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MWD
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

EXECUTIVE SECRETARY

January 23, 1996

To: Board of Directors (Land Committee--Information)
(Legal and Claims Committee--Information)

From: General Manager

Submitted by: Gary M. Snyder
Chief Engineer

Subject: Amendment to Relocation Assistance Rules and Regulations.

RECOMMENDATION

This is an information item only.

EXECUTIVE SUMMARY

California law requires that persons displaced by public projects be provided with certain assistance and benefits in relocating to a replacement property. The law further requires the public entity to establish a grievance procedure for a displacee to obtain review of his or her claim for relocation assistance benefits. As a result of internal structure changes and Metropolitan's experience with the Eastside Reservoir Project, changes to the grievance procedures have become necessary. In accordance with the General Manager's authority pursuant to Administrative Code section 8226, the administrative appeal procedures have been amended to provide flexibility to utilize relocation consultants and attorneys to review and consider claims.

DETAILED REPORT

California law requires that each government agency adopt regulations for the provision of relocation assistance to persons displaced by the agency's projects. Pursuant to Administrative Code section 8226, the General Manager issued Metropolitan's rules and regulations in January 1992 at the commencement of the Eastside Reservoir Project. The current regulations include an administrative appeals procedure as required by law. A copy of the current regulations is attached as Attachment A. The procedure commences with an informal review by the Director of the Right of Way and Land Division. If this review does not resolve the displacees' complaint, a formal review is held by a three-person Relocation Assistance

Appeals Committee chaired by the Assistant General Manager who oversees Right of Way and Land matters. Members of the Legal Department are prohibited from sitting on the Appeals Committee.

As a result of changes within Metropolitan, the regulations are no longer applicable. The Real Estate Services Branch, which was formerly the Right of Way and Land Division, is now part of the Engineering Division and there are no Assistant General Managers. Furthermore, as a result of experience with the one relocation assistance appeal in connection with the Eastside Reservoir Project, it became apparent that it would be advisable to have the hearing chaired by a person experienced in administrative hearings and rules of evidence.

Therefore, the rules and regulations governing grievance procedures have been amended. The changes will allow an informal review by the Assistant Chief Engineer responsible for the Real Estate Services Branch. In the event that the informal review does not resolve the complaint, a further and final appeal may be held before a hearing officer or a three-person hearing board designated by the Chief Engineer. The hearing officer or members of the hearing board need not be employees of Metropolitan, and special consideration shall be given to appointing persons with experience in relocation assistance. The prohibition against appointment of members of the Legal Department is dropped and replaced with a requirement that any hearing board be chaired by a person experienced in administrative hearings.

The regulations are also amended to require that an award of relocation benefits in excess of $250,000 must be approved by the Board of Directors. This change brings the regulations in conformance with the General Manager's authority under Administrative Code section 8115(c).

A copy of the revised Relocation Assistance Rules and Regulations is attached as Attachment B.

Attachment
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ATTACHMENT A
(EXISTING GRIEVANCE PROCEDURES)

XVI. GRIEVANCE PROCEDURES

1. RIGHT OF REVIEW

Any person who believes himself or herself aggrieved by a determination as to the existence of MWD's relocation obligation, eligibility for or the amount of payment, the failure of MWD to provide comparable permanent or adequate temporary replacement housing or MWD's property management practices may, at his or her election, have this claim reviewed and reconsidered by MWD or an authorized designee (other than the person who made the determination in question) in accordance with the procedures set forth in this Section.

2. NOTIFICATION OF DECISION

If MWD denies or refuses to consider a claim, MWD's notification to the claimant of its determination shall inform the claimant of its reasons and the applicable procedures for obtaining review of the decision.

3. RELOCATION ASSISTANCE APPEALS COMMITTEE

All written requests for formal review shall be considered by a three-person Relocation Assistance Appeals Committee of MWD employees, as MWD's authorized designee, which shall decide whether a modification of the original determination is necessary.

A. The three-person Relocation Assistance Appeals Committee shall be chaired by MWD's Assistant General Manager who oversees Right of Way and Land matters and he or she shall have authority to appoint the additional members who shall come from among all staff except the General Counsel and members of his or her staff.

B. MWD's Right of Way and Land Division's staff member responsible for relocation assistance matters shall be responsible for investigating, coordinating and presenting all appeal matters to the Committee.

C. Determination of the Relocation Assistance Committee shall provide an appellant's final administrative remedy.

4. STAGES OF REVIEW

A. **Request for Further Written Information.** A complainant may request MWD to provide him or her with a full written explanation of its determination and the basis therefor, if he or she feels that the explanation accompanying the payment of the claim or notice of MWD's determination was incorrect or inadequate.

MWD shall provide such an explanation to the complainant within 30 days of its receipt of his request.

B. **Informal Oral Presentation.** Within eighteen (18) months following the date the complainant moved from the property or the date he or she received final compensation, whichever is later, the complainant may request an informal oral presentation to MWD's Director, Right of Way and Land Division, before seeking formal review and reconsideration. The right to formal review and reconsideration shall not be conditioned upon requesting an informal oral presentation.

Within fifteen (15) days after the request, MWD shall afford the complainant the opportunity to make such presentation.

The complainant may be represented by an attorney or other person of his choosing. MWD shall make a summary of the matters discussed in the oral presentation to be included as part of its file. If an attorney represents complainant at such presentation, MWD may be represented by an attorney at such presentation.

C. **Request for Review.** A complainant may file a written request for formal review and reconsideration at any time within eighteen (18) months following the date the complainant moved from the property or the date he or she received final compensation, whichever is later. The complainant may include in the request for review any statement of fact within the complainant's knowledge or belief or other material which may have a bearing on the appeal.

D. **Notice of Procedures.** When a complainant seeks review, MWD shall inform the complainant that he or she has the right to be represented by an attorney, to present his or her case by oral or documentary evidence, to submit rebuttal evidence, to conduct such cross-examination as may be required for a full and true disclosure of facts, and to seek judicial review once he or she has exhausted administrative appeals.

E. **Review by Relocation Assistance Appeals Committee.** The Relocation Appeals Committee shall promptly hear all complaints brought by aggrieved persons and shall determine if MWD has complied with the Act and Guidelines, these Rules and Regulations, and where applicable, with federal law and regulations.

(1) **Scope of Review.** The Relocation Assistance Appeals Committee shall review and consider the initial determination of MWD in the complainant's case in light of:

a. All material upon which MWD based its original determination, except that no evidence shall be relied upon where a complainant has been improperly denied an opportunity to controvert the evidence or cross-examine the witness;

b. The reasons given by the complainant for requesting review and reconsideration of the claim;

c. Any additional written or relevant documentary material submitted by the complainant;

d. Any further information which the Relocation Assistance Appeals Committee, in its discretion, obtains by request, investigation or research to ensure fair and full review of the claim.

(2) **Findings and Recommendations by MWD.** The findings and recommendations on review by the Relocation Assistance Appeals Committee shall include:

a. The determination of the Relocation Assistance Appeals Committee as to whether MWD has complied with state law and, where applicable, with federal law, pertaining to the relocation;

b. The recommendations of the Relocation Assistance Appeals Committee, including any recommendations for modification of MWD's initial determination;

c. The factual and legal basis upon which the findings and recommendations rest, including any pertinent explanation or rationale;

d. The findings and recommendations of the Relocation Assistance Appeals Committee shall be in writing and copies thereof shall be provided to the complainant.

(3) **Time limit for Determination.** The Relocation Assistance Appeals Committee shall issue findings and recommendations as soon as possible, but no later than six (6) weeks from receipt of the last material submitted for consideration by the complainant or the date of the hearing, whichever is later. In the case of complaints recommended for dismissal for untimeliness or for any other

reason not based on the merits of the claim, the time limit for issuing the findings and recommendations shall be reduced to twenty (20) days.

5. STAY OF DISPLACEMENT PENDING FINAL DETERMINATION

If a complainant seeks to prevent displacement, MWD shall not require the complainant to move until at least twenty (20) days after MWD has made its final determination. In all cases, MWD shall notify the complainant in writing at least twenty (20) days prior to the proposed new date of displacement.

Any complaint seeking to prevent displacement must be brought within thirty (30) days of service by MWD of the notice to vacate provided for by these Rules and Regulations. Such notice to vacate must include notice that any complaint seeking to prevent displacement must be filed within thirty (30) days.

6. JOINT COMPLAINANTS

Where more than one person believe themselves aggrieved by the alleged failure of MWD to refer them to comparable permanent or adequate temporary replacement housing, the persons may join in filing a single written request for review. A determination shall be made as herein provided for each of the complainants.

7. RIGHT TO COUNSEL

Any complainant party has the right to representation by legal or other counsel at his or her expense at any and all stages of the proceedings.

8. REVIEW OF FILES BY COMPLAINANT

Except to the extent that confidentiality of material is protected by law or its disclosure is prohibited by law, MWD shall permit the complainant to inspect all files and records bearing upon his or her complaint or the prosecution of the complainant's grievance. MWD may impose reasonable conditions on such right to inspect. If a claimant is improperly denied access to any relevant material bearing on the claim, such material may not be relied upon in reviewing the initial determination.

9. RECOMMENDATIONS BY THIRD PARTY

Upon agreement between the complainant and MWD, a mutually acceptable third party or parties may review the case and make advisory recommendations thereon to MWD for its final determination. In reviewing the claim and making

recommendations to MWD, the third party or parties shall be guided by these Rules and Regulations.

10. EFFECT OF DETERMINATION ON OTHER PERSONS

The principles established in all determinations by MWD shall be considered as precedent for all eligible persons in similar situations regardless of whether or not a person has filed a written request for review. All written determinations shall be kept on file and available for public review.

11. JUDICIAL REVIEW

Nothing in these Rules and Regulations shall in any way preclude or limit a complainant from seeking judicial review of his or her complaint upon exhaustion of such administrative remedies as are available under these Rules and Regulations.

ATTACHMENT B
(REVISED GRIEVANCE PROCEDURES)

XVI. GRIEVANCE PROCEDURES

1. RIGHT OF REVIEW

Any person who believes himself or herself aggrieved by a determination as to the existence of MWD's relocation obligation, eligibility for the amount of payment, or the provision of referrals of comparable permanent or temporary replacement housing, may have their claim reviewed in accordance with the procedures set forth in this Chapter.

2. STAGES OF REVIEW

(a) Request for Further Written Information. A displacee may request that MWD provide a full written explanation of its determination of eligibility, calculation of benefits, or referral of comparable replacement property. Such written explanation shall be provided by MWD within thirty (30) days of receipt of the request.

(b) Informal Oral Presentation. If the displacee is dissatisfied with the written explanation, he or she may request an opportunity to make an informal oral presentation to MWD's Assistant Chief Engineer with responsibility for the Real Estate Services Branch. The Assistant Chief Engineer shall schedule a meeting with the displacee within thirty (30) days of receipt of the request.

The Assistant Chief Engineer shall consider the information and evidence presented by the displacee and provide a written decision to the displacee within thirty (30) days following the meeting.

(c) Formal Review. If the displacee is dissatisfied with the decision of the Assistant Chief Engineer, he or she may request formal review of any portion of MWD's determination of eligibility, calculation of benefits, or referral of comparable replacement property. Such request must be made in writing to the Chief Engineer. Within fifteen (15) days of receipt of the request for formal review, the Chief Engineer shall designate a hearing officer or hearing board for the formal review. A hearing board, consisting of three (3) members shall be designated only for complex appeals as determined by the Chief Engineer.

The hearing officer or hearing board members may be employees or non-employees of MWD. The Chief Engineer shall emphasize experience and knowledge of relocation assistance in making the designation. In the event a hearing board is designated, the board shall be chaired by a person experienced in administrative hearings or arbitrations.

Neither the Real Estate Services Branch Manager, Assistant Chief Engineer with responsibility for the Real Estate Services Branch, nor any MWD employee who had responsibility for the subject relocation shall be designated as the hearing officer or member of the hearing board.

The hearing officer or chair of the hearing board shall give written notice to the displacee, the Chief Engineer, and the Real Estate Services Branch Manager of the date, time and location of the hearing. The hearing shall commence within thirty (30) days after receipt of the request for formal review.

The hearing shall be recorded by electronic recording device or certified shorthand reporter. Within ten (10) days of completion of the hearing, the hearing officer or hearing board shall prepare a written report of its decision, including a summary of the evidence presented, and the findings and recommendation of the officer or board. The written report shall be transmitted along with the transcript or recording of the hearing to the Chief Engineer. The Chief Engineer shall have the authority to issue a final award in an amount of $250,000 or less. If the Chief Engineer decides that an award of over $250,000 is warranted, the recommended award, along with the written report of the hearing officer or hearing board, shall be presented to the Board of Directors for review and approval.

The Chief Engineer or Board of Directors may return the matter to the hearing officer or hearing board to receive further evidence on any matter. The Chief Engineer or Board of Directors may reject or amend the decision of the hearing officer or hearing board only after independent examination of the evidence presented at the hearing and an opportunity for the displacee to present further written argument on any issue on which the decision of the officer or board is rejected or amended.

Upon approval of the final award, written notice shall be delivered to the displacee, which shall include notice that the displacee may seek judicial review within ninety (90) days.

3. NOTICE OF PROCEDURES AND TIME LIMITS

Upon request by a displacee, and at the time a displacee seeks review of any decision regarding relocation assistance, MWD shall inform the displacee in writing of the administrative appeal procedures. Such notice shall advise the displacee that any review must be requested within eighteen (18) months following the date he or she moves from the property or the date of payment of final compensation for the property, whichever is later. Such notice shall further advise the displacee of his right to be represented by counsel at each stage of the administrative appeals process.

4. REVIEW OF FILES BY COMPLAINANT

Except to the extent the confidentiality of material is protected by law or its disclosure is prohibited by law, MWD shall permit the displacee to inspect all files and records bearing upon his or her relocation. MWD may impose reasonable conditions on such right to inspect. If a displacee is improperly denied access to any relevant material, such material may not be relied upon in reaching the final decision on administrative appeal.

5. STAY OF DISPLACEMENT PENDING FINAL DETERMINATION

MWD shall use its best efforts to prevent displacement until at least twenty (20) days after it has made a final determination in cases where the appeal involves the adequacy of referrals of comparable replacement property. MWD may pursue displacement if the displacee has been offered reasonable temporary relocation pending a final decision on the displacee's administrative appeal.