

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

February 22, 1993

(Land Committee--Action)
To: Board of Directors (Legal and Claims Committee--Action)
From: Assistant General Counsel
Subject: Amendment of Administrative Code to Provide Procedure for
Establishing Amount of Final Offer in Eminent Domain Cases

Report

The acquisition of property for public use is governed by the Eminent Domain Law, and the Relocation Assistance Law. Both laws contain provisions requiring that the public agency act reasonably in its negotiations with the property owner. The Eminent Domain Law includes a provision requiring that a public agency and property owner exchange a final offer and demand thirty days prior to trial. To encourage the settlement of these cases, the law further provides that if the public agency's final offer is unreasonable in light of the evidence and outcome of the case, the court shall order that it pay the attorney and expert witness fees incurred by the owner. This sanction may result in a substantial increase in the cost of acquiring property. It is essential that the amount of the final offer in all eminent domain cases be carefully considered and determined to avoid the liability for litigation expenses.

The determination of the final offer must include a consideration of the opinions and evidence which the owner will present in the trial. It must also take into account the legal issues in the case, as the outcome of these issues will affect the amount and types of compensation which must be paid. Under the Eminent Domain Law, the parties exchange valuation opinions and supporting data forty days prior to trial. This is usually the earliest time that Metropolitan will have the valuation opinions and evidence of the property owner. Under the provisions discussed above, the law allows only ten days between the exchange of valuation data and the time for making the final offer.

The authority of the General Counsel to acquire property in an eminent domain action without prior Board approval is limited to the lesser of 110 percent of or \$250,000 over the appraisal amount. Administrative Code Section 8221(e). It is anticipated that there will be many cases in which a final offer in excess of these limits should be made.

Because the Eminent Domain Law allows only ten days to make a fully informed decision on the amount of the final offer, it will not always be possible to obtain Board approval. Another procedure must be established to obtain the authority to make reasonable final offers within the time frame given by state law.

There are two proposals made by this letter. It is requested that the Committees consider the two options outlined and any other resolutions of this problem which might be suggested and direct staff to draft the appropriate revision to the Administrative Code.

Options

1) Create a committee or subcommittee of the Board which would be called into session on short notice to consider the valuation opinions and data and determine an amount for the final offer. The committee, which would meet in closed session to maintain the confidentiality of the discussions, would have the authority to authorize the amount of the final offer. Due to the short amount of notice which may be given, the committee should consist of a small membership. It is recommended that no more than seven members be appointed, and that the committee may act with three members present. If the committee consists of more than a quorum of the Board, the requirements of the Brown Act will have to be met for each meeting.

2) Authorize the General Counsel, with the concurrence of the General Manager, to consider the valuation opinions and data and determine an amount for the final offer without regard for the current Administrative Code limits. This authority would be limited to cases where the time constraints do not allow for presentation to the Board at a regularly scheduled meeting. The General Counsel and General Manager shall consult with counsel assigned to handle the case and shall make their decision based on the risks of liability for greater compensation, the potential for payment of the owner's attorney and expert fees, and the cost to Metropolitan of taking the case to trial. The General Counsel shall make a confidential report to the next meeting of the Board on each case in which a final offer was made in excess of the authority contained in the Administrative Code, and the basis for such offer.

The second option will be a more efficient means of resolving the problem created by the Eminent Domain Law. It will require the least amount of staff and Board time and will avoid problems with the unavailability of Board members to attend a meeting on short notice. The General Counsel will

February 22, 1993

have more flexibility in meeting with the attorney handling the case to discuss the specific issues involved.

Committee Assignments

This letter is referred for action to:

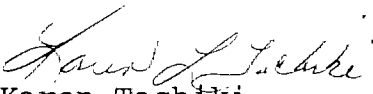
The Land Committee because of its authority to advise, study and make recommendations with regard to policies for the acquisition of rights-of-way under Administrative Code section 2451(a).

The Legal and Claims Committee because of its authority to advise, study and make recommendations with regard to condemnation matters, when they involve settlements requiring Board approval, under Administrative Code section 2461(b).

Recommendation

LAND COMMITTEE AND LEGAL AND CLAIMS COMMITTEE FOR ACTION.

It is recommended that the second option be adopted and that staff be directed to prepare the appropriate amendment to the Administrative Code.


Karen Tachiki
Assistant General Counsel