The City of Sacramento and Proposition 218

The Law Is the Law

1.0 Summary

This investigation began with a complaint that the City of Sacramento is violating sections of the State Constitution regulating the use of utility enterprise funds.[1] The complaint also alleges that efforts to determine the truth of the matter and make corrections met with resistance from top city management. In its investigation, the grand jury interviewed numerous city officials and reviewed relevant city contracts, agreements, memoranda and reports**.** The Grand Jury also reviewed judicial decisions from other California jurisdictions.

Based upon the evidence, the grand jury finds that revenue from utility ratepayers is being used improperly to subsidize general government activities. This practice has continued for several years. At the very least, these subsidies are of questionable legality under Proposition 218.[2]

Further, the grand jury finds a disturbing pattern of management failures and the absence of accountability at the highest levels of city government. The city's top management has failed to fully identify and to correct questionable uses of ratepayer funds. These city officials contend that the city's practices are not abuses of Proposition 218 until the city attorney issues an opinion that they are. Sworn testimony from multiple sources reveals that the city manager and his subordinates have suppressed a 44-page report that analyzed the potential costs of Proposition 218 noncompliance. Some members of city council testified that they do not remember receiving that report, which was sent to each council member in July 2008. As much as $5 million is being illegally transferred from Department of Utilities (DOU) enterprise funds to the city's general fund each year.

Based on the facts discovered and the findings drawn from this investigation, the grand jury recommends that the city council take immediate steps to identify and correct practices that do not comply with Proposition 218 and establish a meaningful time frame for compliance. The grand jury urges the city council to convey to senior staff, and to the public, the council's expectations regarding accountability, transparency in government, and compliance with the Constitution of California. The people of Sacramento deserve nothing less from their public servants.

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[1] In government accounting, a fund that provides goods or services to the public for a fee that makes the entity self-supporting.

[2] See Appendix A.

2.0 Foreword

As a local government within Sacramento County, the City of Sacramento is within the oversight jurisdiction of the Sacramento County Grand Jury. The focus of this investigation is the city's use of revenue it receives from consumers of utility services ("ratepayers"), and whether particular uses violate California law. In July 2009, the grand jury received a complaint that the city is in violation of the California State Constitution, Articles XIII C and XIII D, commonly known as Proposition 218.

California voters passed Proposition 218 on November 5, 1996. Called the "Right to Vote on Taxes Act," the proposition addresses a wide range of issues relating to raising and spending public funds. The scope of this report is limited to the Proposition 218 requirements that cities cannot charge ratepayers more than the cost of providing utility services, nor can they use revenue from ratepayers for non-utility purposes. The intent of these requirements is to prevent cities from overcharging ratepayers for utility services, and using the surplus funds for other city purposes.[3]

The scope of the investigation is also limited to only a few of the city's potential violations. Specifically, the grand jury looked at apparent ratepayer subsidies of parks, recreation, litter removal, and economic development. Although activities such as these serve legitimate governmental purposes, since 1997 the State Constitution has required that they be funded by non-utility revenue sources. In approving Proposition 218, California voters directed that general government activities shall not be funded with money received as payment for delivery of water, sewer, drainage, or solid waste services.

3.0 Issues

During the fact-finding stage of its work, the grand jury identified issues that came up repeatedly. Several issues which could be examined within the available time and resources of the grand jury were selected for further investigation.

1. Has the City of Sacramento violated the State Constitution as modified by Proposition 218 and, if so, are the violations continuing?

    a. Is it a violation of Proposition 218 for the Department of Utilities (DOU) to provide utility services (i.e., water, sewer, drainage or solid waste disposal) to other departments of city government at reduced rates or for free?

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[3] "Understanding Proposition 218", Legislative Analyst's Office, December 1996. Available at: http://www.lao.ca.gov/1996/120196_prop_218/understanding_prop218_1296.html

b. Is it a violation of Proposition 218 for ratepayer funds to be used for government activities that are unrelated to utility services?

c. Is it a violation of Proposition 218 to use ratepayer funds for capital outlays to benefit new private development?

d. Is it a violation of Proposition 218 to use ratepayer garbage collection funds to pay for collecting litter after special events or clearing illegally dumped debris?

2. Did the city manager and/or other senior officials fail to advise the mayor and city council of these issues and fail to recommend ways to rectify possible violations?

3. Have the city manager, mayor, and city council taken steps to ensure that the city is in compliance with Proposition 218?

4. Have city officials acted to avoid disclosure of the city's potential noncompliance?

4.0 Method of Investigation

In the course of this investigation the grand jury conducted 15 interviews. The grand jury took sworn testimony from a number of city officials with management and/or citywide responsibilities.

Notable among the many documents examined by the grand jury are the following:

1. The text of Proposition 218, Articles XIIIC and XIIID of the California State Constitution.

2. Proposition 218: Local Agency Guidelines for Compliance, Association of California Water Agencies, 2007.

3. Howard Jarvis Taxpayers Association v City of Fresno, 127 Cal. App. 4th 914 (2005) (March 23, 2005).

4. Bighorn-Desert View Water Agency v Verjil, 120 Cal. App. 4th 890 (2006), California Supreme Court S127535 (July 24, 2006).

5. Summary of Utility Services Costs Relevant to Proposition 218, [Consultant's] Draft Report, May 2008, 44p.

6. "Interdepartmental Memorandum of Understanding for Phasing in Full Volumetric Water Rates," agreement between DOU and the Department of Parks and Recreation, April 29, 2009, 4p.

7. City of Los Angeles v All Persons Interested, Statement of Decision, Superior Court of Los Angeles, March 25, 2009.

8. "Understanding Proposition 218," Legislative Analyst's Office, December 1996, 25p.

9. Joseph Schofield, "A Clash of Equities: Proposition 218 Squares off against Tiered Water Pricing," California Water Law & Policy Reporter, December 2007, p67.

10. Great Oaks Water Company v Santa Clara Valley Water District, Statement of Decision, Santa Clara County Superior Court, November 30, 2009.

5.0 Background and Facts

5.1 The Voters -- Proposition 218

More than 30 years ago California voters approved Proposition 13, which imposed severe restrictions on local governing bodies' ability to increase property taxes, their most important source of revenue. Subsequently, many cities and counties began to rely on other revenue sources such as assessments, fees related to property, and general purpose taxes on business licenses, hotel occupancy, and utility users. Increases in these revenue sources were not subject to voter approval. Over the next 18 years, opposition to steady increases in these taxes and fees led to voter approval of Proposition 218, which makes it much more difficult for local governments to increase revenue, and forbids the use of property-related fees for general government services.

Proposition 218 shifted powers over taxation and revenue to residents and property owners, and away from local governing bodies. Elected officials found themselves in the difficult position of being responsible for spending, but with extremely limited authority to raise funds. Some local governing boards solved their dilemma by looking the other way. They simply ignored the constraints imposed by Proposition 218. In the 13 years since Proposition 218 was enacted, a number of lawsuits have been brought against local governments for failure to comply with its requirements. Decisions have generally favored the plaintiffs.

5.2 The City -- Business as Usual

Facts revealed in the grand jury's investigation support the claim that the leadership of the City of Sacramento chose to ignore the law and continues to do so. In 2008 more than 60 potential violations were identified by employees within the Department of Utilities (DOU). Analysis of these practices by an independent consultant found potential violations of Proposition 218 may have already cost Sacramento ratepayers in excess of $21 million, present worth. The consultant's report also estimates noncompliance may cost ratepayers more than $5 million in each succeeding year. Grand jury witnesses consistently confirmed the fact that the consultant is a reputable engineering firm.

The following table is taken from the consultant's report.[4] It does not include $13.7 million in potential costs that need further clarification.

DEPARTMENT OF UTILITIES

SUMMARY OF COSTS RELEVANT TO PROPOSITION 218

Fund	Estimated Cost to Date*	Estimated Annual Ongoing Cost
Water	$8,076,000	$2,014,000
Sewer	$28,000	$7,000
Drainage	$4,768,000	$91,000
Solid Waste	$6,423,000	$1,933,000
Shared	$2,434,000	$1,154,000
Total	**$21,729,000**	**$5,199,000**

*Present worth cost of one-time items since 1996 and three years of annually recurring items, through May 2008. Present worth is the calculated value of each transaction increased from its date to May 2008 at 5% per year.

[4] See Appendix B.

The reaction of top city management to this report and to compliance issues brought to its attention over the previous three years is discussed in Section 5.3, below. Following is a brief description of some of the city's programs that benefit from ratepayer subsidies:

1. **Subsidized rates for providing water service to city parks and other city facilities.** The consultant's study reveals that, on an annual basis, the cost of subsidized water rates for various non-Department of Utilities departments/activities could approach an estimated $2,006,000. Other water-related services account for another $8,000. Some additional amounts could not be quantified due to inadequate data, but all of them would increase this number. The Department of Parks and Recreation (DPR) has been a major beneficiary of this subsidy. For many years, DOU has charged DPR a significantly discounted rate for water used in city parks. Currently that rate is 15% of the regular metered water rate. Many witnesses testified that they believe this discount violates Proposition 218. In July 2006 the California Supreme Court held that consumption-based water charges are "property-based fees" subject to Proposition 218 requirements.[5] It was not until April 2009 that DOU and DPR entered into an agreement to bring the rate charged to DPR to the regular metered rate over the following 15 years.

2. **Solid waste disposal services for city facilities and events.** On an ongoing basis, DOU has provided employees and equipment to support general government activities without reimbursement from the general fund. Examples include litter collection after special events and the clearing of illegally dumped debris. The amounts quantified to date total approximately $28,000 (present worth over a three year period) and $7,000 projected annually.

3. **Natomas Auto Mall land purchase by DOU.** In 2003 land for the proposed Natomas Auto Mall was purchased with approximately $2,000,000 from the Drainage Fund. As a result, Drainage Fund set-asides for capital improvements, about $400,000 per year, have been discontinued for several years. This means that Sacramento's drainage infrastructure has been under-funded annually by that amount. There has been no reimbursement for the purchase, which has an estimated present worth of $2,553,000. The purchase was authorized by the city council.

4. **Economic Development Capital Improvement Program contribution.** From 2001 until 2009, $1 million was allocated each year from DOU revenues (Drainage, Water, and Sewer Funds) to pay for utility aspects of development projects in downtown Sacramento "when the project couldn't afford it." In one case, these set-asides from ratepayer funds were used to subsidize infrastructure for a new auto dealership. While not all of the money was used every year, some of it was. The money relieved developers from having to pay their fair share of utility upgrades necessitated by their projects. No audit was

[5] Bighorn-Desert View Water Agency v Verjil, 39 Cal.4th 205 (July 24, 2006).

performed to determine how the money was actually used or what the developers' fair share would have been.

5. The initial decision to divert DOU funds came from the office of the former city manager. The policy was continued by the present city manager until the FY 2010 budget was being prepared in early 2009. For almost a decade DOU reserves were allowed to dwindle while the aging infrastructure continued to deteriorate.

6. **DOU work on city parks, buildings, and sports facilities.** There are numerous city, business and sports facilities to which DOU provides on-going services without any reimbursement. Examples of these services include work performed by DOU at Camp Sacramento (maintenance and repair), Old Sacramento and city buildings (solid waste removal, recycling), and Arco Arena (drainage maintenance). The cost of these services is reflected in the prices paid by utility ratepayers. The amounts vary but represent significant labor and equipment costs, all of which are factored into the rate-setting calculations.

7. **Other significant issues**. A group of issues described as "requiring further clarification" makes up the largest category of items in the consultant's report, aggregating about $13.7 million (present worth over three years).

It is helpful to consider the City of Sacramento's practices in the context of information available to its leaders during the period from mid-2005 to the present. Superior courts in Roseville (2002) and Fresno (2005) decided in favor of ratepayers and against defendant cities on Proposition 218 issues. The California Supreme Court ruled against the defendant water agency in Bighorn-Desert View Water Agency v. Verjil in July 2006. Barely a month before Sacramento's top management developed its 15-year plan for eliminating the ratepayer subsidy of park water supplies, Los Angeles Superior Court ruled against that city's claim that water service was not subject to Proposition 218.[6]

In 2007 the Association of California Water Agencies published Proposition 218: Local Agency Guidelines for Compliance. The California Water Law & Policy Reporter published feature articles on Proposition 218 in December 2007 and again in November 2008.[7] Between August 2005 and September 2009 the League of California Cities published at least 20 reports, updates and analyses of Proposition 218.[8] Despite all this information, the city's management failed to examine its position that none of the city's uses of ratepayer funds could be considered non-compliant unless and until the city attorney issued an opinion to that effect.

[6] City of Los Angeles v All Persons Interested, Statement of Decision, March 25, 2009.

[7] California Water Law & Policy Reporter, December 2007, p67, and November 2008, p31.

[8] See http://www.cacities.org/index.jsp?zone=locc&section=util&sub_sec=util_sitesearch&app=search.

5.3 The City – Warnings Ignored

As early as 2003, city employees expressed concerns that the city is violating Proposition 218. The issue was discussed with city management for several years. Some of these concerns included reduced water rates for parks, spending ratepayer funds for general city services, and allocating $1 million to subsidize economic development. City officials repeatedly responded that nothing could be done without an opinion from the city attorney.

A consultant was hired by DOU in 2008 to review departmental data and estimate the amount of money involved. Employees identified 62 areas of potential noncompliance. In May 2008 the consultant's draft report was delivered for review by city staff.

When the city manager received the report, he ordered that all copies be collected and that none of the report's information be given to the city council. The city manager ordered a work plan be prepared to address the alleged noncompliance with Proposition 218. On May 30, a work plan was submitted to the city manager.[9] The requested work plan was never implemented.

The consultant's contract was terminated. The consultant was paid $25,000 and no final report was ever prepared. There was no further effort to determine if the city was violating Proposition 218 or the cost of noncompliance. City officials testified that although questions had been raised about whether DOU was violating Proposition 218, they could not do anything unless the city attorney issued an opinion. As of October 16, 2009, city officials had not received a legal opinion.

In July 2008 members of the city council received copies of the consultant's report with an explanatory cover letter.[10] Neither the city manager nor the new director of DOU took any action as a result. There was no discussion or acknowledgement of these documents or any Proposition 218 compliance issue in regular council sessions.

Proposition 218 issues have not been discussed in regular management meetings for at least a year, but there have been numerous small group conversations about these issues involving city management. Every witness agreed on the need for clarity and resolution of Proposition 218 issues. Some assumed these issues were being resolved and that the city manager and the city attorney were doing the right thing. Several witnesses had severe memory lapses about any event, meeting, discussion, or document relating to Proposition 218 noncompliance.

Several city officials saw the report which projected a potential loss to utility ratepayers from Proposition 218 violations of about $5 million annually. Although this is a "significant" amount of money, they took no action because the city attorney had not advised them on the

[9] See Appendix C.

[10] See Appendix D.

issue. Several city officials saw a work plan to correct potential violations. Nothing was done to implement the work plan, again with the excuse that there was no city attorney's opinion.

A consistent theme in testimony to the grand jury was that key policymakers passed the blame for failure to act on Proposition 218 compliance issues to someone else. Some witnesses used the excuse that the city had other, more important, problems than Proposition 218 compliance, which they perceived as a minor infraction of the law at most.

6.0 Findings and Recommendations

Finding 1.0 Based on data supplied by city employees, a consultant's draft report estimated that the city's annual cost of potential violations is more than $5 million. The present worth cost of one-time projects and recurring costs over the last three years is in excess of $21 million. The mayor and members of city council received copies of this report in July 2008. No action was taken.

> **Recommendation 1.1** The city council should disclose the entire consultant's report to the public.
>
> **Recommendation 1.2** The city council should explain why it took no action.
>
> **Recommendation 1.3** The city council should acquire outside legal counsel and technical experts to advise the city council on the legality of the uses of utility revenues for each of the practices listed in the consultant's report.

Finding 2.0 Once the city manager and the assistant city manager over the Department of Utilities (DOU) learned that there were potential and substantial Proposition 218 violations, they had a duty to pursue the issue and determine the existence and extent of any actual violations. They failed their duty.

> **Recommendation 2.1** The city council should admonish the city manager and the responsible assistant city manager for this failure.

Finding 3.0 For years DOU has supplied water to city parks at a reduced rate of only 15 % of the usual rate of providing water to other metered users.[11] The grand jury is of the opinion that this is a violation of Proposition 218, which limits fees or charges to ratepayers for property related services. Providing water at reduced rates to the Department of Parks and Recreation (DPR) is not a property related service to ratepayers. The April 2009 agreement between DOU and DPR provides for this violation to be corrected over a 15 year period. The grand jury finds this timeline to be too lengthy.

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[11] In Bighorn-Desert View Water Agency (2006), the California Supreme Court held that consumption based rates are "fees" or charges" for property related services and are subject to Propositions 218.

Recommendation 3.1 The city council should modify this agreement and direct that DPR begin paying the comparable full metered rate in FY 2012.

Finding 4.0 The city has shifted the cost of providing city services from the general fund to the enterprise funds of DOU. The city improperly uses DOU labor and equipment, without reimbursement, to provide services to other city departments, sports facilities and city buildings.

Recommendation 4.1 If the advice of outside counsel confirms these violations, the city council should direct that DOU enterprise funds be reimbursed for future services from non-ratepayer funds.

Finding 5.0 For the last several years DOU was directed to allocate $1 million to pay for capital improvements related to private economic development projects. The city dropped the allocation from the FY 2010 budget.

Recommendation 5.1 The city council should get an outside legal opinion concerning this practice.

Finding 6.0 The grand jury found a lack of accountability, absence of transparency and failure of responsibility by individuals who hold positions of public trust in Sacramento City government.

Recommendation 6.1 The city council should clarify, in writing, its expectations regarding compliance with all laws and convey this policy statement to city staff and to the public.

7.0 Response Requirements

Penal Code sections 933 and 933.05 require that specific responses to all findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento County Superior Court by April 6, 2010, from:

- **The Sacramento City Council**
- **The Mayor of the City of Sacramento**
- **The City Manager of Sacramento**

Mail or hand-deliver a hard copy of the response to:

Hon. Steve White, Presiding Judge
Sacramento County Superior Court
720 9th Street, Dept. 47
Sacramento, CA 95814

In addition, e-mail the response to Becky Castaneda, Grand Jury Coordinator, at castanb@saccourt.com

8.0 Appendices

Appendix A -- California Constitution, Article XIII D, SEC. 6 (b), (1)-(5). The full text of Proposition 218 is available at: http://www.lao.ca.gov/1996/120196_prop_218/understanding_prop218_1296.html#appendix II

Appendix B -- Summary of Utility Services Costs Relevant to Proposition 218, [Consultant's] Draft Report, May 2008.

Appendix C -- Memorandum, Proposition 218 Proposed Work Plan, May 30, 2008.

Appendix D -- Letter to the Mayor and Council Members, July 1, 2008.

Appendix A

Pertinent Sections of

California State Proposition 218

Appendix A

Pertinent Sections of

California State Proposition 218[12]

SEC. 6.2(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

[12] http://www.lao.ca.gov/1996/120196_prop_218/understanding_prop218_1296.html#appendixII

Appendix B

Executive Summary of the Consultant's Report

SUMMARY OF UTILITY SERVICES COSTS RELEVANT TO PROPOSITION 218

DRAFT
MAY 2008

SECTION 1 EXECUTIVE SUMMARY

1.1 INTRODUCTION

Proposition 218 places specific requirements on fees or charges imposed for property-related services, such as services provided by the City of Sacramento (City) Department of Utilities (DOU). Proposition 218 places restrictions on how rate revenue can be spent, as well as how the cost of services is allocated among ratepayers, specifically:

1. Revenues derived from the fee or charge must not exceed the funds required to provide the property-related service (Section 6(b)(1)). [1]

2. Revenues from the fee or charge must not be used for any purpose other than that for which the fee or charge is imposed (Section 6(b)(2)). [1]

3. No fee or charge may be imposed for general governmental services, such as police, fire, ambulance, or libraries, where the service is available to the public in substantially the same manner as it is to property owners (Section 6(b)(5)). [1]

4. The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership must not exceed the proportional cost of the service attributable to the parcel (Section 6(b)(3)). [1]

5. The fee or charge may not be imposed for service, unless the service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Stand-by charges must be classified as assessments and must not be imposed without compliance with the proportionality requirements for assessments. (Section (b)(4)). [1]

DOU has identified several activities that may not be in compliance with Proposition 218. This report lists these identified activities, status of the activity, and estimates a cost to DOU when possible. Costs provided in this report are order of magnitude costs, and are intended to give an indication as to the financial scale of activities that are potentially noncompliant with Proposition 218.

DOU identified items that, based on its interpretation of the law (California Constitution Articles XIIIC and XIIID) [redacted] with Proposition 218. [redacted] These items are summarized below in Sections 1.2.1 through 1.2.5, and described in more

detail in Sections 2 through 6. Additional items with some level of uncertainty as to Proposition 218 compliance are summarized in Section 1.2.6 and described in more detail in Section 7. [redacted] This report does not provide an opinion regarding compliance with Proposition 218.

1.2 SUMMARY

DOU consists of five divisions: Engineering Services, Plant Services, Field Services, Business Services, and Solid Waste Services. Activities performed by these divisions are paid for with money from four funds: Water, Sewer, Drainage, and Solid Waste. Items that may not be compliant with Proposition 218 are summarized by fund in Sections 1.2.1 through 1.2.4. Items whose cost is shared by multiple funds are summarized in Section 1.2.5. Items requiring further legal clarification are summarized in Section 1.2.6.

A cost is associated with each item, when possible. A summary of DOU costs that may not be compliant with Proposition 218 is provided in Table 1-1. The cost of items requiring [redacted] legal clarification is not included in Table 1-1.

The frequency of the activity was identified in the summary tables with one of the following labels:

1. One Time – describes a single expenditure item, such as the purchase of property.
2. Annual – describes a recurring item with a relatively consistent cost from year to year, such as power bills.
3. As Needed – describes a recurring item not performed on a regular basis, or with a variable level of effort, such as equipment repair.

Because of schedule constraints, a detailed economic analysis was not performed of each item. Cost to date and annual ongoing cost were estimated for each item when sufficient information was available. When sufficient information was available at the time of writing, a present worth cost was determined assuming an interest rate of five percent. For consistency, the present worth cost of items with a recurring cost only account for the costs for the last three years. Several items discussed within this report had associated recurring costs that may not be compliant with Proposition 218 for longer than three years. When an item had recurring costs for a period less than three years, the present worth cost was calculated for the actual time that costs were incurred. This period of time is noted in the item description. Costs were identified with the following labels:

1. PW – describes the present worth of the cost assuming an interest rate of five percent.
2. E – describes a cost when insufficient information was available to calculate the present worth.

3. ET-X – describes a cost for a given period of time when insufficient information was available to calculate the present worth. For example a cost of $4,000 labeled ET-2 would indicate a cost of $4,000 over a two year period.

When sufficient information was not available, the cost was listed as "Unknown".

As seen in Table 1-1, DOU is estimated to have spent approximately $21,729,000 to date on items that may not be compliant with Proposition 218. The cost to date includes the present worth cost of one time items since 1996 and three years of annually recurring items. A recurring annual cost of approximately $5,199,000 per year is estimated to be spent by DOU on items that may not be compliant with Proposition 218. Because the cost of several items could not be estimated as part of this study, the actual cost of items that may not be compliant with Proposition 218 is likely higher than stated in this report. It is assumed that it will be the responsibility of the City Attorney and/or others to determine the Proposition 218 compliance of each item discussed in this report.

TABLE 1-1
DEPARTMENT OF UTILITIES
SUMMARY OF COSTS RELEVANT TO PROPOSITION 218

Fund	Estimated Cost To Date[a]	Estimated Annual Ongoing Cost
Water	$8,076,000	$2,014,000
Sewer	$28,000	$7,000
Drainage	$4,768,000	$91,000
Solid Waste	$6,423,000	$1,933,000
Shared	$2,434,000	$1,154,000
Total	**$21,729,000**	**$5,199,000**

[a] Through May 2008.

In addition to items where costs are identified in Table 1-1, DOU has identified several items that require [redacted] legal clarification to determine Proposition 218 compliance. The estimated cost to date of items requiring clarification is $13,673,000. The estimated annual ongoing cost of items requiring clarification is $2,954,000 per year. The costs of items requiring [redacted] legal clarification were not included in Table 1-1, but are summarized in Table 1-7.

1.2.1 Water Fund

The costs of items related to the Water Fund that may not be compliant with Proposition 218 are listed in Table 1-2. A more detailed description of each item is provided in Section 2, Water Fund Costs Relevant to Proposition 218. The total estimated cost to date of items related to the Water Fund is $8,076,000. The estimated annual ongoing cost of Water Fund items is $2,014,000 per year.

TABLE 1-2
WATER FUND
SUMMARY OF COSTS RELEVANT TO PROPOSITION 218

Item	Frequency[a]	Estimated Cost To Date[b]		Estimated Annual Ongoing Cost
Bill Conlin Youth Sports Complex	One Time	$2,000,000	E	$0
911 Center Building at SRWTP	Annual	Unknown	-	Unknown
Baseball Fields at Fairburn Water Treatment Plant	Annual	Unknown	-	Unknown
Pool Chlorination Support	One Time	$11,000	PW	$0
Granite Park Well Plan Review	One Time	$5,000	PW	$0
State Tower at SRWTP	Annual	Unknown	-	Unknown
Well 137	One Time	$4,000	E	$0
Alhambra Reservoir Site	Annual	Unknown	-	Unknown
Ice Rink Storage	Annual	$7,000	PW	$2,000
Subsidized Water Rates	Annual	$6,018,000	PW	$2,006,000
Chorley Park Repairs	Annual	$20,000	PW	$6,000
Thirteenth Street Median Landscaping	One Time	$8,000	E	$0
Repairs at City Golf Courses	As Needed	Unknown	-	Unknown
Grace Avenue Neighborhood Association Project	One Time	$3,000	E	$0
City Parcels Not Billed For Water Service	Annual	Unknown	-	Unknown
Total		**$8,076,000**		**$2,014,000**

[a] "One Time" describes a single expenditure. "Annual" describes a relatively constant recurring cost. "As Needed" describes recurring cost that is variable.

[b] Through May 2008. "PW" describes a present worth cost. "E" describes an estimated cost, typically the cost at the time of the activity. "ET-X" describes a cost over a period of time of X years.

1.2.2 Sewer Fund

The costs of items related to the Sewer Fund that may not be compliant with Proposition 218 are listed in Table 1-3. A more detailed description of each item is provided in Section 3, Sewer Fund Costs Relevant to Proposition 218. The total estimated cost to date of items related to the Sewer Fund is $28,000. The estimated ongoing annual cost of Sewer Fund items is $7,000 per year.

TABLE 1-3
SEWER FUND
SUMMARY OF COSTS RELEVANT TO PROPOSITION 218

Item	Frequency[a]	Estimated Cost To Date[b]		Estimated Annual Ongoing Cost
Pioneer Reservoir Relocation Study	As Needed	$5,000	E	Unknown
Camp Sacramento Septic Pumping	Annual	$4,000	PW	$1,000
Sacramento Zoo Sewer and Drainage Maintenance	Annual	$19,000	PW	$6,000
Total		**$28,000**		**$7,000**

[a] "One Time" describes a single expenditure. "Annual" describes a relatively constant recurring cost. "As Needed" describes recurring cost that is variable.

[b] Through May 2008. "PW" describes a present worth cost. "E" describes an estimated cost, typically the cost at the time of the activity. "ET-X" describes a cost over a period of time of X years.

1.2.3 Drainage Fund

The costs of items related to the Drainage Fund that may not be compliant with Proposition 218 are listed in Table 1-4. A more detailed description of each item is provided in Section 4, Drainage Fund Costs Relevant to Proposition 218. The total estimated cost to date of items related to the Drainage Fund is $4,768,000. The estimated annual ongoing cost of Drainage Fund items is $91,000 per year.

TABLE 1-4
DRAINAGE FUND
SUMMARY OF COSTS RELEVANT TO PROPOSITION 218

Item	Frequency[a]	Estimated Cost To Date[b]		Estimated Annual Ongoing Cost
65th and Broadway Detention Basin	One Time	$1,000,000	E	$0
BERC Funding	Annual	$189,000	PW	$60,000
Natomas Automall	One Time	$2,553,000	PW	$0
Historic Cemetery Plaque Monument	One Time	$5,000	E	$0
Move/Install Gas Vault	One Time	Unknown	-	$0
Garcia Bend and Miller Park Boat Ramps	Annual	$2,000	PW	$700
Southside Park Pond	Annual	$3,000	PW	$1,000
Golf Course Drainages	Annual	$18,000	PW	$6,000
Bing Maloney Golf Course Drain	One Time	$17,000	E	$0
Gold Rush Days	Annual	$9,000	PW	$3,000
Crocker Art Museum Sandbags	Annual	$1,000	PW	$400
Loan Water Truck to Fire Department	Annual	$27,000	PW	$9,000
Parking Lot Drains at Fire Stations	One Time	$5,000	E	$0
Roadside Ditch Culvert Cleaning	Annual	$36,000	PW	$11,000
Fremont Park Fountain	One Time	$3,000	E	$0
Sacramento Executive Airport Utilities	Annual	$900,000	E	Unknown
Total		**$4,768,000**		**$91,000**

[a] "One Time" describes a single expenditure. "Annual" describes a relatively constant recurring cost. "As Needed" describes recurring cost that is variable.

[b] Through May 2008. "PW" describes a present worth cost. "E" describes an estimated cost, typically the cost at the time of the activity. "ET-X" describes a cost over a period of time of X years.

[c] The estimated cost to date of the dog waste stations is for initial construction. The amount of ongoing costs was not available at the time of writing.

1.2.4 Solid Waste Fund

The costs of items related to the Solid Waste Fund that may not be compliant with Proposition 218 are listed in Table 1-5. A more detailed description of each item is provided in Section 5, Solid Waste Fund Costs Relevant to Proposition 218. The total estimated cost to date of items related to the Solid Waste Fund is $6,423,000. The estimated annual ongoing cost of Solid Waste Fund items is $1,933,000 per year.

TABLE 1-5
SOLID WASTE FUND
SUMMARY OF COSTS RELEVANT TO PROPOSITION 218

Item	Frequency[a]	Estimated Cost To Date[b]		Estimated Annual Ongoing Cost
Billboard Revenue	Annual	Unknown	-	Unknown
28th Street Landfill Security Guard	Annual	Unknown	-	Unknown
28th Street Landfill Utilities	Annual	$460,000	PW	$153,000
Sutter's Landing Regional Park Feasibility Study	One Time	$450,000	E	$0
Solid Waste/Recycling Service to City Facilities	Annual	$2,805,000	PW	$935,000
Methane Gas Sales	Annual	$44,000	PW	$0
Former Office of Emergency Services Building	Annual	Unknown	-	Unknown
Old City Incinerator Property	Annual	Unknown	-	Unknown
Sacramento Jazz Jubilee	Annual	$85,000	PW	$27,000
Illegal Dumping	Annual	$2,579,000	PW	$818,000
Total Cost		**$6,423,000**		**$1,933,000**

[a] "One Time" describes a single expenditure. "Annual" describes a relatively constant recurring cost. "As Needed" describes recurring cost that is variable.

[b] Through May 2008. "PW" describes a present worth cost. "E" describes an estimated cost, typically the cost at the time of the activity. "ET-X" describes a cost over a period of time of X years.

1.2.5 Costs Shared by Multiple Funds

The costs of items that may not be compliant with Proposition 218 whose cost is shared by multiple funds are summarized in Table 1-6. Funds sharing the cost of each item are identified in Table 1-6 with the following labels:

D – Drainage Fund
W – Water Fund
S – Sewer Fund
SW – Solid Waste

A more detailed description of each item is provided in Section 6, Multiple Fund Costs Relevant to Proposition 218. The total estimated cost to date of items related to the Multiple Fund items is $2,434,000. The estimated annual ongoing cost of multiple fund items is $1,154,000 per year.

TABLE 1-6
MULTIPLE FUND ITEMS
SUMMARY OF COSTS RELEVANT TO PROPOSITION 218

Item	Funds Sharing Cost[a]	Frequency[b]	Estimated Cost To Date[c]		Estimated Annual Ongoing Cost
Miscellaneous Unfunded Development Review	D, W, S	As Needed	$101,000	ET-3	$39,000
Economic Development CIP Contributions	D, W, S	Annual	$1,892,000	PW	$1,000,000
Compliance Sampling and Reporting	D, W	Annual	$252,000	PW	$80,000
Rebuild Fire Pumps	D, W, S	As Needed	Unknown	-	Unknown
Fabricate Water Cannons	D, W, S	As Needed	$500	E	Unknown
Equipment Repair	D, W, S	As Needed	$4,000[d]	ET-2	Unknown
Prospective Employee Testing	D, W, S	Annual	$10,000	PW	$3,000
Camp Sacramento Maintenance	D, W, S	Annual	$91,000	PW	$30,000
Jiboom Street Park	D, W	One Time	$25,000[e]	E	$0
Property near Pioneer Reservoir	D, S	Annual	Unknown	-	Unknown
Arco Arena Drainage	D, W, S	Annual	$29,000	PW	$2,000
Tree Planting	D, W, S	One Time	$29,000	PW	$0
Bill Inserts	D, W, S, SW	As Needed	Unknown	-	$0
Total Cost			**$2,434,000**		**$1,154,000**

[a] "D" indicates that the Drainage Fund contributes to the cost of this item, "W" indicates the Water Fund, "S" indicates the Sewer Fund, and "SW" includes the Solid Waste Fund.

[b] "One Time" describes a single expenditure. "Annual" describes a relatively constant recurring cost. "As Needed" describes recurring cost that is variable.

[c] Through May 2008. "PW" describes a present worth cost. "E" describes an estimated cost, typically the cost at the time of the activity. "ET-X" describes a cost over a period of time of X years.

[d] Estimated cost to date only accounts for repair of City Department of Transportation asphalt grinder. The repair of other equipment was not available at the time of writing.

[e] Estimated cost to date includes funding of the grant study only. The cost of improvements is not available at the time of writing.

1.2.6 Items Requiring [redacted] Clarification

DOU staff identified several items that require a legal opinion to determine Proposition 218 compliance. The items requiring clarification are summarized in Table 1-7. A more detailed description of each item is provided in Section 7, Items Requiring Further Clarification Costs Relevant to Proposition 218. The total estimated cost to date of the items requiring further clarification is $13,673,000. The estimated annual ongoing cost of items requiring further clarification is $2,954,000. The costs of items identified by DOU that require further clarification are not included in the total estimated cost to date or total estimated annual ongoing cost summarized in Table 1-1.

TABLE 1-7
ITEMS REQUIRING FURTHER CLARIFICATION
SUMMARY OF COSTS RELEVANT TO PROPOSITION 218

Item	Fund[a]	Frequency[b]	Estimated Cost To Date[c]		Estimated Annual Ongoing Cost
NFIP Compliance	D	Annual	$1,261,000	PW	$400,000
ADA Compliance	D	Annual	$788,000	PW	$0
NPDES Stormwater Program	D	Annual	$3,153,000	PW	$1,000,000
Dog Waste Stations	D	Annual[d]	$10,000	E	Unknown
Creek Week	D	Annual	$13,000	PW	$4,000
Remediation and Monitoring Historic Landfill Costs	SW	Annual	$3,977,000[e]	E	$60,000
Solid Waste Authority Franchise Funds	SW	Annual	$4,471,000	PW	$1,490,000
Street Sweeping	SW	Annual	Unknown	-	Unknown
Total Cost			**$13,673,000**		**$2,954,000**

[a] "D" indicates that the Drainage Fund contributes to the cost of this item, "W" indicates the Water Fund, "S" indicates the Sewer Fund, and "SW" indicates the Solid Waste Fund.

[b] "One Time" describes a single expenditure. "Annual" describes a relatively constant recurring cost. "As Needed" describes recurring cost that is variable.

[c] Through May 2008. "PW" describes a present worth cost. "E" describes an estimated cost, typically the cost at the time of the activity. "ET-X" describes a cost over a period of time of X years.

[d] The estimated cost to date of the dog waste stations is for initial construction. The amount of ongoing costs was not available at the time of writing.

[e] The estimated cost to date of remediating and monitoring historic landfills includes projected costs to remediate the Dellar Landfill.

1.3 REFERENCES

[1] State of California, *California State Constitution, Article XIIID, Section 6.*

Appendix C

Proposition 218 Work Plan

Department of Utilities
Office of the Director

CITY OF SACRAMENTO
CALIFORNIA

1395 35th Avenue
Sacramento, CA 95822-2911
phone (916) 808-1400
fax (916) 808-1497/1498

May 30, 2008

MEMORANDUM

TO: [redacted]

FROM: [redacted]

SUBJECT: **Proposition 218 Proposed Work Plan**

Background

[redacted]

CITY OF SACRAMENTO
DEPARTMENT
OF UTILITIES

[redacted]

Utilities also retained an outside firm, [redacted] to review and correlate the information provided by the Division Managers. [redacted] prepared a report which estimates the current annual spending by Utilities which possibly may not be allowable under the provisions of Proposition 218. The report also estimates the cost of some past expenditures by Utilities that also possibly may not be appropriate since Proposition 218 was passed into law [redacted]

The estimated amount of current spending in question totals approximately $5.2 million annually across all four funds (water, sewer, drainage, and solid waste). The estimated amount of past spending totals approximately $22 million over the four funds. These dollar amounts underestimate the actual expenditure amounts since the costs of a number of possibly inappropriate activities could not be determined, and past annual expenses were limited to only three years although Proposition 218 has been in effect for nearly 12 years.

Recommended Work Plan

[redacted]

Utilities staff have done its best to determine what department spending may possibly not comply with the requirements of Proposition 218 [redacted] Utilities recommends that the City Attorney's office be asked to review the report prepared by [redacted] and the support information prepared by Utilities staff, to confirm that the provisions of Proposition 218 have been properly applied. The City Attorney's review would provide the basis for a more thorough audit and preparation of a rate case analysis as described next.

Audit and Rate Case Analysis

The estimates in the attached [redacted] report should be considered a conservative estimate of the order of magnitude of costs only. The cost of many activities identified as possibly violating Proposition 218 could not be determined. Additional work should also be done to refine the costs that were determined. Past costs were limited to only three years for annual expenses, even though Proposition 218 has been in effect for nearly 12 years. Additionally, there may very well be additional activities, and associated expenditures, which may possibly be inappropriate under Proposition 218 that have yet to be identified.

Utilities recommends that the department retain an outside consultant to conduct a complete audit of potentially unallowable costs under the requirements of Proposition 218, based on the City Attorney's review. Once the audit is completed, the total amount of current and past

costs actually not permissible under Proposition 218 would be determined. The consultant would then use this information to compare the unallowable costs with rate and other revenues or in-kind services to determine if the provisions of Proposition 218 are actually being violated, thus creating a rate case analysis.

Use of the City's Internal Auditor is not advised due to the fact that the Auditor has previously declined such an assignment citing a lack of staff and expertise. I believe the audit consultant should work for Utilities, with oversight provided by the recently formed Rate Advisory Commission.

Utilities Budget Actions

Once the audit and rate case analysis is complete, the magnitude of costs, if any, that should be paid for by the general fund, private development, or other agencies can be determined. This may result in a significant change to both the Utilities and general fund budgets. In addition, repayment of past unallowable expenditures could also significantly affect the general fund and Utilities budgets (although there may be a statute of limitation affecting repayment by the general fund and private developers). Such funding could be used to offset operational costs and thus reduce, or eliminate, proposed rate increases; provide additional capital improvement projects for failing infrastructure in water, sewer, and drainage; or to provide some level of contingency funding in solid waste. Unfortunately, additional funding from the general fund would open a new gap in the overall City budget not currently anticipated.

The proposed 2008/09 Utilities budget was prepared without the benefit of the cost analysis in the [redacted] report, or a Proposition 218 rate case analysis. The Utilities budget and rate hearing is noticed for June 10. Given the time frame, it is impossible to allow for review by the City Attorney, conduct an audit and rate case analysis, then potentially modify the department budget. Alternately, to stop providing services to general funded departments is not feasible since to do so would have a very detrimental effect on the City and public health and safety. However, continuing practices which may not be permissible under Proposition 218 without taking steps to address the potential problems would be questionable.

Trying to balance these competing issues from a practical perspective, Utilities recommends that the proposed work plan be initiated as soon as possible, and that staff request that the City Council approve the proposed Utilities budget, and the rate increases needed, to maintain existing service levels. Utilities also recommends that the City Council be informed, at an appropriate time, that information indicates that possible discrepancies under Proposition 218 may exist, and that, in response, a work plan consisting of City Attorney review, an audit, and completion of a rate case analysis is being initiated. A preliminary schedule could also be presented.

In addition, producing a rate case analysis will likely take a substantial length of time, will involve a large number of individuals, and require a significant amount of effort. Although

there is a concern that providing information about possible discrepancies with Proposition 218 could cause unwarranted reactions by other parties (before the processes described above provide a higher level of documentation and confirmation), in my opinion, it would be prudent to explain the process, and why the process is being initiated, to the newly formed Rate Advisory Commission.

Conclusion

I believe that implementation of the proposed work plan will best serve the interests of the City and its ratepayers. I am prepared to provide whatever assistance I can in fully addressing and resolving the issues discussed in this memorandum.

Attachments

cc: [redacted]

Appendix D

Letter to City Council

July 1, 2008

[redacted]

Mayor and City Council Members
City Hall
915 I Street
Sacramento, CA 94814

Dear Mayor and Council Members:

I am writing this letter to inform the City Council of potential concerns regarding the City's compliance with Proposition 218. Attached is a memorandum report which indicates that the City may be violating the provisions of Proposition 218. Although a rate case analysis is necessary to conclusively determine if this is the case, if so, millions of dollars of Utilities funds are potentially being used to subsidize the general fund. In addition, tens of millions of dollars may have been used over the past 12 years since Proposition 218 became law to subsidize the general fund and private developers.

At a meeting on May 28, I provided this information to the City Manager. I strongly recommended that the City Manager inform the City Council of this information before the Council adopted the proposed Utilities 2008/09 budget and rate increases. The City Manager decided to not inform City Council, and directed me to also not inform the Council. [redacted]

After a great deal of consideration, I have decided to provide Council the attached report due to the concern that, as elected officials, you are being asked to make decisions without having complete information to do so. I believe providing this information to you is in the best interest of the City and its ratepayers, and, simply, the right thing to do.

Sincerely,

[redacted]

Sacramento City Council Responses to
The 2009-2010 Sacramento County Grand Jury Report:

The City of Sacramento and Proposition 218

The Law is the Law

Including the Sacramento County Grand Jury Responses

Findings, recommendations, the city council's responses and the grand jury's responses are shown below:

***Finding** 1.0 Based on data supplied by city employees, a consultant's draft report estimated that the city's annual cost of potential violations is more than $5 million. The present worth cost of one-time projects and recurring costs over the last three years is in excess of $21 million. The mayor and members of city council received copies of this report in July 2008. No action was taken.*

> **Response:** The City disagrees in part with this finding. The referenced engineering consultant was retained to review cost data associated with various practices identified by City staff, and prepared and submitted a draft report in May of 2008 quantifying the cost associated with these practices. However, the analysis provided in the draft report consisted solely of cost estimating. The draft report expressly stated that it was not intended to provide an opinion regarding compliance with Proposition 218, and for this reason the various cost estimates in the consultant's draft report were not necessarily indicative of any actual violations of Proposition 218. To the extent that this finding suggests otherwise, the City disagrees. In addition, actions were taken after the consultant's draft report was received, as noted in the response to Recommendation 1.2, below.

***Grand Jury Response:** The grand jury disagrees with the city's response. There was more than adequate information available to the city manager and the city council to warrant greater action than was taken.*

***Recommendation** 1.1 The city council should disclose the entire consultant's report to the public.*

> **Response:** The entire consultant's draft report, with minor redactions of privileged and confidential matter, has been publicly disclosed.

***Grand Jury Response:** The grand jury is satisfied that the draft report was released, but the city did not publicize the procedure for obtaining a copy. It was later learned that a citizen must request a copy from the city attorney.*

***Recommendation** 1.2 The city council should explain why it took no action.*

> **Response:** In August of 2008, the City Council was advised by the City Manager that staff was working with the City Attorney's Office to review the consultant's draft report and, after this review was complete, staff would follow up with a full report to the Mayor and City Council. A status report was brought to City Council in January 2010. During this time, Department of Utilities' staff (1) reviewed the various practices identified in the consultant's draft report in consultation with the City Attorney's Office, (2) conducted internal audits and reviewed policies and procedures to identify potential Proposition 218 issues, and (3) took action to eliminate or reduce the scope of many potential ongoing

Proposition 218 violations, including the following:

In April 2009, the Department of Utilities and Department of Parks and Recreation agreed to a phased approach to incrementally eliminate the reduced volumetric water rate charged for water supplied to City parks over a 15 year period.

• In addition, beginning July 1, 2009, the non-volumetric fixed service charges paid for metered water service, including metered water service to City parks, was significantly increased.

• Beginning July 1, 2009, the Department of Utilities: (1) ceased providing any solid waste services for special events without reimbursement for its service costs; (2) ceased further contributions to the economic development capital improvement program used to fund utility infrastructure; and (3) ceased the use of its personnel or equipment to perform work for non-Utility facilities without receiving full cost reimbursement either in funds or through trade of in-kind services.

With respect to the City's use of Drainage Funds to partially fund the purchase of the "Natomas Auto Mall" property referenced in the Grand Jury report, in 2005 the City exchanged this property for vacant real property located southeast of the intersection of Interstate 80 and Truxel Road. The property currently owned by the City is and will continue to be held as an asset of the Drainage Fund, and if the property is sold in the future, the sale proceeds will be used to reimburse the Drainage Fund.

Grand Jury Response: *The grand jury is satisfied with the city's response.*

***Recommendation** 1.3 The city council should acquire outside legal counsel and technical experts to advise the city council on the legality of the uses of utility revenues for each of the practices listed in the consultant's report.*

Response: City staff has reviewed the various practices. identified in the consultant's draft report in consultation with the City Attorney's Office, and those practices deemed to present potential ongoing Proposition 218 violations have either been eliminated or City staff is recommending a plan to eliminate them. This option is therefore unnecessary and will not be implemented at this time.

Grand Jury Response: *The grand jury still recommends that the city obtain outside legal counsel concerning the use of utility revenues. The city attorney did not adequately advise the city manager and the city council in the past concerning Proposition 218 and, in fact, was not cooperative with the grand jury during this investigation.*

***Finding** 2.0 Once the city manager and the assistant city manager over the Department of Utilities (DOU) learned that there were potential and substantial Proposition 218 violations, they had a duty to pursue the issue and determine the existence and extent of any actual violations. They failed their duty.*

> **Response:** The City disagrees with this finding. As noted in the response to Recommendation 1.2, above, City staff took a number of actions to either eliminate or reduce the scope of potential ongoing Proposition 218 violations after the consultant's draft report was received.

***Grand Jury Response:** The grand jury disagrees with this response. Adequate action to stop violating the state constitution was not taken in a timely manner.*

***Recommendation** 2.1 The city council should admonish the city manager and the responsible assistant city manager for this failure.*

> **Response:** During the City Council's January 26, 2010, public meeting, City staff presented a written report to the City Council concerning the Grand Jury report and Proposition 218 issues, as well as verbal presentations by the City Manager and the Director of Utilities. At this meeting, City Councilmembers publicly admonished staff and directed them to move forward to address these issues.

***Grand Jury Response:** The city manager and his staff were admonished in a public city council meeting but NO action was taken against the city attorney, who in the grand jury's opinion was equally if not more culpable for not bringing the issue to the city council. One of the city attorney's primary responsibilities is to advise the city council when illegal acts are being taken by the city. The grand jury found no evidence the city attorney performed this duty. It is recommended the city attorney be admonished by the city council. Additionally, the grand jury recommends the city attorney provide the city council a list and summary of all legal opinions issued on a monthly basis.*

***Finding 3.0** For years DOU has supplied water to city parks at a reduced rate of only 15% of the usual rate of providing water to other metered users. The grand jury is of the opinion that this is a violation of Proposition 218, which limits fees or charges to ratepayers for property related services. Providing water at reduced rates to the Department of Parks and Recreation (DPR) is not a property related service to ratepayers. The April 2009 agreement between DOU and DPR provides for this violation to be corrected over a 15 year period. The grand jury finds this timeline to be too lengthy.*

> **Response:** The City disagrees in part with this finding. City staff undertook this phased approach to lessen the significant general fund impact of increasing the Department of Parks and Recreation' annual water costs, and as of July 1, 2009, the annual amount paid for water by the Department of Parks and Recreation has already been significantly increased. Given these circumstances and the

City's ongoing and significant general fund deficits, the City does not find this timeline to be too lengthy.

Grand Jury Response: *The grand jury understands the risk to the public parks; nonetheless the grand jury continues to think 15 years is too long.*

***Recommendation** 3.1 The city council should modify this agreement and direct that DPR begin paying the comparable full metered rate in FY 2012.*

Response: See response to Finding 3, above.

***Finding 4.0** The city has shifted the cost of providing city services from the general fund to the enterprise funds of DOU. The city improperly uses DOU labor and equipment, without reimbursement, to provide services to other city departments, sports facilities and city buildings.*

Response: The City agrees with this finding, with the clarification that beginning July 1, 2009, the Department of Utilities ceased the use of its personnel or equipment to perform work for non-Utility facilities without receiving full cost reimbursement either in funds or through trade of in-kind services.

Grand Jury Response: *The grand jury agrees with this response.*

***Recommendation** 4.1 If the advice of outside counsel confirms these violations, the city council should direct that DOU enterprise funds be reimbursed for future services from non-ratepayer funds.*

Response: As noted in the response to Finding 4.0, above, beginning July 1, 2009, the Department of Utilities ceased the use of its personnel or equipment to perform work for non-Utility facilities without receiving full cost reimbursement either in funds or through trade of in-kind services.

Grand Jury Response: *The grand jury agrees with this response but continues to believe that outside legal counsel should be obtained.*

***Finding** 5.0 For the last several years DOU was directed to allocate $1 million to pay for capital improvements related to private economic development projects. The city dropped the allocation from the FY 2010 budget.*

Response: The City agrees with this finding, with three clarifications: (1) the funding was used for public utility infrastructure, (2) the referenced allocation of $1 million was not necessarily an annual contribution of this amount, because in any given fiscal year if allocations for specified utility infrastructure projects were not fully expended or encumbered, the unspent/unencumbered balances were returned to the applicable Utilities funds; and (3) the funding was discontinued beginning July 1, 2009 due to budgetary considerations.

Grand Jury Response: *The grand jury is satisfied with this response.*

***Recommendation** 5.1 The city council should get an outside legal opinion concerning this practice.*

> **Response:** As noted in the response to Finding 5.0, above, for budgetary purposes the Department of Utilities has discontinued its contributions to the economic development capital improvement program used to fund utility infrastructure. Therefore, an outside legal opinion is unnecessary.

Grand Jury Response: *The grand jury agrees with this response.*

***Finding** 6.0 The grand jury found a lack of accountability, absence of transparency and failure of responsibility by individuals who hold positions of public trust in Sacramento City government.*

> **Response:** The City disagrees with this finding. City staff has been working to resolve the issues identified in the Grand Jury report as noted in the response to Recommendation 1.2, above, and will continue to do so. The City Council has directed staff to provide regular updates to ensure greater transparency in the future.

Grand Jury Response: *The grand jury agrees the city council has directed the city manager to be more transparent, but has not seen any evidence the city council itself is becoming more transparent and open with the citizens of Sacramento.*

***Recommendation** 6.1 The city council should clarify, in writing, its expectations regarding compliance with all laws and convey this policy statement to city staff and to the public.*

> **Response:** The City Council expects the City and City staff to comply with all laws. This written response makes that clear to City staff and the public.

Grand Jury Response: *The grand jury agrees with this response.*

Sacramento County
GRAND JURY

Rosemary Kelley

Rudolph Castro

Michael Chakerian

Honoruth Corbett

Laverne Cord

Odette Ebersole

Lyle Hoag

Jerry Jaggers

Elizabeth Knopf

Philip Milano Jr.

James Monteton

David Pritchett

Donald Scharon

Ronald Schreiber

David Smith

Robin Whiting

Krystal Wolfe

Sharrel Wyatt

Gary Ziegenfuss

Dear Judge Cadei and Residents of Sacramento County:

By law, grand juries issue a final report at the end of their terms covering issues investigated during its tenure. This year the Sacramento County Grand Jury is issuing this report early to call public attention to its serious concern whether the Rio Linda Elverta Community Water District ("RLECWD" or "District") can provide its customers with sufficient and safe water. All citizens should have continuous access to safe, palatable water and enough water to fight fires. Unfortunately if you live in the RLECWD you do not have that access.

Over the last nine months, the grand jury has received many complaints about problems in RLECWD. These echo similar complaints made for many years to earlier grand juries, public agencies and the media. In 2007, the State of California weighed in when the California Department of Public Health issued a Compliance Order requiring the District to correct water deficiencies. The complaints and Order appear to have fallen on deaf ears since no significant improvements have been made. In December 2009, the state issued a second compliance order directing RLECWD to make specific corrections.

Based upon its investigation, the grand jury has little hope that RLECWD will be able to take the necessary corrective actions without outside help. The conduct of the board of directors has been deplorable. It has wasted taxpayer's dollars at the same time that it has brought disrepute on the District. Management has been ineffective at best. Over and over, the Board of Directors and Management have made a bad situation worse. Since they have failed repeatedly in the past, there is no reason to believe that they will be successful in the future. The only hope for the District is that major changes are enforced.

Sacramento County, the State of California and the Sacramento Local Agency Formation Commission all have some share in the responsibility to provide adequate water service to RLECWD customers. These public bodies need to come to the aid of Rio Linda/Elverta residents. At present, the residents live with risks to their health and safety. Their future could be worse.

Sincerely,

ROSEMARY KELLEY, Foreperson
2009-2010 Sacramento County Grand Jury
RK/bc

(Mailing Address) 720 Ninth Street • Room 611 • Sacramento, CA 95814
(916) 874-7559 • FAX (916) 874-8025 • www.sacgrandjury.org