

KRAUSE, KALFAYAN, BENINK, & SLAVENS

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JAMES C. KRAUSE (1950-2012)

September 2, 2016

City Council
City of Long Beach
ATTN: CITY CLERK
333 W. Ocean Boulevard Council Chamber
Long Beach, CA 90802

RE: September 6, 2016 Council Meeting
Proposed Action on Resolutions WD-1356 and WD-1357

Dear Members of City Council:

Please be advised that this firm represents Long Beach resident Diana Lejins ([REDACTED]). Earlier this week, we presented a written objection and protest to the Long Beach Water Department's proposed water and sewer rate increases for Fiscal Year 2017, effective October 1, 2016. A copy of our August 30, 2016 letter is attached hereto. We will not repeat our objections raised therein and instead, incorporate them herein by reference.

At the September 6, 2016 City Council meeting, you will consider whether to approve the proposed FY 16-17 budget adopted by the Water Department through Resolution WD-1356 on June 16, 2016. You will also consider whether to approve Resolution WD-1357 (fixing water and sewer rates) also adopted by the Water Department on June 16, 2016.

For the reasons stated in the August 30, 2016 letter, we respectfully request that the City decline to approve Resolutions WD-1356 and WD-1357. Such actions violate Proposition 218 and will invite litigation against the City.

City Council
September 2, 2016
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We request that you include this letter in the formal record of the September 6, 2016 meeting. Thank you for your attention to these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric J. Benink", is centered on a light gray rectangular background.

Eric J. Benink

Enclosure:

August 30, 2016 letter

cc: City Manager Patrick H. West (email only)
City Attorney Charles Parkin (email only)

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August 30, 2016

Long Beach Board of Water Commissioners
ATTN: BOARD SECRETARY
1800 East Wardlow Road
Long Beach, CA 90807

RE: Proposed Water and Sewer Rate Increases

Dear Board of Water Commissioners:

Please be advised that this firm represents Long Beach resident Diana Lejins ([REDACTED]). Ms. Lejins hereby objects to and protests the Long Beach Water Department's proposed water and sewer rate increases for Fiscal Year 2017, effective October 1, 2016. Please include this letter in the record at the September 1, 2016 public hearing.

Ms. Lejins protests on the grounds that the proposed rates violate Proposition 218 (California Const. art. XIII D, §, 6 subd. (b).) Specifically, the water rates are inflated in order to fund transfers from the Water Department to the City's General Fund to pay a so-called "Water Pipeline Permit Fee." The sewer rates are likewise inflated in order to fund transfers to the City's General Fund to pay a so-called "Sewer Pipeline Permit Fee." The City has budgeted \$6,146,731 in Water Pipeline Permit Fees and \$4,712,418 in "Sewer Pipeline Permit Fees" in Fiscal Year 16-17.

The Pipeline Fees were apparently implemented beginning in 2003 in conjunction with the elimination of a "franchise fee." The amounts are supposedly calculated based on the physical dimensions (diameter and linear feet) of the pipes. While the costs of operating a city-owned utility may be recovered from a city's general fund when the general fund incurs costs on the utility's behalf, there is no basis to recover these Pipeline Permit Fees. First, the dimensions of previously-installed pipes bear no relationship to ongoing costs. Second, all water and sewer pipes were funded with ratepayer funds and are accounted for in the Water Department's accounting system. Thus, the City's General Fund incurs no costs – either directly or indirectly – in connection with the water and sewer pipes.

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Based on the foregoing, we respectfully request that the Board decline to adopt the proposed water and sewer rates. Thank you for your attention to these matters.

Sincerely,

A handwritten signature in blue ink, appearing to read "Eric J. Benink", is centered on a light gray rectangular background.

Eric J. Benink