water rates (such as in providing a rationale/justification for the increase in water sales to customers' parcels over any of the 5 Fiscal Years) is simply unlawful. As interpreted by the Supreme Court in *Bighorn-Desert View Water Agency v. Verjil* (2006), *Bighorn* provides that water rates must reflect the "cost of service attributable" to a given parcel. Until each one of those 1,240 accounts are associated with an actual parcel, as in "*The agency shall provide written notice by mail of the proposed fee or charge to the record owner,*" *the City's present water rate adoption procedure, and Ordinance \_\_\_ N.S.,* will be in continued noncompliance with Article XIII D Sec. 6(a)(1).

**(Note to the Reader.** To rebut a potential reader reply to this critique, please note the Court in *David Paland v. Brooktrails Township Community Services District* (2009) expressed Mr. Paland "does not argue that the District failed to comply with the requirements of article XIII D, section 6. Therefore, his Proposition 218 argument fails." Clearly, the contrary is asserted in the text above -- the City has explicitly failed to comply with Article XIII D Sec. 6, as well as Sec. 4. Thus, to cite *Paland* in support of the City's water rate increase is both irrelevant & misleading.)

**cc: Huskinson, Brown & Heidenreich, LLP. Attorneys at Law 310-545-5459**

Mayor Pro Tem Fred Strong  
Report to City Council on activity of January 6-19, 2016

**SLOCOG (1-6-16)**

At the annual reorganization meeting of SLOCOG I gave a brief written report (*attached*) on my activities in 2015 representing SLOCOG and those additional areas I was elected or appointed to . We saw Supervisor Debbie Arnold retire, with honors, as president whereupon Mayor Jan Marx of San Luis Obispo was elevated to that position for 2016. Supervisor Lynn Compton was elected Vice-President.

The board unanimously elected all positions including returning me as their representative to LOSSAN, the Pacific Surfliner Inter-City Passenger Rail Board of Directors, and delegate to CALCOG, the statewide organization of all regional governments in California where I serve on the Board of Directors and Executive Committee, and to NARC, the National Association of Regional Councils, where I currently serve on the Board of Directors representing all regions in the United States and as Transportation Policy Chairman. Mayor John Shoals of Grover Beach was chosen as my alternate to LOSSAN and NARC and as our representative to the Coast Rail Coordinating Committee, working to get additional passenger train service between San Diego and San Jose. I will be his alternate on that committee and Mayor Marx will serve as my alternate to CALCOG.

We also received informational presentations on UBER in San Luis Obispo County and the world, progress on the new interactive data network for our transportation services and an appraisal of the California Transportation Commission's Annual Report to the Legislature. I'll have more to say on that in my CALCOG report.

**Paso Robles Housing Authority (1-12-16)**

The Housing Authority meeting was lightly attended and began with my report on City Council activities, including the anticipated arrival of our new City Manager Tom Frutche. We briefly discussed the water situation and the progress on our water facilities. The Board of Directors of the Housing Authority expressed a desire to have a tour of both facilities and I gave them the contact information to do so. Phase One of the redeveloped Oak Park is fully occupied. Eight buildings in Phase Two are complete except

Act in addition to CEQA and reexamining the issue of intercity rail and transit connectivity serving rural areas of the state, particularly those areas with limited access to air service.

Regarding our own legislative program we expressed "...general dissatisfaction with the Strategic Growth Council's development of policies and guidelines." We plan to seek five new seats on the Council for local government officials due to the current Governor and staff driven decisions to funnel most of the money into only low income housing with little to no consideration for the infrastructure needs of the rest of the state. WE will seek far more and better collaboration between the state, its regions and local government at the city and county level.

Finally, staff is considering a contract with the four largest regions in the state to coordinate efforts to comply with greenhouse gas reduction efforts and compliance with SB 375. This will allow us to coordinate the efforts statewide and learn from each other while using the collected information to assist each other on modeling assumptions and developing our respective integrated planning efforts. The person in this new position, paid for by a grant from the State and/or the "Big Four," would also report to the other Metropolitan Planning Organizations, such as SLOCOG, and to CalTrans "on key transferable practices and protocols that are learned through the coordination."

I will be coordinating tomorrow with intercity passenger rail for our region on the things in this report that are appropriate. The rest of the week I'll be in Sacramento following up on appropriate activities in the areas of revenue, finance, housing, community development and economic development. I will report back on those activities at our next meeting. Meanwhile, we may want to consider ways and means for us to further support the efforts underway to assist us to meet our own needs and goals.

Annual Report to the SLOCOG Board  
Fred Strong, SLOCOG Representative to:  
NARC, CALCOG, LOSSAN and alternate to CRCC  
1-6-16

This has been a busy ongoing year moving previous efforts forward and meeting new issues. I have attended meetings regularly, meeting by conference call when a conflict has arisen (such as a meeting in Raleigh, NC, and Los Angeles simultaneously).

## **NARC**

I serve on the Board of Directors and as National Transportation Policy Chairman (in my fourth term). I drafted and had a staff modified version of a National Port Policy adopted in 2015. As part of our transportation system ports support 40% of the nation's economy at over a trillion dollars a year. In California alone one port does over \$200 billion a year. This impacts us locally at a minimum of 10% of local retail sales.

I was also appointed one of four local elected officials nationwide to research and propose changes to NARC's legislative policies and procedures going forward with a bifurcated system for education and advocacy. This is in process for the up-coming conference in February.

We successfully continued our efforts to retain \$350 million a year in federal funding for local streets, roads and a total transportation system. We finally succeeded in getting more than a one year Bill passed with much effort and over five dozen direct contacts with federal electeds and their staff.

Increases in funding formulae are still in process. My previous experience as a lobbyist in Washington, D.C., has been helpful in moving this effort forward.

## **CALCOG**

As an elected member of the Board of Directors and Executive Committee I have been very active with C.E.O. Bill Higgins, who I have worked directly with in two organizations over the past decade.

We have been working on getting all mandates funded before implementation ... with only limited success. CALCOG has been able to have an extensive impact on many of the environmental regulations coming down from Sacramento, especially in coordinating with CSAC and The League of California Cities, regarding retention of as much local control as we are able to negotiate.

Transportation funding has been a major area of effort as we look toward major changes in transportation technology. One of our conferences spent considerable time with experts in the area of driverless vehicles.