

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

November 22, 1994

Board of Directors

General Counsel

Authorization for New Rate Structure

The Board of Directors (Board) of The Metropolitan Water District of Southern California (Metropolitan) at its meeting on December 14, 1993, approved the form of certain charges to be incorporated into its rate structure. Under the new rate structure, the current noninterruptible water rate or commodity charge, with seasonal storage service and the interim agricultural water discount, will remain in place. But these basic water rates will be augmented by the following new charges:

- Readiness-to-Serve Charge (RTS);
- New Demand Charge (NDC);
- Treated Water Peaking Charge (TWP); and
- Connection Maintenance Charge (CMC).

Each of these charges is described in Board letter 8-2, "Financial Structure Study Recommendations of Rate Structure and Additional Revenue Sources," dated December 1, 1993.

I. Metropolitan's Authorization to Levy Rates and Charges.

Each of the elements of the new rate structure may be characterized as one or more of several different types of charges which may be levied by Metropolitan on its member agencies. These alternatives are summarized below:

A. Water Rate.

Sections 133 and 134 of the MWD Act provide broad authorization to the Board to establish water rates. Section

133 mandates that "the Board shall fix the rate or rates at which water shall be sold." Section 134 provides:

"The Board, so far as practicable, shall fix such rate or rates for water as will result in revenue which, together with revenue from any water stand-by or availability service charge or assessment, will pay the operating expenses of the district, provide for repairs and maintenance, provide for payment of the purchase price or other charges for property or services or other rights acquired by the district, and provide for the payment of the interest and principal of the bonded debt subject to the applicable provisions of this act authorizing the issuance and retirement of the bonds. Those rates . . . shall be uniform for like classes of service throughout the district."

B. Availability of Service Charge.

Section 134.5 of the MWD Act authorizes the Board to impose a water standby or availability of service charge, to raise an amount of revenue determined by the Board. A standby or availability of service charge is "'a minimum payment demanded of patrons who desire to be placed in position to take advantage of the service at their convenience, whether actually using water or not.' [Citation.] . . . Standby and availability charges are fees exacted for the benefit which accrues to property by virtue of having water available to it, even though the water might not actually be used at the present time." (Kennedy v. City of Ukiah (1977) 69 Cal.App.3d 545, 553.)

Section 134.5 of the MWD Act further provides:

"(b) Allocation of the service charge among member public agencies shall be in accordance with a method established by ordinance or resolution of the board. Factors that may be considered include, but are not limited to, historical water deliveries by a district; projected water service demands by member public agencies of a district; contracted water service demands by member public agencies of a district; service connection capacity; acreage; property parcels; population, and assessed valuation, or a combination thereof."

C. Capital Facilities Fee.

Section 54999.2 of the Government Code provides, "[A]ny public agency providing public utility service on or

after July 21, 1986, may continue to charge, or may increase, an existing capital facilities fee, or may impose a new capital facilities fee after that date, and any public agency receiving a public utility's service shall pay those fees . . ." (Emphasis added.)

Section 54999.1 of the Government Code further provides that a "capital facilities fee" or "capacity charge" means "any non-discriminatory charge to pay the capital cost of a public utility facility." A non-discriminatory charge cannot exceed the proportionate share of the cost of the public utility facilities which are of benefit to the person or property being charged, based upon the proportionate share of use of those facilities. This statute enables Metropolitan to impose capital facilities fees.

II. Application to New Rates and Charges.

A. Readiness-to-Serve Charge.

1. **RTS as a Water Rate.** The RTS is a charge for water service and will be allocated among member agencies according to the historic quantity of water purchased by the agency. The RTS will be levied expressly to pay for property and facilities and the principal and interest on bonded indebtedness levied to pay for such facilities. In Section 134 of the MWD Act these amounts are expressly authorized to be paid from the water rate. Therefore the RTS is authorized as a rate charged for water service pursuant to Sections 133 and 134 of the MWD Act.

2. **RTS as a Service Charge.** The RTS is a charge levied on member agencies to pay for the facilities required to help assure that reliable water service remains available to them, whether they use water or not. It will be allocated among member agencies according to historical water deliveries by Metropolitan, one of the factors specifically authorized as a basis for allocation under Section 134.5. Therefore, the RTS is authorized to be assessed as a service charge.

3. **RTS as Capital Facilities Fee.** The RTS will be levied expressly to pay the costs of capital facilities to be provided for the benefit of existing users of Metropolitan's system. Because the RTS is allocated among member agencies according to historic water usage, it can be demonstrated that each member agency will pay the proportionate cost of the portion of the facilities of benefit to that member agency. This meets the statutory requirements for a capital facilities

fee and Metropolitan is authorized to levy the RTS on this basis as well.

B. New Demand Charge.

1. **NDC as a Water Rate.** The NDC is levied to pay the costs of that portion of Metropolitan's facilities provided to serve anticipated new demands, and it must be paid only when the rolling average quantity of water purchased from Metropolitan increases above historic base levels. The NDC is payable as a consequence of the delivery of a quantity of water and clearly may be levied as a water rate under the MWD Act.

2. **NDC as a Service Charge.** The NDC is a charge for the availability of service from facilities provided or to be provided to serve anticipated new demands. The charge is determined using historic water deliveries (both in the base and in the sales figures compared with the base), one of the criteria for allocation of service charges which is expressly permitted by MWD Act Section 134.5. Therefore, it also is a service charge.

3. **NDC as a Capital Facilities Fee.** The NDC will be used expressly to pay the capital cost of new facilities for public utility service. It will be allocated among member agencies according to the amount of increased demands on those facilities by each member agency, to assure that the costs of those facilities are borne by those who benefit from them. The Nexus Study shows the allocation of costs used to calculate the NDC and demonstrates that the cost is not in excess of the proportionate benefit. The NDC meets the statutory requirements for a capital facilities fee.

C. Treated Water Peaking Charge.

This charge will be levied on peak water deliveries. In effect, the TWP will be the top rate on an ascending rate block structure applied to all users of interruptible water service whose demands on Metropolitan in the summer season (May through September) exceed annual average flows (based on cubic feet per second (cfs)) by more than 130%. It is a water rate authorized under Sections 133 and 134 of the MWD Act.

D. Connection Maintenance Charge.

The CMC will allow Metropolitan to directly recover costs of maintenance of its connections from the member agencies using those connections. It is similar to a monthly

meter rate charged by utility companies to cover overhead costs. It is a water rate levied specifically to cover these costs.

III. Implementation of Charges.

Both the RTS and NDC are valid under multiple authorities. When there are multiple ways of attaining an authorized end, your Board has a choice as to which such means to select.¹ Because your Board has been given the legislative authority to set rates and charges for Metropolitan, a court reviewing your Board's enactment of its rate structure design "is limited to a determination of whether District's actions were arbitrary, capricious or entirely lacking in evidentiary support." (Brydon v. East Bay Municipal Utilities District (1994) 24 Cal.App.4th 178, 196.) This limited review is based on the doctrine of separation of powers, which sanctions the delegation of authority to the public agency and acknowledges the presumed expertise of the agency. (Id.) The validity of your Board's action will be presumed, and the burden of establishing to the contrary will be on the challenger. (Id.)

In suggesting the various authorities for these charges, each of the charges is construed in its best light and in the manner most consistent with the MWD Act and California law. First, the RTS and NDC will be imposed as water rates. Under Sections 133 and 134 of the MWD Act, your Board has broad discretion in fixing water rates and courts will defer to the manner in which your Board exercises such discretion. In any challenge of rates set by the lawful rate-fixing body, such rates are presumed to be reasonable, fair and lawful. (Brydon, supra, 24 Cal.App.4th at 200.)

Second, the RTS and NDC will be imposed as capital facilities fees under the Government Code. To implement this fee, your Board should find that the RTS is necessary for the purpose of financing construction costs of public utility facilities furnished by Metropolitan, and does not exceed the proportionate share of the cost of the public utility facilities of benefit to each person or property being charged, pursuant to the requirements of Government Code Section 54999.2.

¹ See, McQuillin, Municipal Corporations (3d Ed., 1988) §10.28.

Third, the RTS and NDC will be imposed as availability service charges under Section 134.5 of the MWD Act. Terms of this authorization of the RTS are discussed in detail in Section IV below. Again, discretion exercised by your Board as the lawful rate-fixing body in setting this charge will be given a presumption of validity.

If any one of the bases for imposition of the RTS and NDC is found to be valid, the charges will be upheld. Reciting multiple authorities for each of these charges gives added strength to the foundation of their validity.

Resolutions stating Metropolitan's intent to impose the RTS and NDC for fiscal year 1995-96 are required to recite the terms of the charges and the authority under which they are implemented, provide notice to the member agencies of such charges (as required pursuant to Section 134.5(d) of the MWD Act) and set the required public hearing. A form of resolution of intention to adopt the RTS is attached as Exhibit A. Adoption of each of the charges will require adoption of an enacting resolution following the public hearing.

The CMC and TWP will be set in the same manner that water rates are set each year. Regulations governing these charges will be added to the Administrative Code.

IV. Local Option to Utilize Standby Charge.

Certain member agencies have expressed their strong support for retaining Metropolitan's standby charge. The proposal described below would allow those member agencies to collect all or a part of their RTS obligation through a Metropolitan water standby charge. Under this proposal, member agencies would be given the option to request (by resolution of a requesting agency's governing body, filed with the Board by the deadline date set in the attached resolution) to have Metropolitan impose a standby charge upon parcels of land in the electing agency's service area. Standby charge collections from each member agency's territory, if any, would be credited against the member's RTS obligation.

As discussed above, the RTS will be imposed (in order of priority) as a water rate, a capital facilities fee and an availability service charge under Section 134.5 of the MWD Act. Metropolitan regards the RTS with a potential for collections through the standby charge as a single charge for a single purpose, with an optional collection mechanism for some agencies.

Interpretations of the MWD Act by the Attorney General and Legislative Counsel state that Metropolitan may not levy both an availability of service charge and standby charge under Section 134.5 of the MWD Act. The utilization of both mechanisms to collect a single charge, as described above, has not been clearly addressed at this time, although an inquiry to the Attorney General is pending. Another factor not yet addressed is the effect of SB 2070, introduced by Senator Ayala and enacted by the Legislature in 1992, which declares that the terms "standby charge" and "availability of service charge" have the same meaning. This legislation obviates the distinctions between the standby and service charges.

The proposal outlined above is distinct from the separate and independent standby and service charges authorized by Metropolitan and examined by the Attorney General and Legislative Counsel in 1992. It also is different from the simultaneous but offsetting service and standby charges described in the Legislative Counsel opinion to Senator Ayala dated October 31, 1994. Instead, this proposal imposes a single service charge under Section 134.5, but provides member agencies an option for flexibility in the payment of that charge. We believe that this is legal and in complete harmony with the legislative intent of that statute.

Adoption of this alternative, while more equitable for some member agencies, carries a greater risk of challenge, whether in the courts, through legislative action or by other political means. We will vigorously defend the legality of this alternative if it is challenged. In such an action, each of the different legal authorities available to Metropolitan for authorization of the charges must be overcome in order to invalidate the charges. We have crafted a series of elections by your Board to utilize all available options and provide additional defenses against such an attack.

The RTS is the charge authorized under the resolution. No matter what its characterization, if collection of any standby charge is enjoined or invalidated, the full amount of the RTS is still payable by each member agency. Further, if the RTS is challenged because of its optional use of the standby charge, all amounts collected from member agencies under the resolution will be valid as water rates or capital facilities fees.

As an additional fallback, the proposed resolution gives the General Manager, in consultation with the officers of the Board, express authority to rescind standby charges if

the RTS is invalidated or enjoined. However, if it is too late to instruct the counties to stop standby charge collections for the fiscal year, the General Manager may revoke the RTS instead, until such time as standby charge collections have concluded. In this situation, member agencies which have not requested that standby charges be imposed will be deemed to have done so, and all payments of RTS by member agencies will be deemed to be cash payments in lieu of standby charges (as permitted under Metropolitan's current standby charge resolution).

After property tax bills have become due and standby charges have been collected for the fiscal year, the General Manager will reimpose the RTS for the remainder of the fiscal year, and all remaining RTS charges will be due and payable on the last business day of the fiscal year. In this manner, standby and service charges will not both be due and payable at the same time, but the commitment of each member agency to payment of the readiness-to-serve charge will be upheld.

N. Gregory Taylor

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EXHIBIT ATHE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

RESOLUTION [____]

**RESOLUTION OF THE BOARD OF DIRECTORS
OF THE METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA
GIVING NOTICE OF INTENTION TO IMPOSE
READINESS-TO-SERVE CHARGE**

WHEREAS, at its meeting on December 14, 1993, the Board of Directors ("Board") of The Metropolitan Water District of Southern California ("Metropolitan") approved the rate structure and additional revenue sources described in the Board letter on the Financial Structure Study dated December 1, 1993, including a readiness-to-serve charge, with implementation of these charges to begin in fiscal year 1995-96;

WHEREAS, the amount of revenue to be raised by the readiness-to-serve charge shall be as determined by the Board and allocation of the readiness-to-serve charge among member public agencies shall be in accordance with the method established by the Board;

WHEREAS, Metropolitan has legal authority to impose such readiness-to-serve charge as a water rate pursuant to Section 134 of the Metropolitan Water District Act, as an availability of service charge pursuant to Section 134.5 of the Metropolitan Water District Act, and as a capital facilities fee pursuant to Section 54999.2 of the California Government Code;

WHEREAS, under authority of Sections 133 and 134 of the Metropolitan Water District Act, the Board has the authority to fix the rate or rates for water as will result in revenue which, together with other revenues, will pay

Metropolitan's operating expenses and provide for payment of other costs, including payment of the interest and principal of Metropolitan's bonded debt;

WHEREAS, pursuant to Resolution 8329, adopted by the Board on July 9, 1991, proceeds of the readiness-to-serve charge and other revenues from the sale or availability of water are pledged to the payment of Metropolitan's outstanding revenue bonds;

WHEREAS, under authority of Government Code Section 54999.2 Metropolitan may impose a capital facilities fee to pay the capital cost of facilities for the provision of water service; and

WHEREAS, the readiness-to-serve charge is intended to recover the debt service, not paid from taxes, of expenditures for projects needed to meet the reliability and quality needs of existing users of the District's water;

WHEREAS, under authority of Section 134.5 of the Metropolitan Water District Act, a readiness-to-serve charge imposed as an availability of service charge may be collected from the member public agencies within Metropolitan, or may be imposed as a standby charge against individual parcels within the District;

WHEREAS, under such authority, the water standby charge may be imposed on each acre of land or each parcel of land less than an acre within Metropolitan to which water is made available for any purpose by Metropolitan, whether the water is actually used or not;

WHEREAS, certain member public agencies of Metropolitan have requested the option to provide collection of all or a portion of their readiness-to-serve charge obligation through a Metropolitan water standby charge imposed on parcels within those member agencies;

WHEREAS, Metropolitan may fix different standby charge rates for parcels situated within different member public agencies, and Metropolitan is willing to comply with the requests of member public agencies opting to have Metropolitan levy water standby charges within their respective territories, on the terms and subject to the conditions contained herein;

WHEREAS, the provisions of the Uniform Standby Charge Procedures Act (USCPA), sections 54984-54984.9 of the Government Code, are available to any local agency authorized by law to provide water or water service, and authorized to

fix, levy, or collect any standby or availability charge or assessment in connection with the provision of that service;

NOW, THEREFORE, the Board of Directors of The Metropolitan Water District of Southern California does hereby resolve, determine and order as follows:

Section 1. That the public interest and necessity require the District to develop a reliable source of revenues less susceptible to seasonal and annual variation, through imposition of a readiness-to-serve charge to be collected from the District's member public agencies.

Section 2. That said readiness-to-serve charge should be in an amount sufficient to provide for payment of the debt service, not paid from ad valorem property taxes, of expenditures for projects needed to meet the reliability and quality needs of existing users of the District's water.

Section 3. That such readiness-to-serve charge for 1995-96 shall be a water rate equal to \$33 per acre foot, which shall be charged on a historic basis for each acre foot of water included in Metropolitan's average water deliveries to its member agencies for the two fiscal year period ending June 30, 1994, for an aggregate readiness-to-serve charge for 1995-96 of \$56,000,000.

Section 4. That in the alternative, and without duplication, the readiness-to-serve charge shall be a capital facilities fee in the aggregate amount of \$56,000,000.

Section 5. That this Board finds that the proposed readiness-to-serve charge is necessary for the purpose of financing construction costs of public utility facilities furnished by Metropolitan, and does not exceed the proportionate share of the cost of the public utility facilities of benefit to each person or property being charged, based upon the proportionate share of use of those facilities, as shown in the attached Engineer's Report.

Section 6. That in the alternative, and without duplication, the readiness-to-serve charge shall be an availability service charge pursuant to Section 134.5 of the Metropolitan Water District Act.

Section 7. That notice is hereby given to the public and to each member public agency of The Metropolitan Water District of Southern California of the intention of Metropolitan's Board to consider and take action at its regular meeting to be held March 13, 1995, on the General Manager's recommendation to impose a readiness-to-serve charge in the amount of \$56,000,000 for fiscal year 1995-96.

Section 8. That the readiness-to-serve charge shall be allocated among the member public agencies in proportion to the average (in acre feet) of water deliveries by the District to each member public agency initially during the two fiscal year period ending June 30, 1994, less certain long-term seasonal storage and other deliveries for long-term storage, as more particularly described in the Board letter on the Financial Structure Study dated December 1, 1993, as amended, and that the amount of the readiness-to serve charge proposed to be imposed on each member agency for fiscal year 1995-96 is as follows:

Proposed 1995-1996 Readiness-to-Serve Charge

<u>Member Agency</u>	<u>Amount</u>
Anaheim	\$ 704,154
Beverly Hills	376,911
Burbank	582,239
Calleguas MWD	2,742,878
Central Basin MWD	2,382,164
Chino Basin MWD	1,763,213
Coastal MWD	1,138,657
Compton	152,186
Eastern MWD	1,676,916
Foothill MWD	279,745
Fullerton	332,196
Glendale	764,120
Las Virgenes MWD	522,071
Long Beach	1,281,387
Los Angeles	8,940,276
MWD of Orange Co.	6,188,503
Pasadena	419,990
San Diego CWA	14,461,962
San Fernando	16,853
San Marino	34,564
Santa Ana	464,430
Santa Monica	165,182
Three Valleys MWD	1,877,307
Torrance	583,128
Upper San Gabriel MWD	1,181,429
West Basin MWD	4,781,795
Western MWD of Riverside Co.	<u>2,185,744</u>
TOTAL	\$56,000,000

Section 9. That the allocation of the readiness-to-serve charge among member agencies set forth in Section 8 above is consistent with the per-acre-foot water rate imposed pursuant to Section 3 above.

Section 10. That it is the intent of the Board that the readiness-to-serve charge for fiscal year 1996-97 be allocated among member agencies in proportion to average water deliveries by the District to each member public agency for the three fiscal year period ending June 30, 1995, and in subsequent fiscal years for the immediately preceding four fiscal year period, but that in no event shall allocations to any member agency be based on less than fifty percent (50%) of such member agency's average water deliveries (less certain deliveries for long-term storage, as described above) for the two fiscal year period ending June 30, 1994.

Section 11. That the proposed readiness-to-serve charge and the amount applicable to each electing member public agency, the method of its calculation, and the specific data used in its determination are as specified in the Engineer's Report filed attached as Exhibit A to this Resolution. The Engineer's Report, which forms the basis of the readiness-to-serve charge, is on file and available for review by interested parties at Metropolitan's headquarters.

Section 12. That except as provided below with respect to any readiness-to-serve charge collected by means of a Metropolitan water standby charge, the readiness-to-serve charge shall be due in equal monthly installments on the last business day (as defined in MWD Admin. Code, § 4507(a)(1)) of the [month], commencing [September 30, 1995].

Section 13. That such readiness-to-serve charge may, at the request of any member agency obligated to pay such readiness-to-serve charge, be raised by a Metropolitan water standby charge imposed upon land within Metropolitan's (and such member public agency's) service area to which water is made available by Metropolitan for any purpose, whether the water is actually used or not.

Section 14. That the rates of any standby charge proposed to be levied to collect all or a portion of a member public agency's readiness-to-serve charge, per acre of land, or per parcel of land less than an acre, as shown in the Engineer's Report, may vary by member public agency, and shall not exceed the readiness-to-serve charge obligation of the member agency divided by the number of acres and/or parcels of less than one acre within such member agency or, if less, the amount of Metropolitan's 1994-95 standby charge for the member public agency. The maximum standby charge applicable to each electing member public agency, the method of its calculation, and the specific data used in its determination are as specified in the Engineer's Report attached as Exhibit A to this Resolution.

Section 15. That the maximum standby charge, per parcel or per acre, applicable to land within each member public agency as allocated in the Engineer's Report shall be as follows:

Maximum 1995-1996 Standby Charge

<u>Member Agency</u>	<u>Amount</u>
Anaheim	\$[8.55
Beverly Hills	15.00
Burbank	14.20
Calleguas MWD	9.58
Central Basin MWD	6.08
Chino Basin MWD	4.45
Coastal MWD	11.60
Compton	8.92
Eastern MWD	4.59
Foothill MWD	9.14
Fullerton	8.22
Glendale	12.23
Las Virgenes MWD	8.03
Long Beach	12.16
Los Angeles	8.68
MWD of Orange Co.	9.96
Pasadena	9.87
San Diego CWA	11.51
San Fernando	1.44
San Marino	8.24
Santa Ana	7.88
Santa Monica	8.39
Three Valleys MWD	12.21
Torrance	12.23
Upper San Gabriel MWD	1.52
West Basin MWD	15.00
Western MWD of Riverside Co.	5.29]

Section 16. That the proposed water standby charge, if imposed, shall be collected on the tax rolls, together with the ad valorem property taxes which are levied by Metropolitan for the payment of pre-1978 voter approved indebtedness. Any amounts so collected shall be applied as a credit against the applicable member agency's obligation to pay a readiness-to-serve charge. Any member agency requesting to have all or a portion of its readiness-to-serve charge obligation collected through standby charge levies within its territory as provided herein shall pay any portion not collected through net standby charge collections to Metropolitan not later than June 30, 1996.

Section 17. That any member public agency which requests to provide for collection of all or a portion of its readiness-to-serve charge obligation by a Metropolitan water standby charge imposed upon land within its service area to which water is made available by Metropolitan for any purpose shall do so by furnishing to Metropolitan (Attn: Director of Finance) not later than March 1, 1995, a certified copy of a resolution of its governing body electing such option. By making such request and providing such resolution to Metropolitan, a member agency will demonstrate that it agrees to all the terms and conditions of this Resolution.

Section 18. That notice is hereby given to the public and to each member public agency of The Metropolitan Water District of Southern California of the intention of Metropolitan's Board to consider and take action at its regular meeting to be held May 9, 1995, on the General Manager's recommendation to impose a water standby charge for fiscal year 1995-96 under authority of Section 134.5 of the Metropolitan Water District Act and the USCPA on land within the member public agencies providing such resolution to Metropolitan on or before March 1, 1995, at the rates, per acre of land, or per parcel of land less than an acre, specified in such resolution (or, if less, or if no rate is specified in such resolution, at the rate specified in Section 15 above.)

Section 19. That the Board will meet in regular session at its meeting on April 11, 1995, to hold a public protest hearing at which interested parties may present their views regarding any proposed standby charges and the Engineer's Report. Any member of the public may submit a written protest or other comments either at a scheduled hearing or by mail to the Executive Secretary of The Metropolitan Water District of Southern California, at Post Office Box 54153, Los Angeles, California 90054-0153. All written protests and comments presented at the hearings or received by the Executive Secretary on or before April 11, 1995, which contain a description sufficient to identify the land owned by the landowner will be given due consideration by the Board before its final action on the proposed standby charge. The USCPA provides that if the Board receives written protests (which protests are not withdrawn at the time of determination by the Board) representing 40 percent of the parcels subject to the proposed standby charge, the matter must be tabled for at least one year. If the Board receives such protests representing 15 percent or more of the parcels subject to the proposed charge, the Board may still adopt the charge, but the charge will be ineffective until approved by a majority of the vote in a landowner election within the District.

Section 20. That it is the intent of the Board that the following lands shall be exempt from the water standby charge: (a) lands owned by the Government of the United States, the State of California, or by any political subdivision thereof or any entity of local government; (b) 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; (c) lands not included in (a) or (b) above, which the General Manager, in his discretion, finds do not now and cannot reasonably be expected to derive a benefit from the projects to which the proceeds of the water standby charge will be applied; and (d) lands within any member public agency, subagency, or city if the governing body of such public entity elects and commits to pay out of funds available for that purpose, in installments at the time and in the amounts established by Metropolitan, the entire amount of the water standby charge which would otherwise be imposed upon lands within those public entities. The General Manager may develop and implement additional criteria and guidelines for exemptions in order to effectuate the intent expressed herein.

Section 21. That the General Manager shall establish and make available to interested applicants procedures for filing and consideration of applications for exemption from the water standby charge pursuant to subsections (b) and (c) of Section 20 above. All applications for such exemption and documents supporting such claims must be received by Metropolitan in writing on or before December 31, 1995. The General Manager is further directed to review any such applications for exemption submitted in a timely manner to determine whether the lands to which they pertain are eligible for such exemption and to allow or disallow such applications based upon those guidelines. The General Manager shall also establish reasonable procedures for the filing and timing of the appeals from his determination, pursuant to Section 22 below.

Section 22. That an Ad Hoc Committee of the Board shall be appointed by the Chairman of the Board for the purpose of considering, in the Committee's discretion, appeals from determinations by the General Manager to deny or qualify an application for exemption from the water standby charge pursuant to Section 20 above. The Ad Hoc Committee shall consider such appeals and make recommendations to the Board to affirm or reverse the General Manager's determinations. The Board shall act upon such recommendations and its decision as to such appeals shall be final.

Section 23. That no exemption from the water standby charge shall reduce the applicable member agency's readiness-to-serve charge obligation, nor shall any failure to collect, or any delay in collecting, any standby charges

excuse or delay payment of any portion of the readiness-to-serve charge when due. All amounts collected as water standby charges pursuant to this Resolution shall be applied solely as credits to the readiness-to-serve charge of the applicable member agency.

Section 24. That in the event that the readiness-to-serve charge or any standby charge imposed to provide for payment thereof, or any other rate or charge imposed pursuant to this Resolution, or any combination of such charges, is determined to be unauthorized or invalid by a final judgment in any proceeding at law or in equity, which judgment is not subject to appeal, or if the collection of any such charge or charges shall be permanently enjoined and appeals of such injunction have been declined or exhausted, then at the instruction of the General Manager (in consultation with the officers of the Board) all proceedings for the collection of any Metropolitan water standby charges as the General Manager may specify shall cease. Notwithstanding the foregoing, however, if procedures for collection of such standby charges by any of the respective counties in Metropolitan's service area have commenced for the fiscal year, and cessation of such collections is impracticable, the General Manager (in consultation with the officers of the Board) may determine that any availability of service charge shall immediately be revoked, and no availability of service charge shall thereafter be imposed on any member agency until the procedures for collection of such standby charges by the applicable county have been completed (not including extraordinary procedures for collection of delinquent amounts, which the General Manager may waive on behalf of Metropolitan). Immediately upon revocation of the availability of service charge under these circumstances, any member agency which has not requested that Metropolitan impose a standby charge upon parcels of land within its territory as a means of collecting the readiness-to-serve charge shall be deemed to have made such request, and all availability of service charges previously paid or to be paid by member agencies to Metropolitan shall be deemed to be cash payments in lieu of standby charges. Following collection of standby charges by the counties, the readiness-to-serve charge shall be reimposed for the remainder of the fiscal year and the uncollected portion shall be due and payable on the last business day of the fiscal year.

Section 25. That the General Manager and the General Counsel are hereby authorized to do all things necessary and desirable to accomplish the purposes of this Resolution, including, without limitation, the commencement or defense of litigation.

Section 26. That this Board finds that the proposed readiness-to-serve charge and other charges provided in this Resolution are exempt from the provisions of the California Environmental Quality Act (CEQA) since they are rates and other charges which are for the purposes of meeting operating expenses; purchasing or leasing supplies, equipment or materials; meeting financial reserve needs and requirements; and obtaining funds for capital projects necessary to maintain service within existing service areas, or for projects which have or will have CEQA documentation in place prior to construction of any facility or facilities; and, additionally, since they constitute the creation of government funding mechanisms which do not involve commitment to any specific project which may result in a potentially significant physical impact on the environment.

Section 27. That if any provision of this Resolution or the application to any member agency, property or person whatsoever is held invalid, that invalidity shall not affect other provisions or applications of this Resolution which can be given effect without the invalid portion or application, and to that end the provisions of this Resolution are severable.

Section 28. That the General Manager is hereby authorized and directed to take all necessary action to satisfy relevant statutes requiring notice by mailing or by publication.

Section 29. That the Executive Secretary is hereby directed to transmit a certified copy of this Resolution to the presiding officer of the governing body of each member public agency.

I HEREBY CERTIFY, that the foregoing is a full, true and correct copy of a Resolution adopted by the Board of Directors of The Metropolitan Water District of Southern California, at its meeting held on January 10, 1995.

Executive Secretary
The Metropolitan Water District
of Southern California