

March 23, 1999

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

From: General Manager _____

Submitted by: Gary M. Snyder _____
Chief Engineer

Subject: Amendment to Resolution of Necessity Directing the General Counsel to Condemn Property Required for the Inland Feeder Project in San Bernardino County, California, identified by MWD's Right-of-Way Parcel Number INFED1-28-370PEA1 Owner's Name: Frank Tyler

RECOMMENDATION

It is recommended that the Board of Directors, by a two-thirds vote, adopt the attached **amended resolution of necessity** to condemn of the property described in **Exhibits A and B**, attached hereto, in accordance with the eminent domain law and directing the General Counsel to commence condemnation proceedings to acquire the property.

EXECUTIVE SUMMARY

Metropolitan will require a permanent subsurface pipeline and public road easement (INFED1-28-370PEA1) across real property owned by Frank Tyler and as described in **Exhibits A and B**, attached hereto, located in San Bernardino County, California, for portions of the Inland Feeder Project. No offer to purchase has been made because the property owner cannot be located with reasonable diligence. It is recommended that 1) **Resolution 8616** adopted by the Board at its meeting of November 10, 1998, be amended to provide for a permanent pipeline and public road easement as described in **Exhibits A and B** attached hereto, in place of the permanent pipeline and temporary construction easement authorized in that Resolution, and 2) to authorize the commencing of an eminent domain action to acquire the permanent pipeline and road easement. A hearing on the adoption of the amended resolution was before the Subcommittee on Real Property Management on March 30, 1999, which recommended approval.

DETAILED REPORT

Metropolitan seeks a permanent subsurface pipeline and public road easement (INFED1-28-370PEA1) across property owned by Frank Tyler located in the south-central part of the City of Highland west of Boulder Avenue (State Highway 30) and fronting Abbey Way. The total area of the subject property is 0.735 acre, a 25 foot wide strip of rural land. Ownership of the property is not connected to any adjacent larger property. The property is a remnant parcel. The San Bernardino County Recorder's Office identifies the property owner as Frank Tyler. A title

report shows that Frank Tyler obtained interest by a decree of distribution recorded on September 12, 1947. No taxes are being paid on this property.

Originally, the 0.735 acres was to be taken as part permanent (.045 acre) and part temporary construction easement (.690 acre), and a **Resolution of Necessity** (Resolution 8616) was adopted toward that end on November 10, 1998. At that time the appropriate committees were informed that as a result of then ongoing talks with the City of Highland and Southern California Edison, it may be necessary to amend this take early in 1999. As a result of those discussions, it is necessary to acquire the entire remnant as permanent easement to accommodate the pipeline and the public road which already partially overlies the remnant as well as relocation of power poles. Therefore, **Resolution 8616** requires amendment as shown on the attachment. The appraised value has not changed and remains \$100.00 for the permanent easement.

An attempt to contact the property owner has been made, but the San Bernardino County Assessor's Office has no information and there is no telephone listing. The property appears on the assessor parcel map as a portion of dedicated Abbey Way. However, neither the County of San Bernardino nor the City of Highland have accepted this area into the public road system. The property is partially paved.

No notice of intention to adopt a resolution of necessity and for an opportunity to appear and be heard before the Executive Subcommittee on Real Property Management has been sent because, after due diligence, the property owner cannot be located. A quorum of the Committee is required for such a hearing. A written **summary of the hearing and the recommendation** of the Executive Subcommittee on Real Property Management as to whether the Board should adopt the amended resolution is attached. The Executive Subcommittee on Real Property Management voted to recommend approval of the proposed amended resolution on March 30, 1999.

Transmitted herewith is the form of the **amended resolution** declaring the necessity of the Project and the acquisition of the permanent easement described in **Exhibits A and B**, attached thereto, and directing the General Counsel to commence condemnation proceedings in San Bernardino County to acquire the permanent subsurface pipeline and road easement.

On February 9, 1993, the Board certified that the Final Environmental Impact Report for the Inland Feeder Project had been completed in compliance with the California Environmental Quality Act (CEQA) and the State Guidelines, and that it had reviewed and considered the information contained in that document. The Board's action on the subject resolution is therefore in compliance with CEQA. No further environmental documentation or review is necessary for the Board to act on this request.

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Attachment 9-5A

Attachment 9-5A

SUMMARY OF HEARING AND RECOMMENDATION
OF THE EXECUTIVE SUBCOMMITTEE ON
REAL PROPERTY MANAGEMENT REGARDING ADOPTION
OF AN AMENDED RESOLUTION OF NECESSITY TO CONDEMN
PROPERTY FOR THE INLAND FEEDER PROJECT

On March 30, 1999, at the offices of The Metropolitan Water District of Southern California, located at 700 South Alameda Los Angeles, California, Room 2-145, a hearing was held by the Executive Subcommittee on Real Property Management of the Board of Directors. Committee Chairman Edward C. Little presided. The Committee was called to order and a quorum was present.

Senior Deputy General Counsel Lauren Brainard advised the Committee that it has been delegated the authority by Metropolitan's Board of Directors to hold the hearing required by law as a prerequisite to the adoption of a resolution of necessity to acquire property through the exercise of the eminent domain power. The purpose of the hearing is to allow the Committee to make a determination regarding whether the public interest and necessity require the proposed Project, whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury, and whether the easements to be acquired are necessary for the Project.

Mr. Brainard further advised the Committee that an attempt to contact the property owner had been made, but the San Bernardino County Assessor's Office had no information and there is no telephone listing. The property appears on the assessor parcel map as a portion of dedicated Abbey Way. However, neither the County of San Bernardino nor the City of Highland have accepted this area into the public road system. No notice of intention to adopt a resolution of necessity was served, nor an offer to purchase the easements were made because the property owner cannot be located.

Mr. Brainard made a presentation regarding the Inland Feeder Project, and identified the subject take as a permanent subsurface pipeline and public road easement and explained to the Committee that the amended resolution was to include a road easement and remove the temporary five year easement from the resolution. The property is located in San Bernardino County located in the south-central part of the City of Highland west of Boulder Avenue and fronting on Abbey Way. The total area of the subject property is 0.735 acres and consists of a 25 foot wide strip of rural land. Ownership of the property is not connected to any adjacent larger property. The property is a remnant parcel.

The Committee voted to recommend adoption of the resolution of necessity.

AMENDED RESOLUTION 8616

**AN AMENDED RESOLUTION OF THE BOARD OF DIRECTORS OF
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
DIRECTING THE CONDEMNATION OF CERTAIN PROPERTY
SITUATED IN THE COUNTY OF SAN BERNARDINO
(INLAND FEEDER PROJECT)**

BE IT RESOLVED by the Board of Directors of The Metropolitan Water District of Southern California (the "District").

Section 1. The District's Board hereby finds and determines that the public interest and necessity require, for public use, the construction, operation and maintenance of water conveyance facilities ("Inland Feeder Project") in the County of San Bernardino for the transportation and distribution of water for use within the District's boundaries and that certain properties situated in the County of San Bernardino are necessary therefor.

Section 2. The permanent easement to be acquired for the public use set forth in section 1, above, consist of a parcel of land described in Exhibits A attached hereto and incorporated herein by reference and shown on Exhibits B attached hereto and incorporated herein by reference.

Section 3. The District's Board hereby declares its intention to acquire the permanent easement described in Exhibits A and B attached, by proceedings in eminent domain as authorized by the Metropolitan Water District Act (Stats. 1969, Ch. 209, as amended).

Section 4. The District's Board hereby finds and determines that the proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

Section 5. The District's Board hereby finds and determines that the permanent easement described in Exhibits A and B attached hereto is necessary for the proposed Project.

Section 6. The District's Board hereby finds and determines that after reasonable diligence the record property owner could not be located and that therefore, an offer as required by Government Code section 7267.2 could not be made to the owner of record of the property described in Exhibits A and B, attached hereto.

Section 7. The District's General Counsel is hereby directed to commence proceedings in the Superior Court of California, County of San Bernardino for the purpose of condemning and acquiring the permanent easement described in Exhibits A and B attached hereto, and to take such steps as may be necessary to secure an order of court permitting the District to take possession of the easement described in Exhibits A and B attached hereto for the uses and purposes herein described. He is authorized to take such actions and steps as he deems necessary in connection with such proceedings, including the amending of the complaint to reduce the extent of the easement to be acquired so as to reduce the compensation payable in the action where such change could not substantially impair the construction and operation of the said public works, and to incur expenses necessary and incidental to the action.

I HEREBY CERTIFY that the foregoing resolution was adopted at the meeting of the Board of Directors of The Metropolitan Water District of Southern California held the 13th

day of April, 1999, by vote of two-thirds of all its members, and I further certify that the foregoing is a full, true and correct copy of the amended resolution.

Executive Secretary
The Metropolitan Water District of
Southern California

EXHIBIT A

A permanent easement in the property described as Parcel INFED1-28-370PEA1, for the purpose of constructing, reconstructing, maintaining, operating, enlarging, removing, and replacing a line or lines of pipe at any time, and from time to time, for water transportation, with every appendage or structure necessary or convenient to be installed at any time in connection therewith and a permanent public road easement; subject to the following conditions.

- A. Owner shall not change the existing grade or otherwise modify the topography of the property affected by this easement without the prior consent of Metropolitan.
- B. No building or other structure excepting pavement for road or parking use shall be constructed or maintained upon any portion of the easement by Owner.
- C. Owner shall not plant trees or any other deep root vegetation within the easement area. Should Metropolitan require use of any portion of the easement area for replacement, relocation or installation of its pipeline, or for future pipelines, Owner shall remove any improvements at his or her own expense.

EXHIBIT A

INFED1-28-370PEA1
(Permanent Easement)
Frank Tyler

The southerly 25.00 feet of the southwest quarter of the southwest quarter (SW1/4SW1/4) of Section 2, Township 1 South, Range 3 West, San Bernardino Meridian in the City of Highland, County of San Bernardino, State of California.

EXCEPTING therefrom the westerly 30.00 feet of said SW1/4SW1/4.

EXHIBIT "B" ATTACHED HERETO AND MADE A PART THEREOF.

END OF DESCRIPTION

PREPARED UNDER MY SUPERVISION

Peter G. Wiseman, P.L.S. 6241

Date

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February 1, 19

EXHIBIT B

