

MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

June 8, 1992

To: Board of Directors (Water Problems--Information)
(Finance & Insurance--Information)

From: General Manager

Subject: Reconsideration to Impose Water Standby Charge and
Availability of Service Charge

Report

In February 1992, your Board adopted a resolution of intention to impose water standby charges and availability of service charges (Resolution 8358). Your Board's goal was to raise \$50 million in firm revenue as part of a five-point program to address revenues and costs in 1992-93. Subsequently, approximately 3.2 million notices were mailed to owners of real property within the District's service area, and a series of public hearings were held at which interested parties were given an opportunity to express their views regarding the proposed charge.

After reviewing the public comment, the Board adopted Resolutions (8367 and 8368) on May 12 that set forth the composition of a water standby charge of \$5.00 per acre or \$5.00 for parcel of land less than an acre, within the District's service area to which water is made available for any purpose by the District, whether the water is actually used or not, subject to certain exemptions; and an availability of service charge directly upon member public agencies of the District, allocated proportionately, based on each agency's water deliveries from the District during the four fiscal years ended June 30, 1991. Each of these charges raise \$25 million in revenues for a total of \$50 million.

Following the Board's action, the public dialogue regarding the application of these charges continued. Senator Ayala introduced legislation that would be declaratory of existing law that Metropolitan could apply only one charge, not both (SB 2070) and, 2) not allow the standby charge to be applied to an improved parcel of land (SB 2071).

The Board held a special meeting to consider both SB 2070 and SB 2071 on May 29, 1992 and postponed action until the Senate Committee hearing on June 2 and the Board meeting on June 9.

At a hearing of the Senate Water Resources and Agriculture Committee on June 2, the Legislative Counsel presented an opinion that Metropolitan had the authority to issue either the water standby or water availability charge but not both (attached). In light of that opinion, Senator Ayala, Chairman of the Committee, requested Metropolitan reconsider its adoption of both charges.

There are essentially four options:

1. Do not reconsider the previous Board action and proceed with the imposition of the water standby charge and availability of service charge. This would provide revenue that would be essential to Metropolitan's capital improvement program and for capital payments state water contract, water management programs and major maintenance.

In light of Senator Ayala's request, this action would most likely be in opposition to SB 2070 and SB 2071.

2. Reconsider and rescind the Board adoption of the imposition of both the water standby charge and availability of service charge. This would reduce Metropolitan's revenues by \$50 million and would require a cutback in Metropolitan's expenses, and/or a reduction in the rate stabilization fund.

This decision would not impact directly either legislative proposal.

3. Reconsider and rescind the adoption of the imposition of the water standby charge only. This option would leave in place the service availability charge to be paid by member agencies. In order for the water standby charge to be applied this year, Metropolitan must notify the County Assessors by July 15. The \$25 million raised by this charge would fund a portion of the capital improvement program, capital payments to SWP, water management programs and major maintenance. Of the \$25 million, \$18 million would come from improved parcels and \$7 million from unimproved land. If only the service availability charge is applied, certain Metropolitan programs would have to be modified and/or the rate stabilization fund reduced.

This action would be consistent with SB 2070's intent that only one charge can be applied. However, it would still conflict with SB 2071 that limits the standby charge to improved parcels of land.

4. Reconsider and rescind adoption of the imposition of the water availability of service charge to be paid by member agencies. This option would leave in place the water standby charge to be paid by land owners in the service area. This service charge is not subject to the assessor's notification requirements and could be re-instituted at a later date. The charge is allocated upon member public agencies proportionately based on each agency's water deliveries from the District during the four fiscal years ended June 30, 1991.

The \$25 million raised from the charge can be used to fund any lawful District purpose. If only the standby charge is applied, certain Metropolitan programs would have to be modified and/or the rate stabilization fund reduced.

This action would be consistent with SB 2070's intent that only one charge can be applied. It would have no impact on SB 2071.

Water Problems Committee Action:

At its meeting on June 8, 1992, the Water Problems Committee voted on and passed a motion which included:

1. Retention of the Availability of Service Charge.
2. Rescind Resolution 8367 which established Water Standby Charge (parcel charge).
3. Take no position on SB 2070.
4. Authorize the General Manager to aggressively promote AB 1875 as legislation to provide metropolitan with the authority to impose connection fees.

Board Committee Assignments

This letter was referred to:

The Finance and Insurance Committee pursuant to its authority to determine revenues to be obtained through sales of water, water standby or availability of service charges, under Administrative Code Section 2441(e).

Board of Directors

-4-

June 8, 1992

The Water Problems Committee pursuant to its authority to make determinations regarding water standby or availability of service charges under Administrative Code Sections 2481(e) and (f).

Recommendation

For information only.


for Michael McJ...
Carl Bordkay

Attachment

Jack I. Horton
Ann Mackey
• Chief Deputies
James L. Asford
Jerry L. Bassett
John F. Studebaker
Jimmie Wing
David D. Alves
John A. Corzine
C. David Dickerson
Robert Cullen Duff
Robert D. Gronke
Roger G. Miller
Terre L. Oliver
Tracy O. Powell II
Marguerite Roth
Michael H. Uoson
Daniel A. Weizman
Christopher Zirkle
Principal Deputies

State Capitol, Suite 3021
Sacramento, CA 95814-4996
916/445-3057
Telecopier: (916) 324-6311

39664

Legislative Counsel of California

BION M. GREGORY

Sacramento, California

June 1, 1992

Gerald Ross Adams
Marin L. Anderson
Paul Anzillo
Charles C. Asoull
Joe J. Avala
Raneene P. Seisic
Lara K. Bierman
Diane F. Bover-Vine
Ann M. Burastero
Eileen J. Buxton
Gwynnne L. Byrd
Emilia Cutrer
Ben E. Dale
Jeffrey A. DeLand
Clinton J. deWitt
Frances S. Dornin
Maureen S. Ounn
Sharon R. Fisner
John Fossetta
Harvey J. Foster
Clay Fuller
Patricia R. Gates
Alvin D. Gress
Jana T. Harrington
Baldev S. Heir
Cecilia Jordan
David B. Judson
Michael Kelly
Michael J. Kersten
L. Douglas Kinney
S. Lynne Klein
Victor Kozelski
Eve B. Krotzger
Diana G. Lum
Jennifer Loomis
Romulo I. Lopez
Kirk S. Louie
James A. Marsala
Francisco A. Martin
Peter Meincoe
John A. Moger
Sharon Reilly
Michael B. Salerno
Keith Schulz
William K. Stark
Ellen Sward
Mark Franklin Terry
Jeff Thom
Elizabeth M. Wart
Richard B. Weisoerg
Thomas D. Wheeler
Belinda Whitsett
Debra J. Zidich
Jack G. Zorman

Deputies

Honorable Ruben S. Ayala
2082 State Capitol

Metropolitan Water District of Southern California:
Water Standby or Availability Service Charge - #19153

Dear Senator Ayala:

You have asked us to discuss whether the Metropolitan Water District of Southern California (hereafter the district) may impose a water standby or availability service charge simultaneously on member public agencies and on individual parcels within the district.

Districts, including the district, derive their powers from the statute under which they are created, and from those other statutes enacted by the Legislature granting them additional powers or limiting those already granted (Crawford v. Imperial Irrigation Dist., 200 Cal. 318, 326; see Oakdale Irr. Dist. v. County of Calaveras, 133 Cal. App. 2d 127, 134). The Legislature, in the absence of constitutional restrictions, has plenary power over the organization, boundaries, powers, and liabilities of statutorily created districts, and may enlarge, restrict, modify, or abrogate the powers granted to those districts (Trumbo v. Crestline Lake Arrowhead Water Agency, 250 Cal. App. 2d 320, 323). Districts have those powers expressly enumerated by law and those implied powers that are necessary to the exercise of the powers granted (Crawford v. Imperial Irrigation Dist., supra, 334). Districts have no general authority to impose water standby or availability charges, and thus are dependent upon statutory authorization therefor.

The district is organized and governed under the Metropolitan Water District Act (Ch. 209, Stats. 1969; hereafter the act). The district has broad powers to develop, store, and distribute water at wholesale for municipal and domestic uses and purposes (Sec. 130 of the act). The district is composed of 27 member public agencies situated within the Counties of Los Angeles, Orange, Riverside, Santa Barbara, San Diego, and Ventura. A member public agency is a city or special district, the area of which, in whole or in part, is included within the district as a separate unit (Secs. 5 and 12 of the act; report of the district entitled The Regional Urban Water Management Plan for the Metropolitan Water District of Southern California, Nov. 1990, p. 6).

The term "water standby or availability service charge" does not denote two separate types of charges for distinct services, but refers to a charge "exacted for the benefit which accrues to property by virtue of having water available to it, even though the water might not actually be used at the present time" (Kennedy v. City of Ukiah, 69 Cal. App. 3d 545, 553; see also Trumbo v. Crestline Lake Arrowhead Water Agency, supra, 322). In this regard, the court in Kennedy v. City of Ukiah, supra, discussed the "water service standby or immediate availability charge" authorized to be imposed by a city pursuant to Section 38743 of the Government Code and declared:

"The only distinction between the terms 'standby' and 'immediately available' appears to be the degree of availability of the water facilities as it affects the basis for determining the schedule of charges that can be imposed pursuant to Government Code section 38743 et seq." (Id., p. 553.)

A number of statutory provisions authorize various local public entities to impose a charge for the availability of water service. For example, under the Community Services District Law (Div. 3 (commencing with Sec. 61000), Title 6, Gov. C.), a community services district may also impose a "water standby or availability charge" on land to which water is made available by that district (Sec. 61765, Gov. C.) and, under the County Water District Law (Div. 12 (commencing with Sec. 30000), Wat. C.), a county water district may also impose a "water standby or availability charge" on land to which water is made available by that district (Sec. 31031, Wat. C.). Likewise, a county may impose a "water standby or immediate availability charge" on land within a county service area to which water is made available by the county (Sec. 25210.77b, Gov. C.). A reclamation district may impose a "standby charge" on land to which water is made available by that district (Sec. 50911, Wat. C.). As mentioned above, a

city may impose a "water service standby or immediate availability charge" on areas to which water service is made available by the city (Sec. 38743, Gov. C.). Under the County Waterworks District Law (Div. 16 (commencing with Sec. 55000), Wat. C.), a county waterworks district may also impose a "water service standby or immediate availability charge" on areas to which water service is made available by that district (Sec. 55501.5, Wat. C.). Under the Municipal Water District Law of 1911 (Div. 20 (commencing with Sec. 71000), Wat. C.), a municipal water district may impose a "water standby assessment or availability charge" on areas to which water is made available by that district (Sec. 71630, Wat. C.).

However labeled, the water standby or availability charge is imposed on the basis of the availability of the water service, whether or not the water is actually used.

With respect to the authority of the district to impose a water standby or availability charge, Section 134.5 of the act (hereafter Section 134.5) provides as follows:

"Sec. 134.5. (a) The board may, from time to time, impose a water standby or availability service charge within a district. The amount of revenue to be raised by the service charge shall be as determined by the board.

"(b) Allocation of the service charge among member public agencies shall be in accordance with a method established by ordinance or resolution of the board. Factors that may be considered include, but are not limited to, historical water deliveries by district; projected water service demands by member public agencies of a district; contracted water service demands by member public agencies of a district; service connection capacity; acreage; property parcels; population, and assessed valuation, or a combination thereof.

"(c) The service charge may be collected from the member public agencies of a district. As an alternative, a district may impose a service charge as a standby charge against individual parcels within the district. In implementing this alternative, a district may exercise the powers of a county water district under Section 31031 of the Water Code, except that, notwithstanding Section 31031 of the Water Code, a district may (1) raise the standby charge rate above ten dollars (\$10) per year by a majority vote of the board, and (2) after

taking into account the factors specified in subdivision (b), fix different standby charge rates for parcels situated within different member public agencies.

"(d) Before imposing or changing any water standby or availability service charge pursuant to this section, a district shall give written notice to each member public agency not less than 45 days prior to final adoption of imposition or change.

"(e) As an alternative to the two methods set forth in subdivision (c), a district, at the option of its board, may convert the charge to a benefit assessment to be levied pursuant to Sections 134.6 to 134.9, inclusive."

Subdivision (a) of Section 134.5 authorizes the district board to impose a water standby or availability service charge within the district. Subdivision (b) of that section requires the service charge to be allocated among member public agencies in accordance with a method established by ordinance or resolution of the board of the district. Subdivision (c) of that section authorizes the district to collect the service charge from member public agencies or, "[a]s an alternative," to impose the service charge as a standby charge on individual parcels within the district. Subdivision (c) also authorizes the district, if imposing the service charge on individual parcels within the district, with exceptions not pertinent, to "exercise the powers of a county water district under Section 31031 of the Water Code." Subdivision (e) of that section authorizes the district, as an alternative to imposing the water standby or availability service charge on either the member public agencies or on individual parcels within the district, to impose a benefit assessment pursuant to other prescribed provisions of the act.

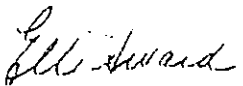
The intent of the Legislature must be ascertained from the language of an enactment (Tomlin v. Cole, 152 Cal. App. 3d 556, 559). If no ambiguity, uncertainty, or doubt exists about the meaning of a statute, there is no necessity for judicial interpretation or construction (Smith v. Rhea, 72 Cal. App. 3d 556, 559). The words in a statute are to be given their ordinary meaning unless a different meaning is clearly intended (Hazelwood v. Hazelwood, 57 Cal. App. 3d 693, 698). "Alternative" means, in pertinent part, "a proposition or situation offering a choice between two things wherein if one thing is chosen the other is rejected ... an opportunity or necessity for deciding between two courses or propositions either of which may be chosen but not both ... one of a number of things or courses offered for choice ..." (Webster's Third New International Dictionary, p. 63).

Thus, subdivisions (c) and (e), taken together, expressly authorize the district to elect only one of three alternatives: impose the water standby or availability service charge on member public agencies, impose that service charge on individual parcels within the district, or impose a benefit assessment in accordance with a specified statutory procedure.

Accordingly, we conclude that the district may impose a water standby or availability service charge on member public agencies or on individual parcels within the district, but not on both simultaneously.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By 
Ellen Sward
Deputy Legislative Counsel

ES:kg