

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

AUG 20 1996

8-8



**MWD**  
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

*[Signature]*  
EXECUTIVE SECRETARY July 30, 1996

**To:** Board of Directors (Legal and Claims Committee--Action)  
**From:** General Manager *[Signature]*  
**Submitted by:** Gary M. Snyder  
*for* Chief Engineer *[Signature]*  
**Subject:** Resolution of Necessity Directing the General Counsel to Condemn Property Required for the Diemer Filtration Plant in Orange County, California, identified by MWD Right-of-Way Parcel Numbers 1006-1-12 and -13, and Owner's Name: Shell Western E & P, Inc. [Two-Thirds Vote Required]

**RECOMMENDATION(S)**

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It is recommended that the Board of Directors review and consider the Environmental Impact Report certified and approved by the City of Yorba Linda for the Shell Master Planned Community, find that the components of the project subject to Metropolitan's authority either do not cause a significant environmental impact or that any such impacts will be mitigated to a less-than-significant level, and adopt, by a two-thirds vote, the attached resolution declaring the necessity for the project and for the properties described in Exhibits A and B, attached thereto, and directing the General Counsel to commence condemnation proceedings in Orange County to acquire the properties.

**EXECUTIVE SUMMARY**

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The Metropolitan Water District will require the real property described in Exhibits A and B, attached hereto, located in Orange County, California, to provide protection of its Diemer Filtration Plant operations against residential development and slope failure. A resolution of necessity is recommended to authorize the commencing of an eminent domain action to acquire the properties. Agenda Item 8-5 relates to approval of the terms for voluntary acquisition of the same property which is the subject of the resolution of necessity. If the voluntary acquisition is approved and completed, the eminent domain action authorized by the resolution of necessity would not be filed.

**DETAILED REPORT**

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At its meeting on July 8, 1996, the Land Committee held a hearing on the adoption of a resolution of necessity to authorize the General Counsel to commence condemnation proceedings on the properties described in Exhibits A and B attached hereto. At the conclusion of the hearing, the Land Committee voted unanimously to recommend that the Resolution of Necessity be adopted.

On June 20, 1996, a notice of intention to adopt a resolution of necessity and for an opportunity to appear and be heard before the Land Committee on July 8, 1996 as to the necessity for the project and the taking of the properties, was served on the owner of the properties identified in Exhibits A and B. Under the law Metropolitan must have received a written request for a hearing within 15 days after the notice was served. The property owner through its attorney, Ms. Susan Trager, submitted a written statement in lieu of a personal appearance. A copy of Ms. Trager's letter was distributed to the Land Committee members and is attached hereto. A quorum of the Committee was present and a hearing held. In compliance with the provisions of the California Eminent Domain Law, a summary of the hearing and the Land Committee's recommendation is attached hereto.

As the lead agency under CEQA, the City of Yorba Linda prepared a Draft Environmental Impact Report (DEIR) which addressed the acquisition of the subject property by Metropolitan. The DEIR was circulated for a 45-day public review period that closed in June, 1994. The City certified the Final Environmental Impact Report (FEIR) in December, 1995. No significant adverse environmental impacts were associated with Metropolitan's acquisition of portions of the Shell lands. As a responsible agency under CEQA, Metropolitan's Board of Directors is required to review and consider the information contained in the FEIR and, prior to adoption of the Resolution of Necessity, find that the acquisition of the property either will not cause a significant environmental impact or that any such impact will be mitigated to a less-than-significant level. A full copy of the EIR, including the Draft EIR and Technical Appendices, Responses to Comments, Mitigation Monitoring Program, and Findings of Fact and Statement of Overriding Considerations are available for review in the Executive Secretary's office.

SUMMARY OF HEARING AND RECOMMENDATION  
OF THE LAND COMMITTEE REGARDING ADOPTION  
OF A RESOLUTION OF NECESSITY TO CONDEMN  
CERTAIN PROPERTY FOR THE INLAND FEEDER PROJECT

On July 8, 1996, at the offices of The Metropolitan Water District of Southern California, a hearing was held by the Land Committee of the Board of Directors. Land Committee Chairman Doude Wysbeek presided. The Committee was called to order and a quorum was present.

Deputy General Counsel Joseph Vanderhorst advised the Committee that it has been delegated the authority by Metropolitan's Board of Directors to hold the hearings required by law as a prerequisite to the adoption of resolutions of necessity to acquire property through the exercise of the eminent domain power. The purpose of the hearing is to allow the Committee to make a determination regarding whether the public interest and necessity require the proposed project, whether the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury, and whether the property to be acquired is necessary for the project. Mr. Vanderhorst further advised the Committee that notice of the hearing had been sent to the owner of record of the properties to be acquired. Counsel for the property owner, Susan Trager, advised that she would not appear but requested that a copy of her letter on the matter be distributed to the Committee. The letter was distributed to the Committee and Mr. Vanderhorst requested that the members read and consider it prior to the vote on the Item (a copy of the letter is attached to this Board letter).

Mr. Vanderhorst requested that Mr. Adam Kear explain the project and identify the properties to be acquired for the project. Mr. Kear identified the two parcels adjacent to the Diemer Filtration Plant that are to be acquired. The Diemer Plant is located on top of a hill with the Shell property around it. The residential development proposed on the Shell property would include construction of houses very close to the western edge of Metropolitan's property. These homes would have a direct view of the plant facilities, and would be within hearing of the noise generated by plant operations. Experience with residential development near the Mills, Jensen and Weymouth plants indicates that Metropolitan can expect to receive nuisance complaints from such homeowners. Acquisition of Parcel 1006-1-13 will be for a buffer zone to protect the plant against this residential encroachment. Also, the buffer zone will protect against complaints about any future construction on Metropolitan's existing plant site. A slope easement is sought over Parcel 1006-1-12. The Diemer Plant site includes fill slopes which have a potential for slippage. The easement will prohibit the development of permanent structures in the area of the potentially unstable slopes. The easement also allows Metropolitan access to perform slope remediation and repair.

Director Wein inquired about which party would be responsible for the slope easement area if the owner did cut-and-fill work and built structures. Mr. Kear answered that the slope movement would occur on Metropolitan's property, but create a risk to the downslope property, and the easement will reduce that risk. Director King asked whether the agency reviewing the residential development project provided adequate protections for Metropolitan's existing plant. Mr. Kear responded that Metropolitan had commented on the EIR expressing our concerns, and that staff had worked with Shell on a cooperative basis to resolve some of these issues, including through the acquisition of property. Mr. Vanderhorst added that the

Director Peterson asked how the buffer zone was treated in the EIR. Mr. Vanderhorst responded that the EIR concludes that the impacts resulting from acquisition of the property by Metropolitan are no worse than the worst case scenario for Shell's residential development on the property. Since the property is being acquired for a buffer zone, there will be no impacts. Mr. Vanderhorst also stated that Shell's development agreement with the City of Yorba Linda does not provide that the property would be open space, but rather would allow it to be developed with residential lots. Director Wright inquired whether the property could be used by Metropolitan for some other use in the future. Mr. Vanderhorst answered that it would be possible, but Metropolitan would have to comply with CEQA prior to building any project on the property. Director Miller asked whether Metropolitan would be protected from nuisance claims if Shell made appropriate disclaimers when they sold the properties. Mr. Vanderhorst stated that such disclaimers are for the protection of the seller against claims but would not protect Metropolitan.

Chairman Wysbeek asked Mr. Vanderhorst to respond to the points raised in Ms. Trager's letter. The letter raises two issues. First, whether there has been compliance with the California Environmental Quality Act. Such compliance is a prerequisite to the commencement of eminent domain proceedings. Mr. Vanderhorst pointed out that a Final EIR has been prepared which addresses Metropolitan's acquisition. The FEIR prepared by Shell for its development includes consideration of Metropolitan's purchase, and concludes, at page 218, that the impacts associated with Metropolitan's use would be similar or less than what would occur under the residential development. The FEIR has been approved by the City of Yorba Linda as lead agency. As a responsible agency, Metropolitan's Board will be required to consider the FEIR before it adopts the Resolution of Necessity. It will be requested to do so at the time that it considers adoption of the Resolution.

Ms. Trager further contends that Metropolitan cannot condemn the property because it has not identified a project for which the property is necessary. Mr. Vanderhorst explained that the project for which the property is being acquired is the existing Diemer Filtration Plant. The acquisition of the property rights are necessary to protect the Plant against the residential encroachment. Director King asked whether the Resolution protects Metropolitan's right to put the property to some use in the future. Mr. Vanderhorst responded that Metropolitan's acquisition of the parcel in fee will allow it to put the property to some other use in the future, but when it does so it will have to comply with CEQA and potentially respond to damage claims from the neighboring property owners.

Director Peterson asked whether there were hazardous materials on the property. Mr. Vanderhorst advised that an environmental assessment would be performed prior to completion of acquisition either by voluntary sale or condemnation. Director Parker inquired as to the cost of completing a voluntary sale with Shell. Mr. Vanderhorst responded that there is a tentative agreement on the sale price, but there are differences over the terms and conditions of the sale. Negotiations will continue on those issues, and it is hoped that a voluntary acquisition will be reached and put on the agenda of the Board along with the Resolution.

Director Little made a motion to recommend that the Board adopt the Resolution of Necessity, which was seconded by Director Wright. The motion was unanimously approved.

LAW OFFICES OF  
**SUSAN M. TRAGER**  
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July 3, 1996

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**VIA FACSIMILE AND PERSONAL DELIVERY**

Doude Wysbeek  
Chairman, and  
Members of the Land Committee  
Metropolitan Water District  
of Southern California  
P.O. Box 54153  
Los Angeles, CA 90054-0153

Re: Comments on Behalf of Shell Western E & P, Inc. in connection with Agenda Item 7(b) of the July 8, 1996 Meeting of the Land Committee, Hearing on Resolution of Necessity directing the General Counsel to condemn property required for the Diemer Filtration Plant in Orange County, California, identified by MWD Right-of-way Parcel Numbers 1006-1-12 and 1-13, and Owner's Name: Shell Western E&P, Inc.

Dear Chairman Wysbeek and Members of the Land Committee:

We represent Shell Western E & P, Inc. ("Shell"). This letter contains our comments on the above referenced matter for consideration by the members of the Land Committee of the Board of Directors of Metropolitan Water District of Southern California ("MWD") at its meeting on July 8, 1996, and in any subsequent proceedings related to MWD's condemnation of Shell's land, and concerning potential expansion of the Diemer Filtration Plant.

MWD has informed Shell that MWD is considering the construction of facilities which may have a relationship to operations at the Diemer Filtration Plant in the City of Yorba Linda in Orange County. Shell understands that the Land Committee's hearing on a Resolution of Necessity directing the General Counsel to condemn Parcels 1006-1-12 and 1006-1-13 sets in motion the eminent domain proceedings necessary to acquire the property on which to expand the Diemer Plant. Just what MWD proposes to construct or what operations will be conducted, has not been disclosed to Shell. Hence, it is not possible at this time to ascertain damages to the remainder of Shell's real property, or to fully evaluate MWD's current appraisal.

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In recent weeks, following the Land Committee's February consideration of a Resolution of Necessity, Shell and MWD have engaged in discussions concerning the purchase and sale of the Shell Property by MWD in lieu of condemnation, and progress towards an agreement is being made. Negotiations have not been completed. Accordingly, in order to preserve its right to contest MWD's right to condemn Shell's property in the event that the ongoing discussions with MWD are not resolved satisfactorily, Shell submits the following comments for consideration by the Land Committee in connection with Agenda Item 7(b) at its July 8, 1996 meeting.

**I. MWD MUST COMPLY WITH THE ENVIRONMENTAL REVIEW PROCEDURES MANDATED BY CEQA BEFORE ADOPTING A RESOLUTION OF NECESSITY TO CONDEMN SHELL'S LAND.**

At its meeting on July 8, 1996, the Land Committee may be advised that a 1995 EIR adequately analyzes the potential environmental impacts related to its proposed acquisition of land for the Diemer-related project. The 1995 EIR does not do so, and as explained below, MWD must prepare and certify a subsequent EIR before proceeding to acquire any of the potential sites.

Compliance with CEQA is a precondition to the commencement of eminent domain proceedings. In City of San Jose v. Great Oaks Water Co., 192 Cal.App.3d 1005 (1987), the court upheld the trial court's dismissal of eminent domain proceedings on the ground that the condemnor failed to comply with CEQA prior to initiating the proceedings. Id. at 1015. The court reasoned that the Legislature clearly intended that the statutory prerequisites to the exercise of the power of eminent domain set forth in CCP 1240.030 are only "supplemental to all other prerequisites to condemnation imposed by law, including environmental laws and statutes." Id. at 1015, n.5 (quoting Tentative Recommendation Relating to Condemnation Law and Procedure: The Eminent Domain Law, 12 Cal. Law Rev'n Comm'n Rep't, pp. 97-98 (1978).)

CEQA requires a public agency to comply with environmental review procedures before approving or carrying out any "project ... which may have a significant effect on the environment." CEQA §§ 21100, 21151.

Unless the action the public agency proposes to undertake is statutorily "exempt" from the provisions of CEQA, once the proposed action is determined to be a "project" under CEQA, the

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public agency must prepare an initial study to determine whether the project might have one or more significant effects on the environment, either directly or ultimately. Cal. Admin. Code tit. 14, § 15365 [hereinafter cited as "CEQA Guidelines"].

Following completion of the initial study, and depending upon the results thereof, the public agency must take one of the following steps upon proper notice and hearing prior to approving or implementing the proposed action: (a) adopt a negative declaration, or (b) prepare and certify an EIR. CEQA §§ 21080(c), 21100, 21151.

The 1995 EIR expressly does not analyze the potential environmental impacts of the Diemer facility expansion project. See 1995 EIR pp. 2-18 and 66 [use of the site for the Diemer facility expansion will require subsequent CEQA analysis]. The CEQA Guidelines and appellate court decisions prohibit MWD from certifying the 1995 EIR at this time to support its acquisition of the Shell site or any other property in connection with the Diemer facility expansion project.

Appellate courts in both the First and Second Districts have required a subsequent EIR in factually similar cases. The First District Court of Appeal has held that an eminent domain proceeding cannot be initiated where the original EIR did not address the environmental consequences of the project for which the land is being condemned. The court further held that there should be an opportunity for public hearings and comments before the condemnor makes its determination as to whether or not a subsequent or supplemental EIR or addendum to the EIR is required. City of San Jose v. Great Oaks Water District (1987) 192 Cal.App.3d 1005, 1016-1017, 237 Cal.Rptr. 845, 852.

Likewise, the Second District Court of Appeals has held that an additional EIR must be prepared where the original EIR underestimated the extent of the project's environmental impacts. Mira Monte Homeowners Association v. County of Ventura (1985) 165 Cal.App.3d 357, 212 Cal.Rptr. 127. It is evident that MWD cannot now rely on the 1995 EIR in analyzing the potential impacts of MWD's acquisition of the Shell site or any other property. At the time the EIR was certified, MWD represented that it may purchase property in the event it needed to expand the Diemer plant facilities. MWD has now determined that it is necessary to acquire land, not only to expand the Diemer plant facilities, but

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to add new uses of the Diemer facility and significantly intensify MWD's activities.

MWD has not publicly disclosed the proposed Diemer facility expansion plans. However, since the 1995 EIR was certified, MWD has described the proposed expansion project at various times to include: construction and operation of ozone treatment facilities; construction and operation of sludge processing facilities; construction and operation of a chemical unloading pad; construction and operation of a 25,000,000 gallon water reservoir; construction and operation of two water storage reservoirs; and construction and operation of sewer facilities.

MWD's acquisition of the Shell site is part of the Diemer facility expansion project. As such, the environmental impacts of the acquisition cannot properly be analyzed by MWD separate from the environmental impacts of the ultimate project expansion. For purposes of environmental review, the CEQA Guidelines define the term "project" as the "whole of an action" undertaken by a public agency which has the potential for resulting in a physical change in the environment, "directly or ultimately." 14 Cal.Code Regs. §15378. As a result, MWD cannot properly rely on the 1995 EIR to support its acquisition of the Shell site. To do so would reduce any subsequent CEQA proceedings on the proposed Diemer facility expansion to a mere post hoc rationalization of a course of action MWD has already committed to.

Further, the 1995 EIR expressly assumes that MWD's use of the Shell parcel and other land for the Diemer plant expansion project would have similar or lesser environmental impacts as residential development of the site. See 1995 EIR p. 2-18. However, the potential uses of the Shell parcel as described by MWD since certification of the 1995 EIR will have greater environmental impacts than those analyzed in the 1995 EIR. Therefore, MWD must prepare and certify a subsequent EIR prior to acquiring the Shell parcel or any other land for the proposed expansion. 14 California Code of Regulations § 15162 [subsequent EIR required where potential impacts will be substantially more severe than shown in previous EIR].

We note that MWD has issued Request for Proposal No. 185 ("RFP") for qualified firms to undertake significant geotechnical studies of some of the parcels under consideration for acquisition. The initial date on which proposals were to be

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received by MWD was January 4, 1996. That date has been extended.

Based on the January 4, 1996 timetable as set forth in the RFP, pertinent portions of which are attached, MWD was to have completed its reconnaissance level geotechnical studies by July 1996, with complete design level studies completed by no sooner than April 1997. MWD cannot even begin its environmental review of the proposed acquisition for one of its suggested uses until the geotechnical studies are complete, which will not occur until mid-1997 at the earliest. Accordingly, until a subsequent EIR on the ultimate project is certified, MWD may not adopt a Resolution of Necessity with respect to the Shell site.

**II. MWD CANNOT ADOPT A RESOLUTION OF NECESSITY TO CONDEMN THE SHELL SITE UNTIL MWD IS ABLE TO MAKE THE FINDINGS REQUIRED UNDER CCP §1240.030 TO COMMENCE CONDEMNATION PROCEEDINGS.**

The exercise of a public agency's power of eminent domain is limited by the California constitution and by California statutes. Before a governing board may properly vote to condemn private property, prerequisites must be met, and findings made.

In this case, MWD cannot initiate condemnation of the Shell property until it first completes the necessary technical, environmental and cost studies and resolves the many unanswered questions including: whether Shell's land is necessary for any Diemer facility-related project, and whether MWD's proposal is for a public project, rather than a private-sector project. Proceeding with its adoption of a Resolution of Necessity on MWD's current record would constitute an abuse of discretion, giving rise to a judicial order of dismissal.

In addition to defining its project and completing CEQA proceedings, MWD must find that each of the prerequisites to the exercise of its power of eminent domain set forth in CCP §1240.030 have been satisfied before it may adopt a Resolution of Necessity with respect to the Shell site. That statute provides that the power of eminent domain may be exercised only if all of the following elements have first been established:

- (a) The public interest and necessity require the project.

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(b) The project is planned or located in a manner that will be most compatible with the greatest good and the least private injury.

(c) The property sought to be acquired is necessary for the project.

The clear purpose of the statutory prerequisites is to prevent a government entity from appropriating private property until the entity has finally established that the particular private property is necessary to further a public project. We understand that MWD has not yet determined which, if any, of the proposed sites should be chosen for any Diemer facility related project. Nor has MWD completed feasibility studies and an environmental review of the sites. Without that information, MWD cannot possibly make the findings required to adopt a Resolution of Necessity to condemn the Shell site.

MWD cannot show that the public interest and necessity require the Project. The concept of public interest and necessity embodied in CCP §1240.030(a) embraces "all aspects of the public good including but not limited to . . . environmental . . . considerations." Senate Comment, supra, at 490. With respect to the proposed Diemer facility expansion, MWD has neither completed its environmental review nor evaluated the suitability of the site or sites for the project. MWD has not even publicly decided what it will do with the land. Thus, on its current record, MWD cannot find that the public interest and necessity require the condemnation of the Shell site for the construction of any project.

MWD cannot show that the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury. The prerequisite set forth in CCP §1240.030(b) "involves essentially a comparison between two or more sites, [and] has also been described as the 'necessity for adopting a particular plan' for a given public improvement." Senate Comment, supra, at 490 (quoting Chevalier v. Stimson, 42 Cal.2d 299, 307 (1959)) (emphasis added). As set forth above, MWD is still conducting studies of at least three other potential sites and cannot at this time determine which of the sites would involve the greatest public good and the least public injury. Nor does MWD have a particular plan for expanding or otherwise modifying the Diemer facility. Thus, on its current record, MWD cannot find that the project is planned or located in the manner

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that will be compatible with the greatest public good and the  
lest private injury.

MWD cannot find that the property sought to be acquired is  
necessary for the project. The prerequisite set forth in CCP  
§1240.030(c) prevents the taking of property by eminent domain  
unless the property is necessary for a proposed project. Senate  
Comment, supra, at 490-91. "This aspect of necessity includes  
the suitability and usefulness of the property for the public  
use." Id. at 491.

MWD has not yet determined that the Shell site is more  
suitable and useful for the contemplated Diemer improvements than  
the other sites under consideration. Indeed, MWD has not yet  
completed its study of the feasibility of constructing anything  
on any of the sites. Thus, on its current record, MWD cannot  
find that the Shell site is necessary for the Diemer expansion.

We appreciate the opportunity to comment on MWD's proposed  
course of action to approve and implement the proposed Diemer  
facility expansion project. Please contact me if we may provide  
you with any additional information.

Sincerely,

LAW OFFICES OF SUSAN M. TRAGER  
A Professional Corporation

  
\_\_\_\_\_  
Susan M. Trager  
Special Counsel to  
Shell Western E & P, Inc.

SMT:my

cc: Joseph A. Vanderhorst, Esq.

STATEMENT OF WALLY LIEU IN SUPPORT OF  
RESOLUTION OF NECESSITY (DIEMER FILTRATION PLANT)

I, Wally Lieu, declare:

1. I am Assistant Chief Engineer of The Metropolitan Water District of Southern California.
2. In order for Metropolitan to insure the delivery of treated water to its member agencies for service to the public, it is necessary to protect the Diemer Filtration Plant in the County of Orange, California, from pending residential development adjacent to Plant operations, and to acquire a slope easement to maintain open space and access for slope remediation and repair. The property identified as Parcel 1006-1-13 on Exhibits A and B attached to the Resolution of Necessity transmitted herewith are proposed to be developed to residential uses which would be incompatible with the Plant operations. The property identified as Parcel 1006-1-12 on Exhibits A and B includes a slope which provides support to the Diemer Plant site.
3. Acquisition of the properties referred to in the Resolution of Necessity is necessary for the continued uninterrupted operation of the Diemer Filtration Plant.
4. It is necessary that the resolution be adopted in order that an action may be commenced to condemn the properties described in the proposed Resolution of Necessity.

Executed at Los Angeles, California on August 6, 1996

  
\_\_\_\_\_  
Wally Lieu

## RESOLUTION 8501

A RESOLUTION OF THE BOARD OF DIRECTORS OF  
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA  
DIRECTING THE CONDEMNATION OF CERTAIN PROPERTIES  
SITUATED IN ORANGE COUNTY  
(DIEMER FILTRATION PLANT PROJECT)

BE IT RESOLVED by the Board of Directors of the Metropolitan Water District of Southern California.

Section 1. The District's Board hereby finds and determines that the public interest and necessity require, for public use, the acquisition of a buffer zone against residential development and slope easement for the protection of Metropolitan's Diemer Filtration Plant ("Project") in the County of Orange, California, for the delivery of treated water for use within the District's boundaries and that certain properties situated in the County of Orange are necessary therefor.

Section 2. The properties to be acquired for the public use set forth in section 1 hereto consist of the interests in the parcels of land described on Exhibits A attached hereto and incorporated herein by reference and shown on Exhibits B attached hereto and incorporated herein by reference. The properties are located within the District's boundaries at the locations shown on Exhibits B attached hereto. The District's Board finds and determines that the properties are necessary for the proposed Project.

Section 3. The District's Board hereby declares its intention to acquire the properties described in Exhibits A and B attached, by proceedings in eminent domain as authorized by the Metropolitan Water District Act (Stats. 1969, Ch. 209, as amended) and Code of Civil Procedure section 1240.125.

Section 4. The District's Board hereby finds and determines that the public interest and necessity require the proposed Project.

Section 5. The District's Board hereby finds and determines that the proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

Section 6. The District's Board hereby finds and determines that the properties described in Exhibits A and B attached hereto are necessary for the proposed Project.

Section 7. The District's Board hereby finds and determines that the offers required by Government Code section 7267.2 have been made to the owner of record of the properties described in Exhibits A and B attached hereto.

Section 8. The District's General Counsel is hereby directed to commence proceedings in the Superior Court of California, County of Orange, for the purpose of condemning and acquiring the properties described in Exhibits A and B attached hereto for the uses and purposes herein described. He is authorized to take such actions and steps as he deems necessary in connection with such proceedings, including the amending of the complaint to reduce the extent of the property to be acquired so as to reduce the compensation payable in the action where such change could not substantially impair the operation of the said public works, and to incur expenses necessary and incidental to the action.

I HEREBY CERTIFY that the foregoing resolution was adopted at the regular meeting of the Board of Directors of The Metropolitan Water District of Southern California held the 20th day of August, 1996, by vote of two-thirds of all its members, and I further certify that the foregoing is a full, true and correct copy of the resolution.

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Executive Secretary  
The Metropolitan Water District of  
Southern California

## EXHIBIT A

1. A permanent easement in and over the property described herein as Parcel 1006-1-12 for purposes of cutting, constructing, filling, maintaining and repairing slopes and providing lateral and subjacent support to the adjacent property. No permanent structures shall be constructed by owner within the easement area without the prior written approval of Metropolitan.

2. Fee interest in the property described herein as Parcel 1006-1-13.

## EXHIBIT A

## PERMANENT EASEMENT

1006-1-12

SHELL WESTERN E&amp;P, INC.

That portion of the southeast quarter (SE 1/4) of Section 16, Township 3 South, Range 9 West of the San Bernardino Meridian, County of Orange, State of California being a strip of land 200.00 feet in width, the northwesterly and northerly line of said strip of land being that portion of the general southerly line of that certain parcel of land designated as Parcel 1006-1-3 and conveyed to The Metropolitan Water District of Southern California by deed recorded November 14, 1969 in Book 9137, Page 265 of Official Records in the office of the County Recorder of said County, more particularly described as follows:

Commencing at the southerly terminus of that certain course identified as "S 30° 19' 47" W 445.25 feet" in said Parcel 1006-1-3; thence, southwesterly along the southwesterly prolongation of said course, S 31° 07' 43" W 50.00 feet to the TRUE POINT OF BEGINNING; thence, northeasterly along said southwesterly prolongation and along the southeasterly line of said Parcel 1006-1-3, N 31° 07' 43" E 495.25 feet; thence N 80° 47' 56" E 330.00 feet.

Containing 3.364 acres, more or less.



PREPARED UNDER MY SUPERVISION

Paul M. Ogilvie  
Paul M. Ogilvie, P.L.S. 6439

Date: 7-31-96

\\spshare2\ampDIEMR-12 -7/31/96

## EXHIBIT A

1006-1-13  
 Grant Deed from  
 Shell Western E&P, Inc. and  
 CalResources LLC

That portion of the north half of Section 16, Township 3 South, Range 9 West, San Bernardino Meridian, in the County of Orange, State of California described as follows:

Commencing at the most northerly corner of that certain Parcel 1002-2-8 as conveyed to The Metropolitan Water District of Southern California by Deed recorded February 2, 1961 in Book 5616, Page 73 et seq of Official Records in the Office of the County Recorder of said County, said corner being marked by a 2 inch iron pipe with brass cap stamped "MWD L.S. 6599"; thence, southwesterly along the northwesterly line of said Parcel 1002-2-8, S 61° 46' 57" W 184.64 feet to the TRUE POINT OF BEGINNING, said point being marked by a 2½ inch iron pipe with brass tag stamped "RCE 21759"; thence continuing S 61° 46' 57" W 1311.07 feet along the northwesterly line of said Parcel 1002-2-8 and along the northwesterly line of that certain Parcel 1006-1-7 as conveyed to The Metropolitan Water District of Southern California by Deed recorded November 14, 1969 in Book 9137, page 265 et seq of Official Records in the Office of said County Recorder of said County to an angle point marked by a 2 inch iron pipe with a brass cap stamped "L.S. 6599"; thence southwesterly along the northwesterly line of said Parcel 1006-1-7, S 22° 09' 49" W 743.57 feet to an angle point, said point marked by a 1 3/8 inch brass tag stamped "MWD L.S. 6599"; thence leaving said northwesterly Parcel line N 09° 37' 51" W 510.00 feet; thence N 22° 34' 05" W 220.00 feet; thence N 02° 54' 57" E 143.02 feet;



PREPARED UNDER MY SUPERVISION

*Paul M. Ogilvie*  
 Paul M. Ogilvie, L. S. 6439  
 Date 7-31-96

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1006-1-13  
 Grant Deed from  
 Shell Western E&P, Inc. and  
 CalResources LLC

thence N 71° 12' 52" E 130.03 feet; thence N 02° 36' 27" E 320.00 feet; thence N 89° 45' 14" E 65.02 feet; thence N 00° 48' 09" W 220.00 feet; thence N 84° 17' 15" W 174.91 feet; thence N 05° 42' 45" E 870.00 feet to the most westerly corner of that certain Parcel 1006-1-1 as conveyed to The Metropolitan Water District of Southern California by said Deed recorded November 14, 1969 in Book 9137, page 265 et seq of Official Records in the Office of the County Recorder of said County; thence along the southwesterly line of said Parcel 1006-1-1, S 68° 50' 26" E 495.81 feet to an angle point; thence continuing along the southwesterly line of said Parcel 1006-1-1, S 51° 05' 41" E 1315.52 feet to the TRUE POINT OF BEGINNING.

Containing 36.346 acres, more or less.



PREPARED UNDER MY SUPERVISION

*Paul M. Ogilvie*  
 Paul M. Ogilvie, L. S. 6439  
 Date 7-31-96  
 s\wordshare2\AMP\DIEMR-14

# EXHIBIT B

A PORTION OF SECTION 16, T3S R9W, SBM  
COUNTY OF ORANGE, STATE OF CALIFORNIA

**THIS EXHIBIT IS TO BE ATTACHED  
TO THE LEGAL DESCRIPTION**

ROBERT B. DIEMER  
FILTRATION PLANT

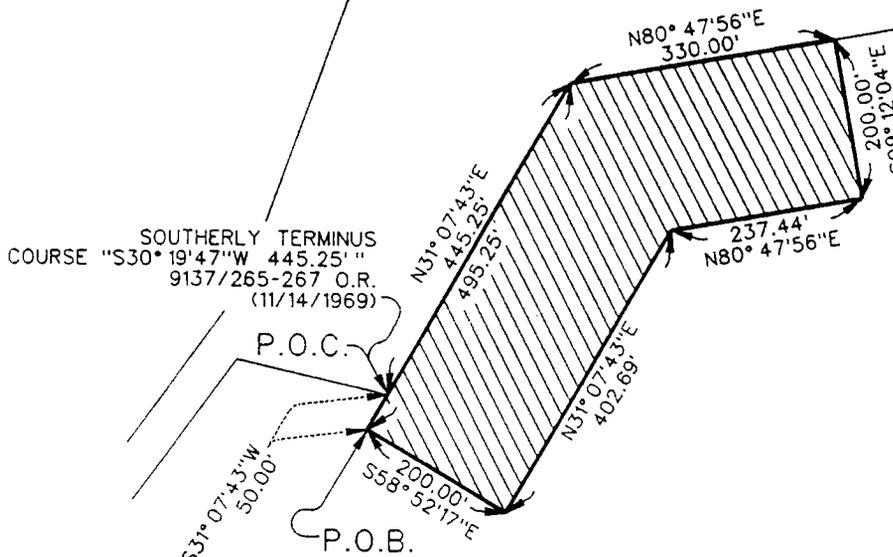


9	10
16	15

NOT TO SCALE

PARCEL 1002-2-8  
5616/73-75 O.R.

PARCEL 1006-1-3  
9137/265-267 O.R.  
(11/14/1969)



16	15
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NOTE:  
This sketch was prepared  
from record data and  
does not represent a  
field survey.

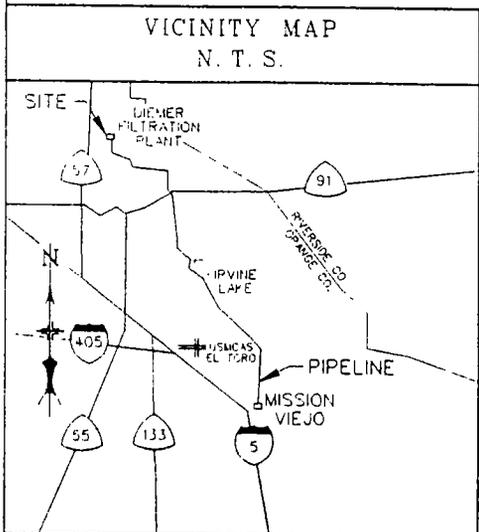
PREPARED UNDER  
MY SUPERVISION

*Paul M. Ogilvie*  
Paul M. Ogilvie P.L.S. 6439

7-31-96  
DATE

THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

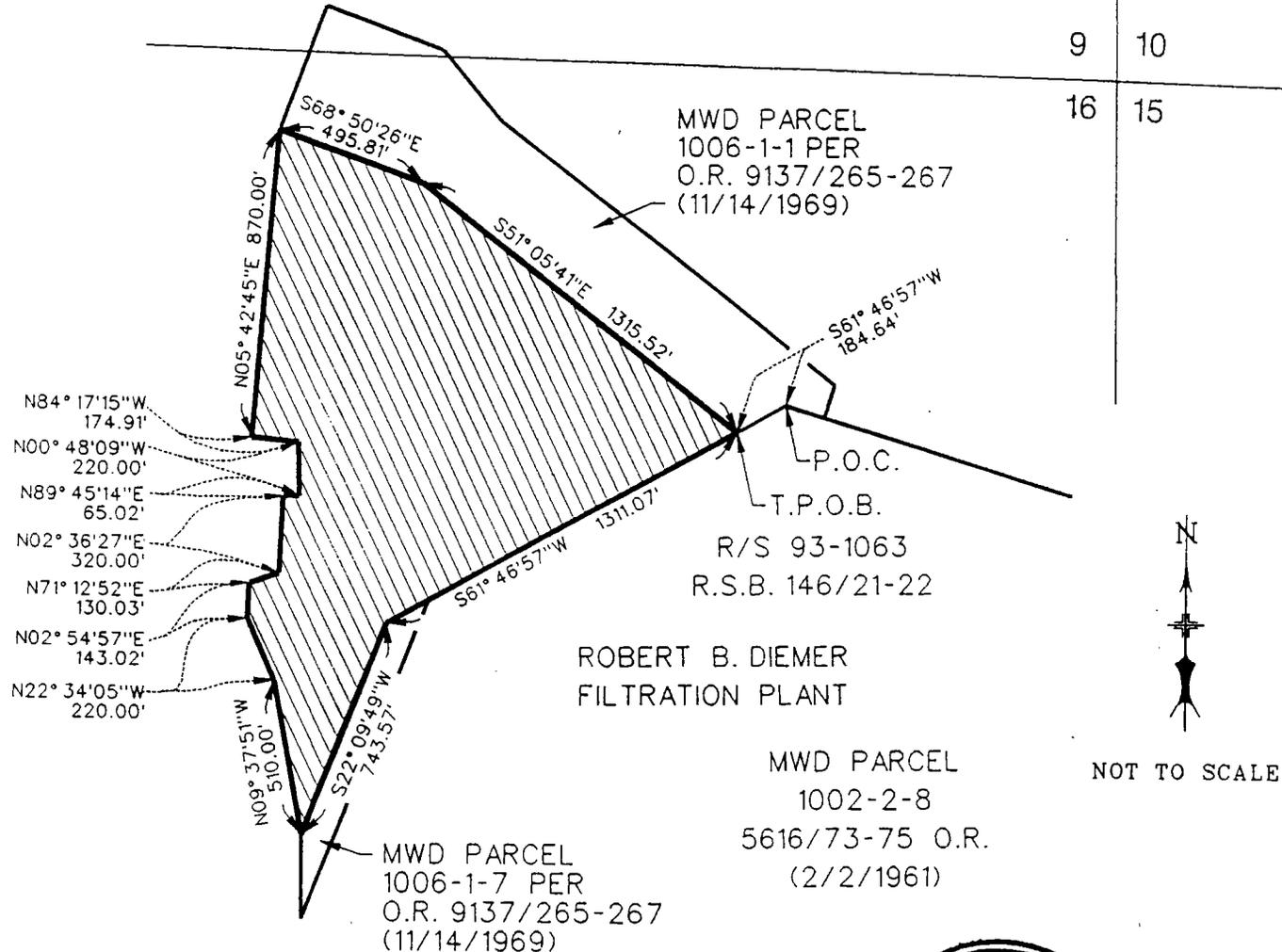
ROBERT B. DIEMER  
FILTRATION PLANT  
PERMANENT EASEMENT  
SHELL WESTERN E&P, INC.  
TO  
MWD  
1006-1-12



**EXHIBIT B**

PORTION, N<sup>1</sup>/<sub>2</sub> OF SECTION 16, T3S R9W, SBM  
COUNTY OF ORANGE, STATE OF CALIFORNIA

**THIS EXHIBIT IS TO BE ATTACHED  
TO THE LEGAL DESCRIPTION**



9 10  
16 15



NOT TO SCALE

 1006-1-13  
GRANT DEED  
AREA-36.346 ACRES

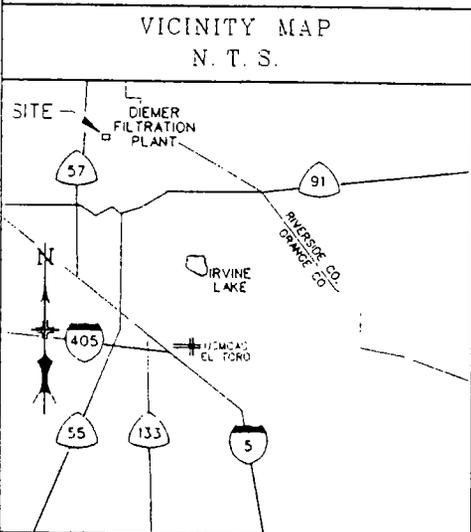
**NOTE:**  
This sketch was prepared  
from record data and  
does not represent a  
field survey.



PREPARED UNDER  
MY SUPERVISION

*Paul M. Ogilvie*  
Paul M. Ogilvie P.L.S. 6439

7-31-96  
DATE



THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

ROBERT B. DIEMER  
FILTRATION PLANT

GRANT DEED

SHELL WESTERN E&P, INC. AND  
CALRESOURCES LLC

TO  
MWD

MWD PARCEL 1006-1-13