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CITY CLERK

Dr. Marie Levine  
764 Coniston Rd  
Pasadena CA, 91103

February 8, 2016

Re: Non-Potable Water Project Violates California Law

Dear Mayor and Pasadena City Council Members

This letter addresses the announced Council Agenda item on February 22, 2016 re certifying the Non Potable Water Project EIR and approving the Project, per Ms. Voutchkova's email of January 21, 2016.

The final EIR for the Non-Potable Water Project ("the Project") states on p.31 that "***PWP's water rates are being evaluated for restructuring to provide sources of financial support for the proposed Project***". Later on p.32 the EIR goes on to say that "***The City Council is expected to meet ... to approve the proposed Project.... This would allow PWP to move forward in constructing Phase I project only***". I interpret that to mean that once City Council approves it, PWP will immediately divert funds or increase Residential Water Rates in order to proceed with the Project.

According to the information posted by the State of California Legislative Office<sup>1</sup>, I am convinced that the funding mechanism for the Project as insinuated in the EIR violates California Law (Article XIII D, Sec. 6 – Prop 218) under the following requirements stipulated for levying Property-Related Fees:

1. ***(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***

The Project clearly violates this condition since no non-potable water will be distributed to residential customers. The EIR (p.31) clarifies that "*the proposed project would help alleviate long-term water supply challenges by offsetting the use of potable water for non-potable purposes*". But then goes on to explain that this is a "*General Benefit*" and hence not one that is actually used or immediately available to the customers.

Furthermore, I would add that if Pasadena is truly interested in alleviating the challenges on its long-term water supply, it should start by putting an immediate end to the rampant development of luxury condominiums that is spreading around town like cancer, a step that would not cost PWP customers a dime.

The Project is illegal on the premise of this condition alone, but it also violates other requirements under Article XIII D, Sec. 6 as follows

2. ***(2.b.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.***

<sup>1</sup> [http://www.lao.ca.gov/1996/120196\\_prop\\_218/understanding\\_prop218\\_1296.html](http://www.lao.ca.gov/1996/120196_prop_218/understanding_prop218_1296.html)

At the January 11, 2016 hearing, Ms Shari Thomas explicitly stated in her presentation that the CIC rate increase was **NOT** intended to support any Non-Potable Water Construction. She re-affirmed several times that no funding would go the Project. Later, upon questioning from Councilman Hampton, Mr. Klinkner admitted that once voted, some money from the CIC increase could be transferred to pay for starting Phase I of The Project. In fact, what Mr. Klinkner's stated is strictly forbidden under the text of the law since the CIC increase was specifically not levied to pay for the Project Construction, per the hearing.

Furthermore, at the January 11, 2016 meeting the City Council and City Managers argued repeatedly that the CIC increase was needed to fund much needed infrastructure repair, without which we would see pipes bursts and other apocalyptic events. So assuming the City Managers proceed with diverting funds from the CIC increase to start Phase I construction of the Project, in violation of Prop 218, which of the CIC projects directly benefiting residential customers will lose their funding so that industrial customers can have access to non-potable water? How was that priority determined? Or are the City Managers insinuating that they collected more money than necessary from the CIC rate increase, again as a clear violation of Prop. 218?

3. ***(1) The amount of the fee ... to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of ... the amount of the fee ..., the basis upon which the amount of the proposed fee ... was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.***

While the EIR claims it needs to restructure PWP rates to fund the Project, it does not provide an amount for how much money will be diverted from existing programs or for any PWP rate increase. Nor was the information mailed out to the customers or presented at a public hearing. This clearly violates the law.

At that same hearing on January 11, 2016, Ms Thomas announced that PWP will indeed be restructuring its rates within the next several months, which I can only surmise will be for the main purpose of funding the Project as explained with the same language in the EIR. The schedule that Ms Thomas showed was rather aggressive and did not make mention of any rate increase to fund the Project as part of the restructuring.

So when will the PWP rate payers get an honest answer as to how much The Project will cost them or what other program will be lost as a consequence?

4. ***(2) The agency shall conduct a public hearing upon the proposed fee ... not less than 45 days after mailing the notice ... to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.***

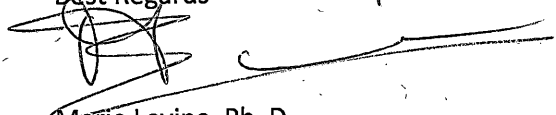
Here too, PWP rate payers were not allowed 45 days to respond to a possible rate increase to fund the Non-Potable Water Project. Furthermore, the City Council cannot vote on the project before the rate payers have voted on it themselves first. In some municipalities (e.g. Fresno) rate payers were sent actual paper ballots which were then counted at the city council meeting. I see no evidence of that happening here.

Should the City Council vote on the Non-Potable Water Project on February 22, 2016, it will be violating any one of the State laws presented herein. In order to avoid yet another expensive lawsuit against the City, I urge the Council to defer voting on the Project until a viable and legal funding mechanism is clearly identified.

Thank you very much for considering my comments, and I look forward to hearing your responses during the City Council hearing.

I am submitting this letter for the Administrative Record; and, have sent a copy to the responsible person at Pasadena Water and Power person, Roumiana Voutchkova at [rvoutchkova@cityofpasadena.net](mailto:rvoutchkova@cityofpasadena.net).

Best Regards



Marie Levine, Ph. D.  
Pasadena resident

RECEIVED  
PASADENA CITY CLERK  
FEB 10 2016

Dr. Marie Levine  
764 Coniston Rd  
Pasadena CA, 91103

February 9, 2016

Re: Sheldon Reservoir is a single-point failure to the Non-Potable Water Project

Dear Mayor and Pasadena City Council Members

This letter addresses the announced Council Agenda item on February 22, 2016 re certifying the Non Potable Water Project EIR and approving the Project, per Ms. Voutchkova's email of January 21, 2016.

According to the EIR, the viability of Phase 1 of the Non Potable Water Project is predicated on the fact that Sheldon Reservoir is the best and only location where this Non-Potable water can be stored. The EIR goes out of its way to prove that to the point of making ridiculous, if not inflammatory statements.

Such is the case in Table 3-3, under impacts for Cultural Resources, it is stated that disturbing human remains due to excavation activities at Sheldon Indian Burial Grounds is a preferable outcome than to laying increased pipe lengths in the **Historical Districts** of Salvia Canyon and Rosemont Ave. This is where City officials remind us that the history of Pasadena starts when rich white folks came to town 100 years ago to build Mc Mansions.

The argument is that the mitigation is less than significant at Sheldon Reservoir because possible Indian features were identified through a sub-surface survey and an archeologist will be on site to monitor the excavation. In Comment 8-2, in response to concerns raised on the accuracy of that survey, the EIR states:

- *"According to BA Silva Sensing Systems, the consultant who conducted the geophysical survey work ... soils in the area surveyed do not prohibit signal penetration, so the remote sensing survey's reading are **presumed reliable**. Although the Target of Interest (TOI) identified may or may not turn out to be a cultural resource related to the cemetery, it has been **conservatively assumed** to be a cultural resource, so the project has been designed to avoid disturbing the area of the TOI."*

In fact this is **NOT** what the consultant said. According to the consultant's own report published in Appendix F of the Draft EIR here is what BA Silva Sensing actually states:

- *"Magnetic data was hindered by the amount of metal present on and below the surface in the form of metal debris, bolts, underground pipes, and above-ground electrical utilities."*
- *"Unfortunately, data collected for this project was hampered by the amount of magnetic fields presents. These fields were produced by surface and subsurface metal and overhead live wires leading to the training poles and the out-buildings".*

- *"Note that these findings do not ensure the absence of (other) cultural features within the survey boundary. Normal soil properties and disturbances (human and natural) could create conditions such that identifying this particular type of target is impossible."*
- *"Normally only TOI are included in the results section. However, in this report two anomalies were included. The reasons for their inclusion are due to no ground truthing (mechanical test excavation) of TOI #1 and because of the lack of a magnetic survey that is normally used to help delineate TOI from anomalies."*

The consultant repeatedly cautions that the readings are not reliable, that no calibration was performed to verify the findings and that it is likely that other artifacts exist underground. This completely contradicts the EIR conclusions and seriously puts into question the credibility of the entire report.

Furthermore the EIR makes the following vague and un-substantiated assertions in response to comment 49-4 about any delay to the project due to finding additional Indian artifacts at Sheldon:

*"The extent of delay would vary from no delay at all to several weeks/months depending on what treatment measures are implemented for the resource and the size and extent of resource. Delays to the project related to encounters with cultural resources would be minimized by diverting work around the resource. Efforts will be made to handle any cultural resources encountered in a manner that is also efficient and minimizes delays to the project while remaining protective of the resource. Clarification has been added to Mitigation Measures 3.5-1b and 3.5-1c to reinforce that delays will be minimized to the extent practicable while adequately and appropriately handling any potential resources (see Section 3 Clarifications, Revisions, and Corrections). Specific length of delay would be dependent on the nature of the cultural resource and individual situation in which it is encountered, and is impossible to estimate in advance. ... With implementation of Mitigation Measures 3.5-1a through 3.5-1c, potential impacts to cultural resources would be less than significant. PWP would not abandon the Sheldon Reservoir site for the non-potable reservoir as a result of encountering cultural resources."*

I believe that this is a huge risk to the entire project, as there is no guarantee whatsoever that the delay could be contained for even "several months" after historical artifacts are found. Nor is it guaranteed that the Sheldon Reservoir site would not have to be abandoned as a result of encountering cultural resources. It is also likely that more than one such cultural finding will be discovered during excavation, further compounding the delays. Where these potential new cultural findings are found on the excavation site is just as critical, as the required perimeter around the artifacts may preclude the design of any reservoir at all in the space available at the Sheldon site. The impacts of this high risk situation will increase the cost of the projects from schedule delays, mitigation efforts, not to mention legal actions, as well as leave the residential neighborhood with a gaping hole in the ground for months-on-end, if not permanently. Furthermore, in the event Sheldon Reservoir has to be abandoned, the City will be left with no other viable options for the Project according to the EIR.

The proposal to use Sheldon Reservoir as the one and only viable reservoir puts the entire project at significant risk because of the uncertain presence of Indian artifacts, the lack of reliability of the underground survey and the unknown delays to the project, if not its complete abandonment.

**The Sheldon Reservoir is a single point failure for the whole Project, and I urge the City Council to vote against the EIR.**

I am submitting this letter for the Administrative Record; and, have sent a copy to the responsible person at Pasadena Water and Power person, Roumiana Voutchkova at [rvoutchkova@cityofpasadena.net](mailto:rvoutchkova@cityofpasadena.net).

Best regards,

A handwritten signature in black ink, appearing to read 'Marie Levine', with a long horizontal flourish extending to the right.

Marie Levine, Ph. D.

Pasadena Resident



February 2, 2016

Mayor Terry Tornek and City Council  
City of Pasadena  
100 North Garfield Avenue  
Pasadena, CA 91109

re: Recycled Water Project on February 22 agenda

Dear Mayor Tornek and City Council Members,

The Pasadena Chamber of Commerce is very supportive of the Recycled Water Project that will bring non-potable water to Pasadena for landscaping and other uses. This is a valuable resource that the City invested in decades ago and will now be able to access.

In looking at the proposed project, we would hope any environmental and visual impacts to Pasadena would be temporary and limited to construction. We would encourage that any structures, buildings, pump stations or similar improvements required for the project be attractively designed, or shielded from public view. We would especially like the ridgeline views at the top of Linda Vista to be protected from visual intrusion by structures or buildings.

This is an important project for Pasadena's future and the Chamber is very supportive of it moving forward.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Little", enclosed within a large, hand-drawn oval.

Paul Little  
President and Chief Executive Officer

cc: M. Beck, E. Klinkner, S. Thomas, M. Jomsky

**Flores, Valerie**

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**Subject:** FW: Public safety--Pasadena Non-Potable Water Project

**From:** Jkinkle1@aol.com [mailto:Jkinkle1@aol.com]  
**Sent:** Thursday, February 18, 2016 12:18 PM  
**To:** Tornek, Terry  
**Cc:** nrchomsky@aol.com; Stone, Rhonda; Stewart, Jana; Flores, Debra  
**Subject:** Public safety--Pasadena Non-Potable Water Project

Dear Mayor Tornek:

I attended the February 16th meeting regarding construction on Laurel Street during the **Pasadena Non-Potable Water Project**. This was the first notification I have received that the pipeline will be installed on Laurel Street and I am putting my safety concerns for the residents on record.

There has been inadequate notification of residents and inadequate study regarding the trenching of the street for the pipeline and how the trenching might affect the stability of the Street Trees (a Protected Tree under Municipal Code Chapter 8.52) on the Laurel Street parkway. **The Street Trees are 100 foot-tall Canary Island Pines, which pose a danger to residents during windstorms.** Two Street Trees fell on December 1, 2011 (see attached photos). A tree smashed 3 cars and crashed through the roof of 1200 Laurel Street, injuring a guest in the home.

**Roots are an important cause of trees becoming hazardous.** Tree scientist Pascal Pirone reported that in his 30 years of examining tree problems more than half were traced to root disease or injuries. **Trenching or construction within the root zone is a major cause of hazard trees.** The problem is two-pronged. First, severed roots lose their ability to support the trunk and crown, especially if located on the windward side of the tree. Second, severed roots are open wounds that invite decay organisms.

The City of Los Altos faced a similar dilemma in 2015 when their consulting arborist determined that trenching work would create a high risk of failure to a Canary Island Pine, especially in adverse weather conditions. The trench would be dug within 11-12 feet of the base of the tree and would result in a significant impact to the tree's critical root zone. The tree was removed due to the **significant liability the City would assume should the tree fail in the future.**

[http://www.losaltosca.gov/sites/default/files/fileattachments/city\\_council/meeting/4781/9.86\\_third\\_street\\_tree\\_removal.pdf](http://www.losaltosca.gov/sites/default/files/fileattachments/city_council/meeting/4781/9.86_third_street_tree_removal.pdf)

**It seems likely that the Street Tree roots could be damaged by the Water Project, impacting the health and stability of these trees, which may already be weakened by the ongoing drought conditions. Trees weakened by compromised root systems are more likely to experience windfall, thus posing a danger to life and property. When damage, injury or death occurs because of a defective tree, the law usually holds the tree's owner responsible. Under the law, it is the City of Pasadena's duty to exercise care, good judgment, caution, and foresight by recognizing situations that may cause them to break or fall.**

Public safety has not been adequately addressed, since there is no arborist report in the EIR or in the public documents regarding the project. Nina Chomsky, Linda Vista Annandale Association (LVAA) President, raised the Street Tree issue (see EIR Letter 78 No. 2, p. 292), but this issue was ignored by the response (see EIR Master Response 1).



During the February 16<sup>th</sup> meeting, you stated that the Laurel Street Trees had been studied by an arborist "walking the street." I would like to request a copy of the arborist report. I would ask that an arborist report be provided and consideration be given to rerouting the pipeline to an alternate street. Thank you for your prompt attention.

Sincerely,

Jill Brock

1171 Laurel Street



