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October 1, 2013

Ms. Kelly Williams
Lake Havasu City Clerk
2330 McCulloch Blvd., N.
Lake Havasu City, AZ 86403

RE: Proposed Initiative Re: Sewer Bond Payment

Dear Ms. Williams:

Dr. Ullery has retained my office because of your rejection of two proposed initiatives. You were kind enough to provide the opinions of bond counsel and attorneys apparently retained by the City. I of course am copying this letter to the Lake Havasu City Attorney and those two attorneys.

I noted the attorneys' quarrel with the proposal indicating that somehow this got into rate setting. Although I would disagree that either of the proposed initiatives on their face had anything to do with rate setting or public hearings for rate settings, for other reasons I am enclosing the text of a new proposed initiative.

The initiative, if adopted, could, at the election of the City Council, affect sewer rates, but the initiative does not purport to somehow set sewer rates or somehow avoid public hearings on sewer rates. The enclosed initiative simply follows the language of the original initiative which adopted and authorized the issuance of bonds. In effect, the proposed initiative follows the language of the November, 2001 initiative measure which authorized the \$463,000,000 bond issue in the first place. A review of that bond issue indicated that the City Council could make an election to use ad-valorem taxes in addition to water and wastewater system revenues. Therefore the enclosed initiative simply mandates that the Council adopt that methodology as opposed to the alternate methodology of payment solely from the revenue of the City's water and wastewater system.

The enclosed language addresses the issues raised by Attorney Pennartz and Ballard-Spahr, LLP. The proposed initiative does not in any way impair the security of the existing bond holders, which is correctly pointed out by counsel, as it becomes a contract with the bond holders once the bonds are issued.

The bond holders in effect have a lien against the revenues of the wastewater system, and the *enclosed* proposed initiative simply adds more security, if anything, and therefore clearly does not breach the terms of the bond issuance.

The Lake Havasu City Council made a legislative decision based upon the options of the original bond issue to elect that the bonds be payable solely from the revenues of the City's water and wastewater system, and the enclosed proposal would make a decision of the voters to elect the second method and add ad-valorem taxes.

Although I was not present at the Council work session of Tuesday, October 23, 2012, many of the persons interested in this issue attended that meeting and I have reviewed the minutes. I see that the staff reported that there were alternatives that were legally available, and I assume that staff had researched the matter, and therefore the alternatives in the enclosed proposed initiative simply repeat options that the Council was advised were perfectly legal options on October 23, 2012. The Council ultimately seems to have done nothing or least adopted what was called a "do nothing" approach. The option was given to Council to include ad-valorem taxes, and in fact property taxes were specifically discussed as a legal alternative for the Council. In fact, some exact language from the minutes follows: "Mr. Cassens said that Scenario B would have to go before Council, but would not necessarily have to go before the voters." In other words, the City has taken the position that an ad-valorem tax was available to the Council, and therefore clearly something that is available to the Council as a decision is available to the voters by initiative.

In fact, the City Finance Director seems to have pointed out that there was \$120,000,000 worth of Senior Lien debt that would have to be recouped through sewer rates, but the remainder of Junior Lien debt was backed by ad-valorem taxes.

Therefore the proposed initiative simply mirrors what the City has already said is an alternative, but would put that alternative to a decision by the voters as the Council has in effect made a non-decision and has not acted to change the repayment system.

At the work session the City Manager reported a Scenario C which would fund debt payment with a dedicated sales tax. Again, I assume that staff researched same and that same was a legal option, as the Council was advised by staff that same was a legal option. The proposed initiative uses the exact language from the original initiative authorizing the bond issue, therefore presumably the language proposed would include sales taxes under the definition of ad-valorem taxes, therefore the initiative would have the net effect of allowing the Council to elect a multiple source plan which would involve sewer rates, sales tax, and property taxes.

In fact, the minutes quoted Mr. Cassens saying that he, "noted that this initiative would also require a voter initiative and a two-thirds voter passage to take effect." I assume that this reference was to the so-called "singer initiative" requiring a tax increase to receive a two-thirds voter passage. However, I think as correct as that interpretation may be, as this proposed initiative in effect forces the Council to take the election already authorized in the original November 6, 2001 initiative, such taxes were already authorized by more than two-thirds of the voters as I believe that the November 6, 2001 initiative passed by 78%.

Yours very truly,

HARVEY R. JACKSON

HRJ/htp

cc: Lake Havasu City Attorney
David A. Pennartz/Gust Rosenfeld
Ballard-Spahr LLP
Dr. Ullery

Proposed Initiative

The Lake Havasu City Council shall, in addition to paying existing sewer bonds solely with revenue of the City's water and wastewater systems, shall levy ad-valorem taxes on all taxable property within the City, and adjust the sewer rates accordingly, taking into account the additional revenue raised by said ad-valorem taxes.