



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

7-6

March 23, 1993

(Land Committee--Action)

Board of Directors (Legal and Claims Committee--Action)

Assistant General Counsel

Amendment of Administrative Code to Provide Procedure for
Establishing Amount of Final Offer in Eminent Domain Cases

Report

At their March 8, 1993 meetings, the Land and Legal and Claims Committees considered the problem presented to Metropolitan by the time constraints in the California Eminent Domain Law. The law requires a condemning agency to make a final offer of compensation thirty days prior to trial. This offer must be reasonable or the agency faces the sanction of paying the attorneys' and appraisers' fees incurred by the property owner. For this reason it is important that the amount of the final offer be carefully considered.

However, the Eminent Domain Law also provides that the parties exchange valuation opinions and data forty days prior to trial. This time schedule leaves only ten days in which to consider the property owner's valuation and the legal issues bearing on valuation, and make a determination of the amount of the final offer. There will be cases in which there is insufficient time to obtain Board approval to make a final offer in excess of the authority granted to the General Counsel in the Administrative Code, the lesser of ten percent or \$250,000, over appraised value (§ 8221(c)).

Two proposals were made to resolve this problem. The first was to create a committee of the Board which would have the authority to determine the amount of the final offer and would meet on short notice. The second was to authorize the General Counsel to determine the amount of the final offer, with the concurrence of the General Manager.

The Land and Legal and Claims Committees considered these proposals and recommended a combination of the two that would create a committee, consisting of seven members, which would meet at the request of the General Counsel for the purpose of determining the amount of a final offer. The meetings would be convened when a final offer is required to be made prior to the next regularly scheduled Board meeting. If a

quorum of the committee could not be convened within the time limits, the General Counsel, with the concurrence of the General Manager, would have the authority to determine the amount of the final offer.

The Board approved that recommendation at its March 9 meeting and directed the staff to draft implementing amendments to the Administrative Code. The proposed amendments are attached as Attachment A to this letter. An underlined version showing the new language added to the Code is attached as Attachment B to this letter.

Committee Assignments

This letter is referred for action to:

The Land Committee because of its authority to advise, study and make recommendations with regard to policies for the acquisition of rights-of-way under Administrative Code Section 2451(a).

The Legal and Claims Committee because of its authority to advise, study and make recommendations with regard to condemnation matters, when they involve settlements requiring Board approval, under Administrative Code Section 2461(b).

Recommendation

LAND AND LEGAL AND CLAIMS COMMITTEES FOR ACTION.

It is recommended that the Board amend the Administrative Code by adding Article 10 Sections 2595 and 2596, to Chapter 5 of Division II, and further by amending Section 8221, paragraph (e) of Article 2, Chapter 2 of Division VIII as set forth in Attachments A and B to this letter.


Karen Tachiki
Assistant General Counsel

ATTACHMENT A

1. Add to Division II, Chapter 5

Article 10

SPECIAL COMMITTEE ON EMINENT DOMAIN LITIGATION

Sec.

2595 Membership

2596 Duties and Functions

§ 2595. Membership.

The Special Committee on Eminent Domain Litigation shall consist of seven members. The Chair shall be the chair of the Land Committee, and the Vice Chair shall be the Chair of the Legal and Claims Committee. The Chairman of the Board shall select the remaining members of the Special Committee, three of whom shall be members of the Land Committee and two shall be members of the Legal and Claims Committee.

§ 2596. Duties and Functions.

(a) The Special Committee shall meet at the request of the General Counsel to consider and determine the amount of the final offer to be made in eminent domain litigation pursuant to section 1250.410 of the Code of Civil Procedure. The General Counsel shall request a meeting of the Special Committee when the final offer must be made prior to the next regularly scheduled meeting of the Board of Directors and a final offer in excess of the General Counsel's authority is requested.

(b) In the event that a quorum of the Special Committee cannot meet prior to the time the final offer must be made, the General Counsel, with the concurrence of the General Manager, is authorized to consider and determine the amount of the final offer, which shall be reported to the Board at its next regularly scheduled meeting.

2. Amend Division VIII, Chapter 2, Article 2, section 8221, paragraph (e) to read as follows:

"In any action in eminent domain filed by the District, or any inverse condemnation action filed against the District alleging a taking of real property, the General Counsel is authorized to acquire the property by stipulated judgment providing for payment of not more

than the acquisition price which the General Manager is authorized to pay by Section 8221(c), unless otherwise authorized by the Board or Special Committee on Eminent Domain Litigation, or under the provisions of Section 2596(b), together with interest thereon as provided in Section 8221(c).

KARSCH\JVBOARD\ATTACH.3

than the acquisition price which the General Manager is authorized to pay by Section 8221(c), unless otherwise authorized by the Board or Special Committee on Eminent Domain Litigation, or under the provisions of Section 2596(b), together with interest thereon as provided in Section 8221(c).

KARSCH\JVBOARD\ATTACH.3