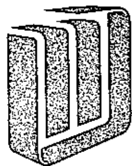
APPROVED AS REVISED BY LETTER DATED 7-13-92
by the Board of Directors of
The Metropolitan Water District
of Southern California
at its meeting held

JUL 14 1992

EXECUTIVE SECRETARY

39701

E



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

July 1, 1992

(Executive Committee--Action)
(Finance & Insurance Committee--Action)
(Water Problems Committee--Action)

To: Board of Directors

From: General Manager

Subject: Standby and Availability of Service Charges

Report

A. Introduction

At its May meeting, your Board adopted resolutions imposing standby charges and availability of service charges intended to produce a total firm revenue source for fiscal year 1992-93 of approximately $50,000,000. The two charges were scaled so that each would produce approximately half the required amount.

The Board's action, namely the concurrent imposition of both charges, was argued not only within the Board, but, subsequent to the adoption of your resolutions, triggered the introduction of Senate Bill 2070 (Ayala--San Bernardino County) that purports to be declarative of existing law and states that the terms "standby charge" and "availability of service charge" have the same meaning. The substance of Senate Bill 2070, that standby and availability of service charges cannot be levied simultaneously, has since also been amended into Assembly Bill 3304 (Tucker--Inglewood).

The dilemma created by the introduction of SB 2070 and the threat that it may be enacted with immediate effect was further compounded by an opinion of Legislative Counsel corroborating the view that Metropolitan does not have the authority concurrently to impose both charges. In the light of that opinion, Senator Ayala, and separately Senators Bergeson, Killea, and Presley requested the Attorney General to provide his opinion as to Metropolitan's authority in this regard. That opinion, dated June 30, 1992, and addressed to Senator Ayala, reached the same conclusion as Legislative Counsel. A copy of the Attorney General's opinion has previously been furnished to all Directors.

As a result of the pending political efforts and the legal opinions of Legislative Counsel and of the Attorney General, serious concerns exist as to the advisability of

moving forward with the planned revenue-raising program in its present form.

B. Initial Policy Choices

The fundamental policy choices are:

1. To accept the Legislative Counsel and Attorney General opinions as controlling and to repeal either Resolution 8367, imposing a standby charge, or Resolution 8368, imposing an availability of service charge.

2. To disregard the opinions of Legislative Counsel and of the Attorney General and continue with the program, taking the risk either that adverse legislation such as SB 2070 or AB 3304 may be enacted or that litigation may be filed to challenge the action of the Board, or both.

C. Implementation Alternatives

1. Disregarding the Opinions

Disregarding the opinions of the Attorney General and Legislative Counsel raises the issue whether to await possible litigation or to find a way of initiating litigation to obtain judicial resolution of the issue. Since such rejection is not recommended below, this letter will not dwell on these alternatives. Let it simply be said that any litigation would, of course, have the potential for delaying collection of all or a portion of the anticipated revenue, and the ultimate outcome of such litigation cannot be predicted.

2. Acceptance of the Opinions

The available alternatives on acceptance of the opinions as guidance to the District all appear to entail a revision of the District's firm revenue source program with a view to preserving the certainty of an assured flow of some level of such revenues. This can be accomplished in the following ways:

i. By imposing the entire $50,000,000 as an availability of service charge on member agencies; or

ii. By maintaining either the standby charge or the

availability of service charge, but not both, with the objective of raising at least $25,000,000 of firm revenues, and

a) making up any shortfall out of available reserves. Such reserves, it will be recalled, were recently enhanced by approximately $33 million as the result of a credit for power charges previously paid to the Department of Water Resources as part of the District's State Water Contract obligation; or

b) raising water rates by approximately $15 per acre-foot to replace the lost $25,000,000 of firm revenue; or

c) raising the additional $25,000,000 in revenues by a combination of property taxes (up to approximately $13.5 million as authorized by Section 124.5 of the Metropolitan Water District Act) and water rates (by approximately $7 per acre-foot); or

d) providing for the second $25,000,000 by some other combination of adjustments in the levels of water rates, taxes, expenditures and reserves.

iii. By maintaining either the standby charge or the availability of service charge, but not both, with the objective of raising at least $25,000,000 of firm revenues, and adjusting expenditures accordingly.

D. Conclusion

In the light of the opinions of Legislative Counsel and the Attorney General, either Resolution 6367, imposing a standby charge, or Resolution 6368, imposing an availability of service charge, should be repealed and the Board should consider revenue alternatives, including the options described in Part C of this letter.

This action is exempt from provisions of the California Environmental Quality Act, because it can have no possible effect on the environment.

Committee Assignments

This letter is referred for action to:

The Executive Committee because it involves legislation which may affect the District, pursuant to Administrative Code Section 2417 (a);

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); and

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

EXECUTIVE COMMITTEE, FINANCE AND INSURANCE COMMITTEE, AND WATER PROBLEMS COMMITTEE FOR ACTION.

That your Board repeal either Resolution 8367 or Resolution 8368, and rely on available reserves for any resulting shortfall.

Carl Boronkay

FV:db
firmrevs.11a
Attachment

DANIEL E. LUNGREN
Attorney General

State of California
DEPARTMENT OF JUSTICE

110 WEST A STREET, SUITE 700
P.O. Box 85266
SAN DIEGO, CA 92186-5266
(619) 237-7351

FACSIMILE: (619) 238-3313
(619) 237-7182

June 30, 1992

The Honorable Ruben S. Ayala
California State Senate
State Capitol - Room 2082
Sacramento, CA 95814

RE: Opinion No. 92-609

Dear Senator Ayala:

By letter dated June 15, 1992, you requested an opinion of the Attorney General concerning whether the Board of Directors (hereafter "Board") of the Metropolitan Water District of Southern California (hereafter "District") may concurrently impose a water standby or availability charge upon both its member agencies and against individual parcels located within the District. We conclude that the Board may not do so.

The District is organized under and governed by the provisions of the Metropolitan Water District Act of 1969. (Stats. 1969, ch. 209; formerly Stats. 1927, ch. 429; *Deering's Water Uncodified Acts*, Act 9129b; *West's Water Code Appendix*, § 109; hereafter "Act.")[1] The Board is comprised "of at least one representative from each member public agency." (§ 51.) A member public agency is "any public agency, the area of which, in whole or in part, is included . . . as a separate unit" within the District. (§ 12.)

The District is "organized for the purpose of developing, storing, and distributing water for domestic and municipal services." (§ 25.) It "may provide, generate, and deliver electric power within or without the state for the purpose of developing, storing, and distributing water." (*Ibid.*)

The Board imposes charges for the water provided by the District. (§§ 130-134.) It also imposes a property tax (§ 307), has the authority to impose benefit assessments (§§ 134.6-134.9), and can issue short-term revenue certificates (§§ 296-299.5) and bonds (§§ 200-295.3) to raise revenues.

---

1. All unidentified section references hereafter are to the Act.

FROM FROM AG SAC 07/01/92 10:35 P. 2

In 1984 the Legislature added section 134.5 to the Act. (Stats. 1984, ch. 271, § 5.) Section 134.5 states:

> "(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 a 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 31013 of the Water Code, except that, notwithstanding Section 31013 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 the 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."

FROM FROM AG SAC 07/01/92 10:36 P. 3

TOTAL P. 2

Water Code section 31031, to which section 134.5 refers, provides in turn:

> "A district may fix, on or before the first day of July in each calendar year, a water standby or availability charge of not to exceed ten dollars ($10) per acre per year for each acre of land, or ten dollars ($10) per year for each parcel of land less than an acre within the district to which water is made available for any purpose by the district, whether the water is actually used or not. The board of directors of a district which fixes such a charge may establish schedules varying such charge according to the land uses and degree of availability or quantity of use of such water to the affected lands, and may restrict such charge to lands lying within one or more improvement districts within such district."

Section 134.5 is the statute requiring our interpretation. Does it authorize the simultaneous imposition of a water standby or availability service charge against both the District's member public agencies and individual parcels within the District? The proposal contemplated is that the Board will impose a $25 million service charge against its member public agencies and a $25 million service charge against individual parcels located within the District pursuant to the terms of section 134.5.

In analyzing the language of section 134.5, we are guided by several well established principles of statutory construction. The "primarily aim in construing any law is to determine the legislative intent." (*Committee of Seven Thousand* v. *Superior Court* (1988) 45 Cal.3d 883, 897.) "If a statute's language is clear, then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs." (*Kizer* v. *Hanna* (1989) 48 Cal.3d 1, 8.) "The words of a statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible." (*Dyna-Med, Inc.* v. *Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.) "A construction of a statute that renders some of its words surplusage or redundant is to be avoided." (*Schmidt* v. *Superior Court* (1987) 43 Cal.3d 1060, 1067.)

Applying all of these rules, we find that section 134.5 does not authorize the Board to impose concurrent charges against member agencies and individual parcels of property. First, as to the definition and purpose of a "water standby or availability service charge," such charges were described in a related context in the case of *Kennedy* v. *City of Ukiah* (1977) 69 Cal.App.3d 545. The court explained:

FROM AG SAC 07/01/92 10:58 P. 2

> ". . . A New Mexico case had defined 'standby' as a charge or assessment levied against property adjacent to a water main but not connected to it. The utility remains 'standby,' ready to serve the property, and hence the property is benefited. (*Chapman* v. *City of Albuquerque* (1959) 65 N.M. 228 [335 P.2d 558, 561].) Pennsylvania uses the term 'ready to serve,' and interprets it as follows: 'In effect, it is a minimum payment demanded of patrons who desire to be placed in position to take advantage of the service at their convenience, whether actually using the water or not.' (*Central Iron & Steel Co.* v. *Harrisburg* (1921) 271 Pa. 340 [114 A. 258, 260].) 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. Standby and availability charges are fees 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." (*Id.* at p. 553.)

Accordingly, a water standby or availability service charge is imposed based upon the potential for use rather than whether any water is actually used.

We also note that the rates charged for the water provided and the water standby or availability service charges are to produce sufficient revenue to cover the District's operations. Section 134, amended at the same time that section 134.5 was enacted (Stats. 1984, ch. 271, § 4), states:

> "The board, so far as practicable, shall fix such rate or rates for water as will result in revenue which, together with revenue from any water standby or availability service charge or assessment, will pay the operating expenses of the district, provide for repairs and maintenance, provide for payment of the purchase price or other charges for property or services or other rights acquired by the district, and provide for the payment of the interest and principal of the bonded debt subject to the applicable provisions of this act authorizing the issuance and retirement of the bonds. Those rates, subject to the provisions of this chapter, shall be uniform for like classes of service throughout the district."

It is apparent that section 134.5 was enacted to give the Board additional flexibility in generating revenues for the District's activities. The Board has numerous ways in which to raise funds for its operations; section 134.5 adds another type of levy.

In the context of the statutory scheme as a whole, then, section 134.5 furnishes an additional and fairly recent source of funding of the District's activities. Looking at its individual provisions, we find that the Board must first determine "[t]he amount of revenue to be raised by the service charge." (§ 134.5, subd. (a).) The total amount to be collected is then allocated to the areas of the individual member public agencies. (§ 134.5, subd. (b).)

Subdivision (c) of section 134.5 provides two different methods of collecting the service charges. "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 a district." Finally, subdivision (e) of section 134.5 authorizes the Board to convert the service charge into a benefit assessment: "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 . . . ."

We find no ambiguity in the language of section 134.5. Two methods of collecting the service charge are specified in subdivision (c) of the statute. These methods are stated in the alternative. Either one or the other may be chosen by the Board, but not both together. The term "alternative" is commonly defined as "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 . . . either of two paired or contrasted things, courses, or propositions offered for one choice in a situation in which taking either necessarily entails rejecting the other." (Webster's New Internat. Dict. (3d ed. 1966) p. 63.)

The Legislature used the word "alternative" and the phrase "[a]s an alternative" in section 134.5, subdivision (c). We are invited to read such language out of the statute. We decline to do so. Presumably the Legislature meant what it said (*Kizer* v. *Hanna*, *supra*, 48 Cal.3d at 8), and we accord significance to each word and phrase of the statute (*Schmidt* v. *Superior Court*, *supra*, 43 Cal.3d at 1067).

TOTAL P. 7

In answer to the question presented, therefore, we conclude that the Board may not concurrently impose a water standby or availability charge upon both its member public agencies and against individual parcels of property located within the District under the terms of section 134.5.

Sincerely,

DANIEL E. LUNGREN
Attorney General

RODNEY O. LILYQUIST
Senior Assistant Attorney General
Chief, Opinion Unit

ROL:mlt

07/01/92 10:39 P. 7 FROM AG SAC