

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

April 30, 1993

To: Board of Directors (Land Committee--Information)
(Legal and Claims Committee--Information)
From: General Counsel
Subject: Proposed Change to Language in Resolutions of Necessity.

Report

At its meeting of April 13, 1993, there was a discussion by the Board of Directors regarding the language in the Resolutions of Necessity for the acquisition of property for the Domenigoni Valley Reservoir project. Section 1 of the resolutions adopted by the Board in the past has read:

"The District's Board finds and determines that the public interest and necessity require, for public use, the construction, operation, and maintenance of a reservoir in the County of Riverside, California, for the storage and transportation of water for domestic and municipal uses within the District's boundaries, and that certain properties situated in the County of Riverside are necessary therefor."

The phrase "for the storage and transportation of water for domestic and municipal uses" is taken from the Metropolitan Water District Act, which gives Metropolitan the power of eminent domain to accomplish these purposes.

The Board inquired whether the removal of the phrase "for domestic and municipal uses within the District's boundaries" would have any adverse legal effect on the validity of the resolutions or the purposes to which the acquired property could be put.

California law provides that the eminent domain power may only be exercised to acquire property for a public use. The Eminent Domain Law requires that the resolution of necessity contain a "general statement of the public use for which the property is to be taken." This requirement would be satisfied by a statement that the reservoir is to be constructed and operated for the storage and transportation of

water for public use, without specifying the particular purposes for which the water will be used.

The Metropolitan Water District Act authorizes Metropolitan to acquire property to store and transport water. The statutory authorization for Metropolitan to exercise eminent domain powers to accomplish this purpose constitutes a legislative declaration that this is a public use. No valid legal challenge can be made that the reservoir project is not a public use.

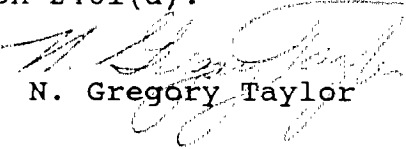
Nor does there appear to be any legal basis for limiting the use of the property based on the general description of the project in the resolution of necessity. The legal effect of the resolution is to indicate a legislative decision on the issues of public use and necessity. Our research indicates that in the absence of fraud or abuse of discretion, the resolution is binding, even if the public agency makes a later decision not to use the property for the purpose for which it was acquired. In the present case, the proposed use for a reservoir will not change. Therefore, a change in the resolution's general statement of the public use would not have any adverse legal effect.

Board Committee Assignments

This letter is referred for information to:

The Land Committee because of its authority to advise, study and make recommendations with regard to the conduct of condemnation proceedings pursuant to Administrative Code Section 2451(g) and make recommendations to the Board as to whether to adopt a resolution of necessity pursuant to Administrative Code Section 2452.

The Legal and Claims Committee because of its authority to advise, study and make recommendations with regard to litigation brought by the District pursuant to Administrative Code Section 2461(a).


N. Gregory Taylor