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APPROVED
by the Board of Directors of
The Metropolitan Water District
of Southern California
at its meeting held

MAY - 9 1995

EXECUTIVE SECRETARY

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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

April 28, 1995

To: Board of Directors (Committee on Legislation--Action)

From: General Manager

Subject: Senate Bills 771 (Lockyer) and 894 (Leslie)--Changes to Eminent Domain and Property Acquisition Statutes

RECOMMENDATION:

It is recommended that the Board of Directors express their opposition to Senate Bills 771 and 894.

John R. Wodraska
General Manager

Submitted by:

Gary M. Snyder
Chief Engineer

Concur:

John R. Wodraska
General Manager

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EXECUTIVE SUMMARY:

Senate Bill 771 would amend the Eminent Domain Law by changing the date that the right to compensation accrues from the date of filing the eminent domain action to the date that a public official publicly announces that an identifiable property may be subject to an eminent domain proceeding. This change would require Metropolitan to acquire some properties that are identified in public hearings or environmental documents, but which would not be required for the project as finally approved.

Senate Bill 894 would amend the Public Records Act and Relocation Assistance Act with respect to issues related to property acquisition. The Public Records Act would be amended to make appraisal reports subject to disclosure after the contents have been disclosed to the contracting parties. This change would allow discovery of appraisal reports prepared by an appraiser which Metropolitan is using as an expert witness in eminent domain actions on other properties. The Relocation Assistance Act would be amended to require that a condemning agency adopt its resolution of necessity before making an offer to acquire property, and prohibits an agency from acquiring property for more than the price paid for the transfer of comparable property between private parties within six months prior to the acquisition. This would create a conflict with the eminent domain law which requires that an offer be made prior to the resolution of necessity, and that the condemning agency pay fair market value for property.

DETAILED REPORT:

The Eminent Domain Law presently provides that the right to compensation is deemed to have accrued at the time that the eminent domain action is filed. Under this law, a public agency must pay the property owner for any damage or costs resulting from the pending action if the agency abandons the acquisition. Related statutes and case law require public agencies to commence eminent domain proceedings within a reasonable time after announcing that a property will be condemned, but not later than six months after adopting a resolution of necessity. If an agency acts too slowly, the property owner has a cause of action for damage caused by the unreasonable delay.

Senate Bill 771 would amend the Eminent Domain Law to provide that the right to compensation accrues on the date "that a public official publicly announces that an identifiable property may or will be subject to an eminent domain proceeding." During the environmental review process required for all public projects there are statements made in public hearings and environmental documents which identify properties which may be condemned for the project. Since the California Environmental Quality Act requires that alternatives to the proposed project be reviewed, several different sites or alignments are usually the subject of public debate and comment. Senate Bill 771 would create a right to compensation from the date that a property is identified by a public official as potentially subject to condemnation for a proposed project. As a consequence, public agencies may be required to acquire or pay damages for properties that are discussed in the environmental review process. This bill has the potential to substantially increase the costs of property acquisition for public projects. The bill is also unnecessary as current law protects property

owners against unreasonable delay in acquisitions, while allowing public agencies to perform their planning without having to acquire all the sites considered for a project.

Senate Bill 894 would make two changes to statutes related to property acquisition for public projects. The bill would amend the Public Records Act to remove the exemption from disclosure for appraisal reports after the contents of the report have been disclosed to the contracting party. This change would allow a member of the public to obtain a copy of an appraisal report which has been disclosed to the property owner involved. Current law protects appraisal reports until "all of the property has been acquired." Rules governing negotiations for property acquisition require that a public agency make disclosures of certain information from appraisal reports to the property owner involved. However, the owner is not entitled to a copy of the report, nor is any other member of the public. Since Metropolitan often uses an appraiser to value a number of properties for a project, it is likely that reports done by an appraiser for other properties would be subject to disclosure. This would be a particular problem where the appraiser is designated as an expert witness, and would be subject to cross-examination regarding reports prepared for other properties on the project.

The Relocation Assistance Act has provisions requiring public agencies to appraise property and make an offer to acquire for not less than the appraised value prior to adopting a resolution of necessity. The bill would make two changes to these provisions. First, the offer to acquire would be made after the resolution of necessity is adopted. This provision would conflict with provisions of the Eminent Domain Law which require that the resolution of necessity contain a statement that an offer has been made. Furthermore, it is more reasonable to negotiate to acquire the property on an agreed upon price before the six month period to file an eminent domain action is triggered by the adoption of the resolution of necessity. Second, the bill would require that the acquisition be at "a fair market value, never exceeding the value of the transfer of comparable property between private parties in an arms length transaction within the last six months." Payment of fair market value is a constitutional requirement, but limiting the definition to a value determined by a comparable sale within six months would probably violate the constitutional requirement. The use of comparable sales usually requires adjustments to their value because each property is unique in some way. Also, the value of property is often determined by a method other than reference to comparable sales. Therefore, this definition of fair market value would conflict with the constitutional requirement that the owner be paid just compensation. Finally, this limitation would deprive owners in a rising market of just compensation by allowing the market value to be capped six months prior to the acquisition of their property.

For the reasons stated above, Senate Bills 771 and 894 would make unwise changes to the laws governing acquisition of property for public projects, and it is recommended that your Board express its opposition to these bills.