

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

September 24, 1992

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

From: General Manager

Subject: Exemption Procedure for the Water Standby Charge

Report

In May 1992 your Board adopted Resolution 8367 imposing a water standby charge on real property within the District's service area. The resolution provided, among other things, for certain property parcels to be exempted from the standby charge subject to the following criteria:

- 1) Lands owned by public agencies;
- 2) Lands permanently committed to open space and maintained in their natural state, that are not now and will not in the future be supplied water;
- 3) Lands which do not now and can not reasonably be expected to receive any benefit from the projects to which the proceeds of the water standby charge will be applied; and
- 4) Lands within the City of Los Angeles and the City of Santa Monica, the governing bodies of which have elected and committed to pay out of funds available for that purpose, in installments at the time and in the amounts as established by Metropolitan, the entire amount of the water standby charges which would otherwise be imposed upon lands within those member public agencies.

Resolution 8367 authorized the General Manager to consider requests for exemptions and to allow or disallow exemptions based on the above criteria. The resolution also provided for the creation of an ad hoc committee of the Board to consider appeals from decisions made by the General Manager. Accordingly, the Chairman of the Board has appointed five Directors to the Ad Hoc Committee on Water Standby Charge Exemption Appeals.

In August 1992 your Board modified the exemption procedure by adopting a motion providing that:

- 1) A property owner requesting an exemption from standby charges must sign an agreement stating that if the property owner later has a need for Metropolitan's water at any time in the future the owner agrees to pay: (a) all prior years' charges; (b) a 10 percent penalty charge; and (c) interest charges;
- 2) The agreement is to be recorded against the property; and
- 3) If a property owner refuses to sign the agreement, the owner's property will be subject to the water standby charge.

By letter dated September 8, 1992, the General Counsel advised your Board of potential problems associated with the August modification of the exemption procedure and recommended reconsideration of that action. At the September meeting your Board deferred action on the General Counsel's recommendation to the October meeting.

This letter recommends a procedure that is consistent with the original criteria set forth in Resolution 8367 and reflects the motivation that prompted the Board's August action. It is proposed that the General Manager be authorized to grant exemptions to property owners who, without doubt, meet the strict criteria in Resolution 8367, without requiring execution of an agreement as a condition of exemption. In general, these would be cases where documentation is provided which clearly demonstrates that property has been irrevocably dedicated to open space or other purposes that ensure that water will never be used. It is further proposed that the General Manager reject exemption requests that do not meet a strict interpretation of the criteria in Resolution 8367 unless: (1) he concludes that an exemption is appropriate in the circumstances (i.e., that, based upon the applicant's representations and the facts that are known to him at the time, the lands for which an exemption is sought cannot reasonably be expected to benefit from the projects funded in part by the proceeds of the standby charge), and (2) the petitioner agrees to pay all unpaid charges, a onetime 10 percent surcharge on such unpaid charges, and interest at the rate of 10 percent per annum compounded annually in the event that the Board later finds

that the exempted lands have in fact benefited from the projects funded in part by the charges.

If the property owner's request for exemption is denied by the General Manager, or his approval is conditioned upon execution of an agreement as described above, the General Manager will notify the property owner of the owner's right to appeal to your Board's Ad Hoc Committee on Water Standby Charge Exemption Appeals for reconsideration of the exemption request.

The property owners shall have 30 days from the date of the General Manager's notice of denial or conditional approval to file with the Executive Secretary a written notice of appeal to the Ad Hoc Committee. The Ad Hoc Committee shall consider, in its discretion, timely appeals from the General Manager's decisions and shall make its recommendations to the Board to affirm, modify or reverse the General Manager's determinations. The Board shall act upon such recommendations and its decision as to such appeals shall be final.

Since reasonable expectations concerning the inapplicability of future benefits are subject to change from year to year and, while doubtful, it is not inconceivable that property dedicated to open space may be relieved of restrictions that presently prevent development, it is considered necessary that landowners enjoying exemptions be required to repetition each year that a charge is imposed to maintain that exempt status.

The actions recommended in this letter are exempt from the provisions of the California Environmental Quality Act because they can have no possible effect on the environment.

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 charges within the District pursuant to Administrative Code Section 2481(e) and (f); and

The Finance and Insurance Committee because of its authority to study, advise and make recommendations with regard to the determination of revenues to be obtained through

water standby charges pursuant to Administrative Code Section 2442(e).

Recommendations

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

It is recommended that the Board:

- 1) Approve the procedure for exemption appeals recommended in this letter.
- 2) Rescind the action taken in August 1992 which requires execution of such an agreement as a condition for all exemptions from the water standby charge.


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