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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

8-17

September 8, 1992

To: Board of Directors (Water Problems Committee--Action)
(Finance and Insurance Committee--Action)

From: General Counsel

Subject: Signed Agreement as Condition for Standby Charge Exemption

Report

At its August 1992 meeting, the Board adopted a motion providing that:

(1) a property owner requesting an exemption from standby charges must sign an agreement stating that if he later has a need for Metropolitan's water at any time in the future he agrees to pay: (a) all prior years' charges; (b) a 10 percent penalty charge; and (c) interest charges;

(2) that the agreement is to be recorded against the property; and

(3) that if a property owner refuses to sign the agreement, the standby charge will appear on his tax bill.

This action has the effect of burdening property with the standby charge in the absence of the described agreement whether or not the property is benefitted by the availability of Metropolitan's water. There is a high risk that California courts will reject such a requirement.¹ Where property satisfies criteria established in California law mandating the granting of exemptions from standby charges or special

¹ Presumably, this requirement would only apply to private property owners. Subsection 2(a) of Resolution 8367 exempts land owned by federal, state, and local governments, despite the fact that these entities use substantial amounts of Metropolitan water and will continue to do so.

assessments² -- the most important criterion being the lack of actual or foreseeable benefit provided by the works financed by the standby charges -- California courts would be likely to disfavor an attempt to impose a standby charge based on the property owner's refusal to sign the agreement because the land has in fact met the test that California's courts have traditionally applied to determine the validity of such a charge.

Although a public entity can impose a water standby charge on a privately-owned parcel of land where the land does not use any of the entity's water, the land must be benefitted by the availability of water. (Kennedy v. City of Ukiah (1977) 69 Cal.App.3d at 553.) "[A] special assessment, sometimes described as a local assessment, is a charge imposed on particular real property for a local public improvement of direct benefit to that property The rationale of special assessment is that the assessed property has received a special benefit over and above that received by the general public." (Solvang Mun. Improvement Dist. v. Board of Supervisors (1980) 112 Cal.App.3d 545, 552.) The benefit need not be immediate -- it may come about in the foreseeable future. (Dawson v. Town of Los Altos Hills (1976) 16 Cal.3d 676.) It has also been held that the charge will be deemed valid if there is a benefit to the property as the result of any use that might be made of it. (Howard Park Co. v. City of Los Angeles (1953) 119 Cal.App.2d 515.)

Where there is neither present nor foreseeable benefit to a property, California's courts will not approve the imposition of standby charges. That principle is recognized in Resolution 8367 adopted by your Board in May 1992 which incorporates this test as a basis for granting an exemption. To further condition the exemption on the signing of an agreement adds a test not provided by that Resolution and, in addition, could be questioned as not having been subject to the same opportunity for public comment as were the other provisions of the Resolution. More fundamentally, however, the added condition could be deemed as an unlawful exaction in that the exemption is available as a matter of law if the property

² This letter will use the terms "standby charge," "special assessment," and "availability of service charge" interchangeably, as courts often do. (See, e.g., Kennedy v. City of Ukiah (1977) 69 Cal.App.3d 545, 553.) Standby charges are a form of special assessment. (70A Am. Jur.2d Special or Local Assessments (1987).)

is not benefitted now or in the foreseeable future, whether or not the owner signs the agreement in issue.

We are not unmindful of the intent of the motion which was to assure that properties making a future demand for water pay past charges from which they were previously exempted. However, exemptions are granted on an annual basis in the light of the facts then demonstrated. If those facts, as of that year, demonstrate that there is neither present nor foreseeable benefit to the property, the property is entitled to the exemption for that year. The fact that in a future year the exemption may no longer be available neither vitiates the exemption previously granted nor obligates the property owner to payment of back charges.

Finally, if the Board wishes to leave in effect the motion it has adopted, it is suggested that it change the reference to "penalty" to "administrative fee" since, as a rule, courts will not favor the imposition of a penalty.

In the light of this discussion, it is our recommendation that the Board review the desirability of leaving in effect the motion adopted at its August meeting to require the signing of an agreement as a condition of an exemption from the standby charge.

Committee Assignments

This letter is being referred for action to:

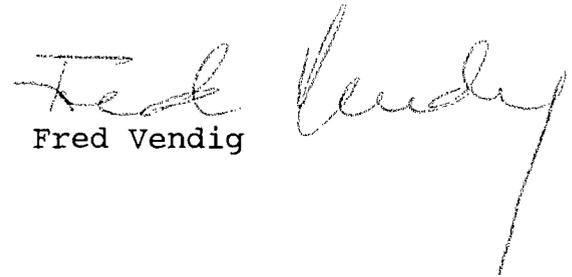
The Water Problems Committee because of its authority to study, advise, and make recommendations with regard to policies regarding allocation of water standby or availability of service charges within the District and availability of service revenue requirements among member public agencies, pursuant to Administrative Code Section 2481(e) and (f); and

The Finance and Insurance Committee because of its responsibility to study, advise, and make recommendations with regard to the determination of revenues to be obtained through sales of water, water standby or availability of service charges and the levying of taxes, pursuant to Administrative Code Section 2441(e).

Recommendation

**WATER PROBLEMS COMMITTEE AND FINANCE AND INSURANCE COMMITTEE
FOR ACTION.**

That the Board review the motion recorded in Minute Item 39801 of the Minutes of the meeting of Metropolitan's Board on August 20, 1992, requiring the execution of an agreement by the property owner as a condition of an exemption from the standby charge.


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