

MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

December 8, 1992

To: Board of Directors

From: General Manager

Subject: Revision of Administrative Code Provisions
Concerning District Property

Report

At their meetings yesterday, the Land Committee and Legal and Claims Committee considered the proposed revision of Administrative Code provisions concerning District property (Item 8-9). The Committees recommend that the Board adopt Articles 1, 2 and 3 of the proposed revision with certain changes.

The Land Committee recommended the following:

1. Section 8200, paragraph (g) - delete "and fee requirement" at the end of the paragraph. Add "and" between "reputation" and "availability" in the last line.
2. Section 8221, paragraph (f) - add the following sentence - "The acquisition price of the real property, including the remainder, shall not exceed the limit set forth in paragraph (c) without prior approval by the Board."
3. Section 8241 - Change to read as follows:
"The General Manager shall have any real property interest proposed to be granted appraised as follows:
 - (a) When the value of the property to be granted is less than \$10,000, the value shall be based on the opinion of a qualified appraiser;
 - (b) When the value of the property to be granted is greater than \$10,000, but less than \$250,000, the fair market value of

the property shall have been appraised by a qualified appraiser;

(c) When the value of the property to be granted is greater than \$250,000, the fair market value of the property shall have been appraised by a qualified appraiser who shall be an independent appraiser, and, if deemed appropriate by the General Manager, by a second qualified appraiser."

The Legal and Claims Committee concurred with the Land Committee's recommendations and in addition recommended the following change to Section 8223 - add "not in excess of \$250,000 for each acquisition" at the end of the third line after "acquisition of real property."

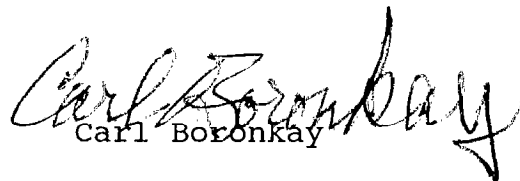
Article 4 of the proposed revisions would not be adopted at this time.

A three-member taskforce, with representatives from the Land, Legal and Claims, and Engineering and Operations Committees, has been designated to work with staff to review the Code provisions regarding disposal of property and make a recommendation regarding those provisions.

Attachment A is a copy of the revised Administrative Code provisions with the Committee recommendations. Attachment B shows the recommended changes from the version submitted with the letter dated November 5, 1992, with additions underlined and deletions stricken out.

Recommendation

It is recommended that the Board amend Articles 1, 2 and 3 of Chapter 2 of Division VIII of the Metropolitan Water District Administrative Code to read as shown in Attachment A to this letter


Carl Boronkay

JV:mg
board\revadmin.cod
Attm.

ATTACHMENT A

Chapter 2

DISTRICT PROPERTY

Article 1

GENERAL PROVISIONS

Sec.	
8200	Definitions
8201	Authorization to General Manager
8202	Restriction on District Directors and Employees

§ 8200. Definitions.

As used in this Chapter 2:

(a) Real property means the fee estate in land, including improvements or minerals therein, the fee estate in minerals in land, or any real property interest as defined in Section 8200(b).

(b) Real property interest means the interest created by an easement in, or a lease or license or permit to use, real property.

(c) Personal property means property upon but severed from, or otherwise not affixed to, real property.

(d) Acquisition price means the amount paid by the District for the acquisition of real property.

(e) Disposal price means the amount received by the District for the disposal of District real property.

(f) Annual payment means (1) the amount paid annually by the District for the grant of any real property interest to the District; or (2) the amount received annually by the District for the grant of any real property interest.

(g) Qualified appraiser means a professional appraiser who is either an independent appraiser or an employee of the District, and who has been determined by the General Manager to be qualified to appraise real property after demonstrating to

the General Manager's satisfaction a relevant and acceptable combination of training, experience, common sense, professional designation, license, if legally required, and, in the case of an independent appraiser, reputation and availability.

§ 8201. Authorization to General Manager.

The General Manager is authorized to acquire, manage, and dispose of real property on behalf of the District in accordance with Articles 2, 3, and 4, and to dispose of District surplus personal property in accordance with Article 4, of this Chapter 2, or any action by the Board, by documents which shall be approved as to legality by the General Counsel.

§ 8202. Restriction on District Directors and Employees.

District directors and employees, their spouses and dependent children may not acquire real or personal property owned by the District, or make exchange for any such property, or represent in any manner a prospective lessee, licensee, permittee, or purchaser of, or party seeking to make exchange for, any such property.

ARTICLE 2

ACQUISITION OF REAL PROPERTY

Sec.

- 8220. Authority to Procure Options
- 8221. Authority to Acquire Real Property; Appraisal
- 8222. Terms and Conditions of Acquisition Documents
- 8223. Payment of Expenses for Acquisitions
- 8224. Recordation of Notices of Public Easements
- 8225. Adoption of Resolutions of Necessity
- 8226. Relocation Assistance Programs

§ 8220. Authority to Procure Options.

The General Manager is authorized to procure options for the purchase of any real property which the General Manager determines to be required for District purposes at a price not more than the lesser of \$250,000 or the appraised market value for an option to purchase contract which shall have been determined by a qualified appraiser who may be either an employee of the District or an independent appraiser.

§ 8221. Authority to Acquire Real Property; Appraisal.

The General Manager is authorized to acquire any real property which the General Manager determines to be required for District purposes as provided herein:

(a) When the acquisition price or the annual payment therefor is less than \$10,000, it shall have been determined by a qualified appraiser to be the fair market value thereof. If the acquisition price, including any option price paid, or annual payment is \$10,000 or more but less than \$500,000, the real property shall have been appraised prior to acquisition by a qualified appraiser.

(b) If the acquisition price or annual payment for any real property is \$500,000 or more, the real property shall have been appraised prior to acquisition by a qualified appraiser who shall be an independent appraiser, and, if deemed appropriate by the General Manager, by a second qualified appraiser.

(c) The acquisition price or annual payment shall not exceed the lesser of 110 percent of or \$250,000 over the appraised value of the property established by the single appraisal if only one appraisal is obtained, or by the higher of the two appraisals if two appraisals are obtained, unless otherwise approved by the Board. In addition, if an action has been filed by the District to acquire the property by eminent domain, then either the General Manager, by contract to purchase the property upon payment of the acquisition price as provided above, or the General Counsel, by stipulated judgment in an action to acquire the property upon such payment, may pay an amount equal to interest thereon that would be required to be paid if the property were otherwise acquired by judgment in condemnation under the California Eminent Domain Law.

(d) If the General Manager recommends adoption by the Board pursuant to Section 8225 of a resolution of necessity to acquire real property by eminent domain, the General Manager shall first make the offer required by law to purchase the real property. Such offer to purchase shall be made for a price equal to the appraised value of the property established by the single appraisal if only one appraisal is obtained, or by either the higher or the lower of the two appraisals if two appraisals are obtained. The appraisal based upon which the offer to purchase is made shall be the approved appraisal of the property.

(e) In any action in eminent domain filed by the District, or any inverse condemnation action filed against the District alleging a taking of real property, the General Counsel is authorized to acquire the property by stipulated judgment providing for payment of not more than the acquisition price which the General Manager is authorized to pay by section 8221(c), unless otherwise authorized by the Board, together with interest thereon as provided in section 8221(c).

(f) The General Manager, and the General Counsel in the event of litigation, is authorized to acquire any remainder, or portion of a remainder, in connection with acquisition of real property for District purposes whenever any appraisal obtained by the District of the required property establishes that the remainder or portion thereof will be left in such size, shape or condition as to be of little market value. The acquisition price of the real property, including the remainder, shall not exceed the limit set forth in paragraph (c) without prior approval by the Board.

(g) The General Manager is authorized pursuant to Government Code Section 27281 to accept deeds or grants of any real property acquired pursuant to this Section 8221 and cause the same to be recorded on behalf of the District.

§ 8222. Terms and Conditions of Acquisition Documents.

The documents by which any real property is acquired for District purposes shall contain such terms and conditions as the General Manager deems to be reasonable and proper.

§ 8223. Payment of Expenses for Acquisitions.

The General Manager is authorized to pay the following expenses, where applicable, connected with the acquisition of real property not in excess of \$250,000 for each acquisition:

- (a) All fees charged by an escrow holder for services rendered.
- (b) The charge made for a reconveyance.
- (c) Any premium payable for a policy of title insurance.
- (d) The cost of obtaining copies of documents referred to in title reports and records relating thereto.
- (e) Any documentary tax lawfully payable by the seller.

(f) Any other expenses required to eliminate or minimize potential risks or liabilities associated with the acquisition of real property.

§ 8224. Recordation of Notices of Public Easements.

The General Manager is authorized to comply with the Streets and Highway Code in order to cause to be recorded in the name of the District a document in the form of a notice of public easement for District facilities in the event of the vacation of any public street or highway in which the facilities are installed pursuant to Section 142 of the Metropolitan Water District Act.

§ 8225. Adoption of Resolutions of Necessity.

(a) The General Manager shall give the notice and the Land Committee shall hold the hearing required of the Board by Code of Civil Procedure Section 1245.235(c). The hearing shall be attended by not less than a quorum of the committee. Subsequent to the hearing, the committee shall provide the Board and any person who filed a written request within the time specified in the notice and appeared before the committee with a written summary of the hearing and a written recommendation as to whether to adopt the resolution of necessity. Any such person shall also be given an opportunity to appear and be heard before the Board on the matters referred to in Section 1240.030.

(b) In determining whether to adopt a resolution of necessity to acquire real property, the Board shall consider the recommendation of the General Manager, the written summary of hearing and written recommendation presented to it by the Land Committee and the presentation to the Board by any person made pursuant to Section 8225(a).

§ 8226. Relocation Assistance Program.

The General Manager is authorized to implement a relocation assistance program, including a relocation assistance appeals procedure where required, in connection with the acquisition of real property, in accordance with Government Code Section 7260 et seq., and California Code of Regulations, Title 25, Article 1, Section 6000, et seq., and Article 5, Section 6150, et seq.

**ARTICLE 3
MANAGEMENT OF REAL PROPERTY**

Sec.

- 8240 Grants of Real Property Interests
- 8241 Appraisal of Real Property Interests
- 8242 Terms and Conditions of Management Documents
- 8243 Consent to Subdivision

§ 8240. Grants of Real Property Interests.

The General Manager is authorized to grant to public entities, public utilities, private persons and private entities, any real property interests in District real property that will not interfere with the District's operations; provided, however, that: (1) any such grant to a public entity or public utility is required for its operations; (2) the consideration for any one such grant (annual payment in the case of any lease, license or permit) to a private person or private entity is less than \$250,000; and (3) if it will be necessary for District facilities to be relocated or protected in order to avoid interference from the use of the real property interest, the General Manager shall obtain approval of a relocation or protection agreement by the Board prior to granting such real property interest, except as to any agreement which the General Manager is authorized to execute pursuant to Section 8118(a)(3).

§ 8241. Appraisals of Real Property Interests.

The General Manager shall have any real property interest proposed to be granted appraised as follows:

(a) When the value of the property to be granted is less than \$10,000, the value shall be based on the opinion of a qualified appraiser;

(b) When the value of the property to be granted is greater than \$10,000, but less than \$250,000, the fair market value of the property shall have been appraised by a qualified appraiser;

(c) When the value of the property to be granted is greater than \$250,000, the fair market value of the property shall have been appraised by a qualified appraiser who shall be an independent appraiser, and, if deemed appropriate by the General Manager, by a second qualified appraiser."

§ 8242. Terms and Conditions of Management Documents.

Documents conveying real property interests which the General Manager is authorized to grant by this Article 3, shall contain such terms and conditions, as the General Manager deems

to be reasonable and proper, but shall include, as a minimum, the following:

(a) Any lease, permit or license to use District real property, other than a lease to a public entity or a public utility, shall be subject to cancellation upon order of either the Board or the General Manager upon no more than one year's written notice to the lessee, permittee or licensee.

(b) Any lease, permit or license to use District real property shall contain insurance and indemnification, defense, and hold harmless provisions protecting the District against liability arising from use of such property thereunder.

§ 8243. Consent to Subdivision.

The General Manager is authorized to consent on behalf of the District to the subdivision of real property owned by a subdivider, subject to any easement owned by the District, and to consent to recordation of the subdivision map provided that the certification expressing such consent shall reserve to the District any such easement in the property so subdivided.

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(c) Personal property means property upon but severed from, or otherwise not affixed to, real property.

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(f) Annual payment means (1) the amount paid annually by the District for the grant of any real property interest to the District; or (2) the amount received annually by the District for the grant of any real property interest.

(g) Qualified appraiser means a professional appraiser who is either an independent appraiser or an employee of the District, and who has been determined by the General Manager to be qualified to appraise real property after demonstrating to the General Manager's satisfaction a relevant and acceptable combination of training, experience, common sense, professional designation, license, if legally required, and, in the case of an independent appraiser, reputation and availability, ~~and fee requirement.~~

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The General Manager is authorized to acquire, manage, and dispose of real property on behalf of the District in accordance with Articles 2, 3, and 4, and to dispose of District surplus personal property in accordance with Article 4, of this Chapter 2, or any action by the Board, by documents which shall be approved as to legality by the General Counsel.

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(d) If the General Manager recommends adoption by the Board pursuant to Section 8225 of a resolution of necessity to acquire real property by eminent domain, the General Manager shall first make the offer required by law to purchase the real property. Such offer to purchase shall be made for a price equal to the appraised value of the property established by the single appraisal if only one appraisal is obtained, or by either the higher or the lower of the two appraisals if two appraisals are obtained. The appraisal based upon which the offer to purchase is made shall be the approved appraisal of the property.

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§ 8241. Appraisals of Real Property Interests.

The General Manager shall have any real property interest proposed to be granted appraised ~~in accordance with the provisions of Section 8260(b).~~ as follows:

(a) When the value of the property to be granted is less than \$10,000, the value shall be based on the opinion of a qualified appraiser;

(b) When the value of the property to be granted is greater than \$10,000, but less than \$250,000, the fair market value of the property shall have been appraised by a qualified appraiser;

(c) When the value of the property to be granted is greater than \$250,000, the fair market value of the property shall have been appraised by a qualified appraiser who shall be an independent appraiser, and, if deemed appropriate by the General Manager, by a second qualified appraiser."

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Documents conveying real property interests which the General Manager is authorized to grant by this Article 3, shall contain such terms and conditions, as the General Manager deems to be reasonable and proper, but shall include, as a minimum, the following:

(a) Any lease, permit or license to use District real property, other than a lease to a public entity or a public utility, shall be subject to cancellation upon order of either the Board or the General Manager upon no more than one year's written notice to the lessee, permittee or licensee.

(b) Any lease, permit or license to use District real property shall contain insurance and indemnification, defense, and hold harmless provisions protecting the District against liability arising from use of such property thereunder.

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The General Manager is authorized to consent on behalf of the District to the subdivision of real property owned by a subdivider, subject to any easement owned by the District, and to consent to recordation of the subdivision map provided that the certification expressing such consent shall reserve to the District any such easement in the property so subdivided.