

**KRAUSE, KALFAYAN, BENINK, & SLAVENS**

A LIMITED LIABILITY PARTNERSHIP

550 WEST "C" STREET · SUITE 530 · SAN DIEGO, CALIFORNIA 92101

TELEPHONE (619) 232-0331

FACSIMILE (619) 232-4019

WWW.KKBS-LAW.COM

RALPH B. KALFAYAN  
ERIC J. BENINK  
VINCENT D. SLAVENS  
VENEETA JASWAL

SPECIAL COUNSEL  
BENJAMIN T. BENUMOF

JAMES C. KRAUSE (1950-2012)

August 28, 2018

Via Overnight Mail

Monique De La Garza, CMC  
City Clerk  
333 W. Ocean Blvd.  
City of Long Beach  
Long Beach, CA 90802

*RE: Proposed Water and Sewer Rate Increases  
September 4, 2018 City Council Agenda Item re: Recommendation  
To Declare Ordinance Approving Resolution No. WD-1392*

Dear Ms. De La Garza:

Please be advised that this firm represents Long Beach Water Department customers Diana Lejins [REDACTED] and Angela Kimball [REDACTED]. In conjunction with the Water Department's August 30, 2018 public hearing, Ms. Lejins and Ms. Kimball objected to and protested the Water Department's establishment of water and sewer rates as reflected in Resolution WD-1392 passed by the Board of Water Commissioners (Board) on June 21, 2018 (effective October 1, 2018). A copy of their protest letter is attached hereto for your convenience.

On September 4, 2018, the City Council will consider whether to declare an ordinance approving Resolution WD-1392. It is our understanding that the Board passed Resolution WD-1392 based on the passage of Measure M on June 5, 2018. According to the City, Measure M authorizes the Water Department to embed a surcharge in its water and sewer rates in order fund transfers from the Water Revenue Fund to the City's General Fund. The City initiated Measure M after it resolved a lawsuit brought by Ms. Lejins to challenge the City's practice of transferring so-called "pipeline permit fees." The goal of Measure M was to replace the loss of revenue that resulted from the settlement the City entered into with Ms. Lejins.

Ms. Lejins and Ms. Kimball believe that the proposed water and sewer rates are illegal to the extent they embed amounts to transfer from the Water Revenue Fund to the City's General Fund based on any purported authority provided by Measure M. It is our understanding that such embedded surcharges comprise approximately 12% of the rates.

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The basis for their contention is threefold. First, the City apparently agrees that the water and sewer fees and charges are property-related and accordingly, are subject to Proposition 218. (See California Constitution, article XIII D, § 2, subdivisions (e)(g) and (h).) Yet, California Constitution, article XIII D, section 3, plainly prohibits the imposition of any tax, assessment, fee or charge, upon any parcel or property or upon any person as an incident of property ownership, subject to four exceptions, none of which are applicable here. Second, article XIII D, section 6, subdivisions (b)(1)(2) and (5) prohibit the imposition of a property-related fee if such fee exceeds the funds required to provide the property-related service, is used for purposes other than that for which the fee or charge is imposed, or is used for general governmental services. Embedding surcharges to fund transfers to the General Fund violates all three subdivisions. Finally, to the extent that the City contends that the fees and charges constitute a voter-approved **tax** (a term not used in Measure M or in the amended Charter provision), the City lacks legal authority to impose taxes on persons and properties outside its territorial limits. Ms. Kimball resides in an unincorporated area of Los Angeles County. She was unable to vote on Measure M, yet she is subject to the "tax" to the extent the City contends it is such.

Based on the foregoing, we respectfully request that City Council decline to declare an ordinance approving Resolution No. WD-1392. **Please include this letter in the record of the September 4, 2018 public hearing with respect to the above-referenced agenda item.** Thank you for your attention to these matters.

Sincerely,



Eric J. Benink