



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

8-10

February 14, 1997

To: Board of Directors (Special Committee on Real Property Management-Action)
(Legal and Claims Committee-Action)

From: *for* General Manager Edward J. Meo III

Submitted by: Gary M. Snyder
for Chief Engineer Wally Lu

Subject: Hearing on Resolution of Necessity Directing the General Counsel to Condemn Property Required for the Inland Feeder Project in San Bernardino County, California, identified by San Bernardino County Assessor's Parcel Number 270-11-05; MWD Right-of-Way Parcel Numbers INFED1-30-170PEA1, -170TEA2 and 170TEA3 and Owner's Name: San Bernardino County Flood Control District. [Two Thirds Vote Required]

RECOMMENDATION

It is recommended that the Board of Directors adopt, by a two-thirds vote, the attached resolution declaring the necessity for the Project and for the easements described in Exhibits A and B, attached thereto, and directing the General Counsel to commence condemnation proceedings in San Bernardino County to acquire the easements.

EXECUTIVE SUMMARY

The Metropolitan Water District will require the interests in real property described in Exhibits A and B, attached hereto, located in and San Bernardino County, California, for portions of the Inland Feeder Pipeline Project. An offer to purchase the property as required by California Government Code section 7267.2 was made, but no agreement has been reached. A resolution of necessity is recommended to authorize the commencing of an eminent domain action to acquire the property.

DETAILED REPORT

The property which is the subject of the proposed resolution of necessity is located immediately north of 40th Street at the base of Waterman Canyon in the City of San Bernardino. The property is owned by the San Bernardino County Flood Control District, and is vacant land. The larger property consists of 120 acres.

Metropolitan is seeking to acquire permanent and temporary easements across the property to be used for access to the Inland Feeder Pipeline being constructed in Waterman Canyon. The easements are required to obtain access for construction of the pipeline crossing and blow-off facility located in Strawberry Creek, and for the tunnel portal site for the Arrowhead East Tunnel. Upon conclusion of construction, the easements will continue to be needed for access to inspect, maintain and repair the pipeline facilities in the Strawberry Creek area.

Parcel INFED1-30-170PEA1 consists of permanent easement rights for the access road. The easement covers 24.4 acres. Parcels INFED1-30-170TEA2, and -170TEA3, are temporary construction easements over an area on each side of the permanent easement to provide room for the construction of the access road.

Metropolitan has had these easements appraised at a total value of \$385,856, based on land values of \$15,000 per acre. An offer for the full appraised value has been made to the Flood Control District, which has declined to sell the property due to a separate pending sale agreement of the property to an adjacent developer. Metropolitan has been engaged in unsuccessful negotiations with the developer for similar rights to extend the access road across the developer's property. Therefore, it is necessary to proceed with acquisition of the required parcels through an exercise of Metropolitan's eminent domain power.

Although the property is owned by a public agency, and is arguably being used for flood control purposes, Metropolitan has the authority to condemn the easements for a more necessary public use (Code of Civil Procedure sections 1240.610 et seq.), or for a compatible public use (Code of Civil Procedure sections 1240.510 et seq.). The existing agreement between the Flood Control District and the adjacent property owner to sell a portion of the property for road purposes is clear evidence that the use of the property for flood control purposes is not more necessary than Metropolitan's proposed use for road purposes. Metropolitan staff further believes that its use of the access road will not interfere with the Flood Control District's use of the surrounding property for flood control purposes.

On February 5, 1997, a notice of intention to adopt a resolution of necessity and for an opportunity to appear and be heard before the Special Committee on Real Property Management on February 25, 1997, as to the necessity for the Project and the taking of the property, was served on the Flood Control District. The Eminent Domain Law requires an owner to provide a written request for a hearing within 15 days after the notice was served to be entitled

to a hearing on the adoption of a resolution of necessity. A quorum of the Committee is required for such a hearing. A written summary of the hearing and the recommendation of the Special Committee on Real Property Management as to whether the Board should adopt the resolution will be provided to the Board and to the property owner if it appears before the Committee.

Transmitted herewith is the form of a resolution declaring the necessity of the Project and the acquisition of the easements described in Exhibits A and B, attached thereto, and directing the General Counsel to commence condemnation proceedings in San Bernardino County to acquire the easements.

On February 9, 1993, your Board certified that the Final Environmental Impact Report for the Inland Feeder Project had been completed in compliance with the California Environmental Quality Act (CEQA) and the State Guidelines, and that it had reviewed and considered the information contained in that document. Your action on the subject resolution is therefore in compliance with CEQA. No further environmental documentation or review is necessary for your Board to act on this request.

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

On February 25, 1997, at the offices of The Metropolitan Water District of Southern California, a hearing was held by the Special Committee on Real Property Management of the Board of Directors. Committee Chairman Jerry King 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.

The subject property is owned by another public agency and arguably is being put to a public use for flood control purposes. Mr. Vanderhorst stated that the eminent domain law authorizes Metropolitan to acquire property being put to a public use if its proposed use is more necessary than, or compatible with, the present use. In this case, Metropolitan intends to use the easements being acquired for construction and maintenance of an access road. The owner, San Bernardino County Flood Control District, has entered into an agreement with an adjacent property owner to sell the property for that same purpose. Therefore, it is clear that the use Metropolitan intends to make of the property is both more necessary than, and compatible with, any public use presently being made of the property. Mr. Vanderhorst further advised the Committee that the property owner had been offered the full amount of the appraised value for the property interests sought to be acquired, and a copy of the offer letter will be made a part of the administrative record.

Mr. Vanderhorst stated that notice of the hearing had been sent to the owner of record of the property to be acquired, and that no request to appear and be heard had been received. No representative of the property owner was present at the hearing.

Mr. Vanderhorst requested that Project Manager, James Gallanes, make a presentation regarding the Project and the property to be acquired. Mr. Gallanes reported that the Project involves construction of a pipeline and tunnel system connecting the Devil Canyon facility with the Eastside Pipeline. The portion of the project in the area where the subject property is located, is in Waterman Canyon in the San Bernardino Mountains. The facility will be crossing Waterman Canyon in pipeline, and entering a tunnel portal on the east side of the canyon.

Mr. Gallanes then identified the property which is the subject of the resolution. Parcel INFED1-30-170PEA1 consists of the permanent easement being acquired for construction and maintenance of the access road to the pipeline. Parcels INFED1-30-170TEA2, and - 170TEA3 are 5-year easements to be used in the construction of the access road and pipeline.

To minimize potential impacts to the Flood Control District and to an adjacent property owner who has the right to purchase access rights on the property, Mr. Vanderhorst requested that the proposed resolution be amended to remove the "exclusive" provision in the temporary easements.

The Committee voted unanimously to recommend adoption of the resolution as amended to reflect that the temporary easements should not be exclusive.

RESOLUTION

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA DIRECTING THE CONDEMNATION OF CERTAIN PROPERTY SITUATED IN THE COUNTY OF SAN BERNARDINO (INLAND FEEDER PROJECT)

BE IT RESOLVED by the Board of Directors of The Metropolitan Water District of Southern California (the "District").

Section 1. The District's Board hereby finds and determines that the public interest and necessity require, for public use, the construction, operation and maintenance of water conveyance facilities ("Inland Feeder Project") in the County of San Bernardino for the transportation and distribution of water for use within the District's boundaries and that certain property situated in the County of San Bernardino is necessary therefor.

Section 2. The easements to be acquired for the public use set forth in section 1, above, consists of parcels of land described in Exhibits A attached hereto and incorporated herein by reference and shown on the Exhibits B attached hereto and incorporated herein by reference. The property is not located within the District's boundaries.

Section 3. The District's Board hereby declares its intention to acquire the easements 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).

Section 4. 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 5. The District's Board hereby finds and determines that the easements described in Exhibits A and B attached hereto are necessary for the proposed Project.

Section 6. The District Board finds and determines that, pursuant to Sections 1240.510 *et seq.* of the Code of Civil Procedure, the public use for which the District is acquiring the easements will not unreasonably interfere with or impair the continuance of the public use for which the property is now appropriated as such use now exists or may reasonably be expected to exist in the future.

Section 7. The District Board finds and determines that, pursuant to Sections 1240.610 *et seq.* of the Code of Civil Procedure, the public use for which the District is acquiring the easements is a more necessary public use than the use to which the property is appropriated.

Section 8. The District's Board hereby finds and determines that the offer required by Government Code section 7267.2 has been made to the owner of record of the property described in Exhibits A and B attached hereto.

Section 9. The District's General Counsel is hereby directed to commence proceedings in the Superior Court of California, County of San Bernardino for the purpose of condemning and acquiring the easements described in Exhibits A and B attached hereto, and to take such steps as may be necessary to secure an order of court permitting the District to take possession of the easements 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 easements to be acquired so as to reduce the compensation payable in the action where such change could not substantially impair the construction and 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 11th day of March, 1997, 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.

Executive Secretary
The Metropolitan Water District of
Southern California

EXHIBIT A

**INFED1-30-170PEA1
San Bernardino County
Flood Control District**

A permanent non-exclusive easement for ingress, egress and road purposes, over, upon and across the property located in the County of San Bernardino, State of California, described herein, and shown on Exhibit B, attached hereto.

EXHIBIT A

INFED1-30-170PEA1
San Bernardino County
Flood Control District

That portion of Lots 1 and 2 of Section 14, Township 1 North, Range 4 West, San Bernardino Meridian, and that portion of Lot 38 of the Muscupiabe Rancho, all in the County of San Bernardino, State of California described as follows:

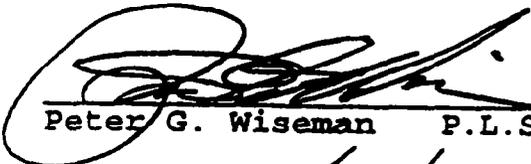
Commencing at the northwest corner of the southeast quarter of the northeast quarter (~~SE $\frac{1}{4}$ NE $\frac{1}{4}$~~) of said Section 14 as marked by a 4" i.p. with wood plug, tagged RCE 4562 per Record of Survey filed in Book 7, page 37 of Record of Surveys of said County; thence along the west line of said ~~SE $\frac{1}{4}$ NE $\frac{1}{4}$~~ S 00° 21' 38" E 37.82 feet to the northeast corner of said Lot 1 as established by Parcel 1 of Court Decree No. 43149 recorded August 24, 1939 in Book 1364, page 300 of Official Records of said County and as marked by a found 1" i.p. tagged LS 2788 1" below surface in lieu of 2" i.p. per Tract No. 6688 filed in Book 86, pages 86 through 89, inclusive of Maps of said County; thence along the northerly line of said Lot 1 S 89° 57' 44" W 490.04 feet to the POINT OF BEGINNING; thence S 01° 48' 16" E 346.14 feet; thence S 14° 20' 33" W 545.29 feet; thence S 12° 49' 44" E 734.88 feet; thence S 10° 54' 09" W 472.43 feet; thence S 04° 20' 07" E 275.72 feet; thence S 11° 43' 10" W 127.03 feet; thence S 78° 16' 50" E 192.41 feet; thence S 07° 15' 43" W 704.02 feet; thence N 80° 33' 41" W 200.00 feet; thence S 09° 26' 18" W 126.03 feet; thence S 06° 38' 17" W 513.41 feet; thence S 00° 31' 25" E 50.37 feet to a point on the northerly right of way line of 40th Street (100 feet wide) as reserved in First Amended Final Order of Condemnation recorded January 5, 1966 in Book 6545, page 736 of Official Records of said County; thence along said northerly right of way line S 89° 28' 35" W 200.00 feet; thence N 00° 31' 25" W 62.38 feet; thence N 06° 38' 17" E 530.78 feet; thence N 09° 26' 18" E 130.94 feet; thence N 80° 33' 42" W 200.00 feet; thence N 09° 26' 18" E 292.42 feet; thence N 05° 31' 21" E 436.13 feet; thence S 78° 16' 50" E 211.11 feet; thence N 11° 43' 09" E 93.83 feet; thence N 04° 20' 06" W 274.21 feet; thence N 10° 54' 09" E 457.16

EXHIBIT A

INFED1-30-170PEA1
S.B.C.F.C.D.

feet; thence N 12° 49' 45" W 741.19 feet; thence N 14° 20' 33" E 565.25 feet; thence N 01° 48' 16" W 324.51 feet to the northerly line of said Lot 1; thence along said northerly line of Lot 1 N 89° 57' 44" E 200.11 feet to the POINT OF BEGINNING.

PREPARED UNDER MY SUPERVISION


Peter G. Wiseman P.L.S. 6241
Date 10/30/96



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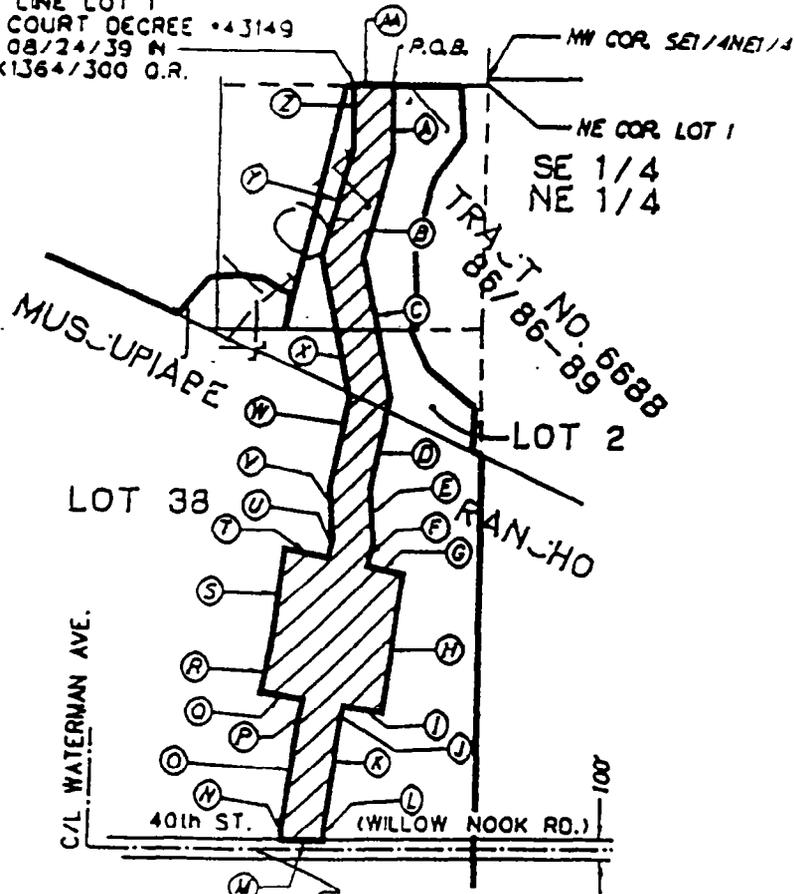
October 28, 1996

EXHIBIT B

THIS EXHIBIT IS TO BE ATTACHED TO THE LEGAL DESCRIPTION
 POR. GOVERNMENT LOTS 1 & 2, SEC. 14, T. 1 N., R. 4 W., S.B.M.
 AND POR. LOT 38 OF THE MUSCUIABE RANCHO
 COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

Page 1 of 1

N'LY LINE LOT 1
 PER COURT DECREE #43149
 REC. 08/24/39 IN
 BOOK 1364/300 O.R.



LINE TABLE

	BEARING	DISTANCE (ft)
A	S01° 48' 16" E	346.14
B	S14° 20' 33" W	545.29
C	S12° 49' 44" E	734.88
D	S10° 54' 09" W	472.43
E	S04° 20' 07" E	275.72
F	S11° 43' 10" W	127.03
G	S78° 16' 50" E	192.41
H	S07° 15' 43" W	704.02
I	N80° 33' 41" W	200.00
J	S09° 26' 18" W	126.03
K	S06° 38' 17" W	513.41
L	S00° 31' 25" E	50.37
M	S89° 28' 35" W	200.00
N	N00° 31' 25" W	62.38
O	N06° 38' 17" E	530.78
P	N09° 26' 18" E	130.94
Q	N80° 33' 42" W	200.00
R	N09° 26' 18" E	292.42
S	N05° 31' 21" E	436.13
T	S78° 16' 50" E	211.11
U	N11° 43' 09" E	98.83
V	N04° 20' 06" W	274.21
W	N10° 54' 09" E	457.16
X	N12° 49' 45" W	741.19
Y	N14° 20' 33" E	565.25
Z	N01° 48' 16" W	324.51
AA	N89° 57' 44" E	200.11

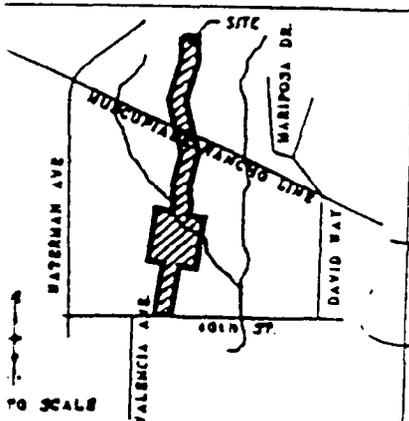
RESERVED IN F.O.C
 REC. 01/05/66
 IN BOOK 6545/736 O.R.

LEGEND



PERMANENT EASEMENT
 INFED1-30-170PEAI
 (24.408 ACS. TOTAL)

VICINITY MAP



PREPARED UNDER
 MY SUPERVISION

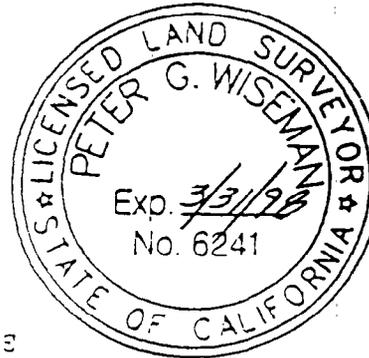
Peter G. Wiseman P.L.S. 6241

DATE

10/30/96



NOT TO SCALE



THE METROPOLITAN WATER DISTRICT
 OF SOUTHERN CALIFORNIA

INLAND FEEDER
 PERMANENT EASEMENT
 SAN BERNARDINO COUNTY
 FLOOD CONTROL DISTRICT
 TO
 MWD
 INFED1-30-170PEAI

EXHIBIT A

**INFED1-30-170TEA2
San Bernardino County
Flood Control District**

A temporary construction easement for a term of four (4) years commencing on the effective date of an order for possession, over, upon and across the property located in the County of San Bernardino, State of California, described herein as Parcel INFED1-30-170TEA2, and shown on Exhibit B, attached hereto, and reserving to the owner the right of reasonable access over and across the easement area.

**INFED1-30-170TEA3
San Bernardino County
Flood Control District**

A temporary construction easement for a term of four (4) years commencing on the effective date of an order for possession, over, upon and across the property located in the County of San Bernardino, State of California, described herein as Parcel INFED1-30-170TEA3, and shown on Exhibit B, attached hereto, and reserving to the owner the right of reasonable access over and across the easement area.

EXHIBIT A

INFED1-30-170TEA2
INFED1-30-170TEA3
San Bernardino County
Flood Control District

INFED1-30-170TEA2

That portion of Lot 38 of the Muscupiabe Rancho,
in the County of San Bernardino, State of California
described as follows:

Commencing at the northwest corner of the
southeast quarter of the northeast quarter (~~SE $\frac{1}{4}$ NE $\frac{1}{4}$~~) of said
Section 14 as marked by a 4" i.p. with wood plug, tagged RCE
4562 per Record of Survey filed in Book 7, page 37 of Record
of Surveys of said County; thence along the west line of
said ~~SE $\frac{1}{4}$ NE $\frac{1}{4}$~~ S 00° 21' 38" E 37.82 feet to the northeast
corner of Lot 1 as established by Parcel 1 of Court Decree
No. 43149 recorded August 24, 1939 in Book 1364, page 300 of
Official Records of said County and as marked by a 1" i.p.
tagged LS 2788 1" below surface in lieu of 2" i.p. per Tract
No. 6688 filed in Book 86, pages 86 through 89, inclusive of
Maps of said County; thence along the northerly line of said
Lot 1 S 89° 57' 44" W 490.04 feet; thence S 01° 48' 16" E
346.14 feet; thence S 14° 20' 33" W 545.29 feet; thence
S 12° 49' 44" E 734.88 feet; thence S 10° 54' 09" W 472.43
feet; thence S 04° 20' 07" E 275.72 feet; thence S 11° 43'
10" W 127.03 feet; thence S 78° 16' 50" E 192.41 feet;
thence S 07° 15' 43" W 704.02 feet to the POINT OF
BEGINNING; thence N 80° 33' 41" W 200.00 feet; thence S 09°
26' 18" W 126.03 feet; thence S 06° 38' 17" W 513.41 feet;
thence S 00° 31' 25" E 50.37 feet to a point hereinafter
known as point "A" on the northerly right of way line of
40th Street (100 feet wide) as reserved in First Amended
Final Order of Condemnation recorded January 5, 1966 in Book
6545, page 736 of Official Records of said County; thence
along said northerly right of way line N 89° 28' 35" E
200.00 feet; thence N 00° 31' 25" W 37.86 feet; thence N 06°
38' 17" E 496.00 feet; thence N 09° 26' 18" E 121.14 feet to
the POINT OF BEGINNING.

EXHIBIT A

INFED1-30-170TEA2
INFED1-30-170TEA3
S.B.C.F.C.D.

INFED1-30-170TEA3

Commencing at point "A" described above; thence along said northerly right of way line of 40th Street S 89° 28' 35" W 200.00 feet to the POINT OF BEGINNING; thence N 00° 31' 25" W 62.38 feet; thence N 06° 38' 17" E 530.78 feet; thence N 09° 26' 18" E 130.94 feet; thence N 80° 33' 42" W 200.00 feet; thence S 09° 26' 18" W 135.83 feet; thence S 06° 38' 17" W 548.18 feet; thence S 00° 31' 25" E 74.90 feet to said northerly right of way line of 40th Street; thence along said northerly right of way line of 40th Street N 89° 28' 35" E 200.00 feet to the POINT OF BEGINNING.

PREPARED UNDER MY SUPERVISION


Peter G. Wiseman P.L.S. 6241

Date

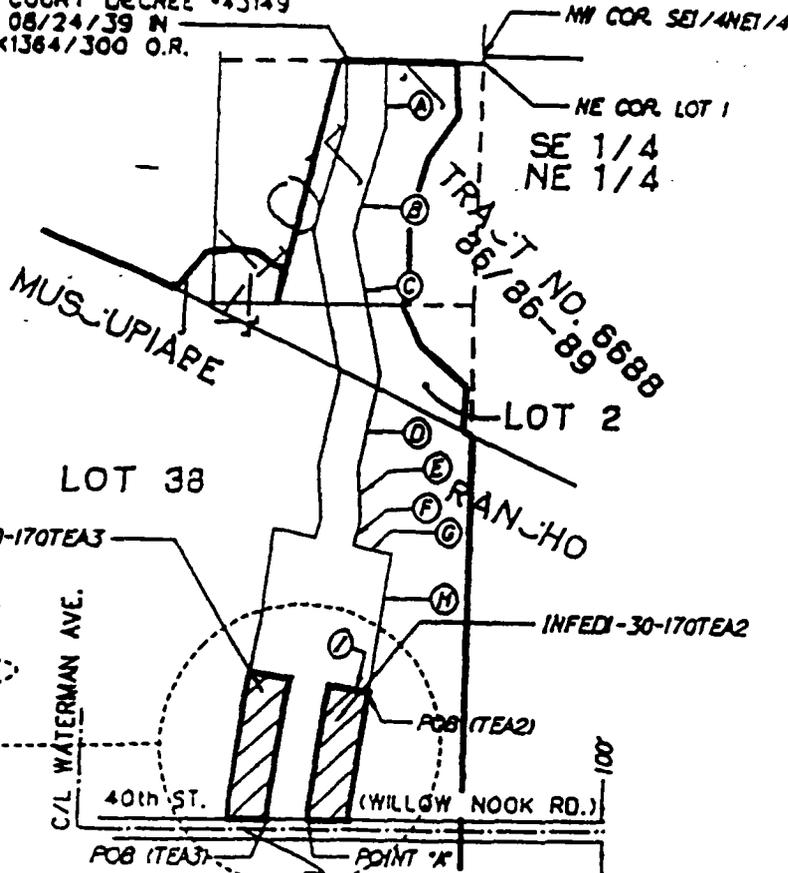
10/30/96



EXHIBIT B

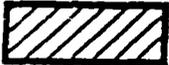
"THIS EXHIBIT IS TO BE ATTACHED TO THE LEGAL DESCRIPTION"
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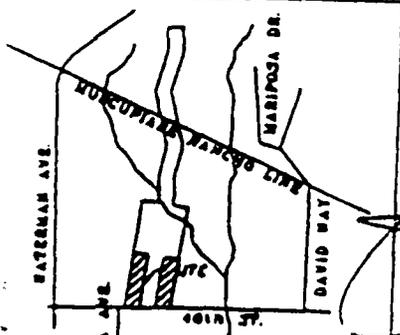
SEE PAGE 2 OF 2

LEGEND



TEMPORARY EASEMENT
 INFEDI-30-170TEA2 (3.087 ACS.)
 INFEDI-30-170TEA3 (3.405 ACS.)
 (6.492 ACS. TOTAL)

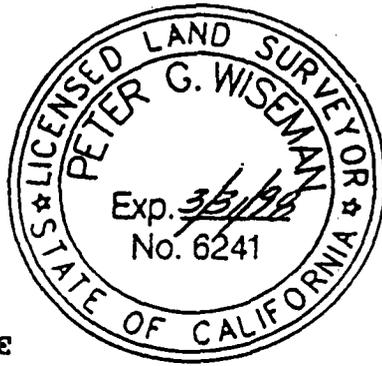
VICINITY MAP



PREPARED UNDER
 MY SUPERVISION



NOT TO SCALE



Peter G. Wiseman
 Peter G. Wiseman P.L.S. 6241

DATE 10/28/96

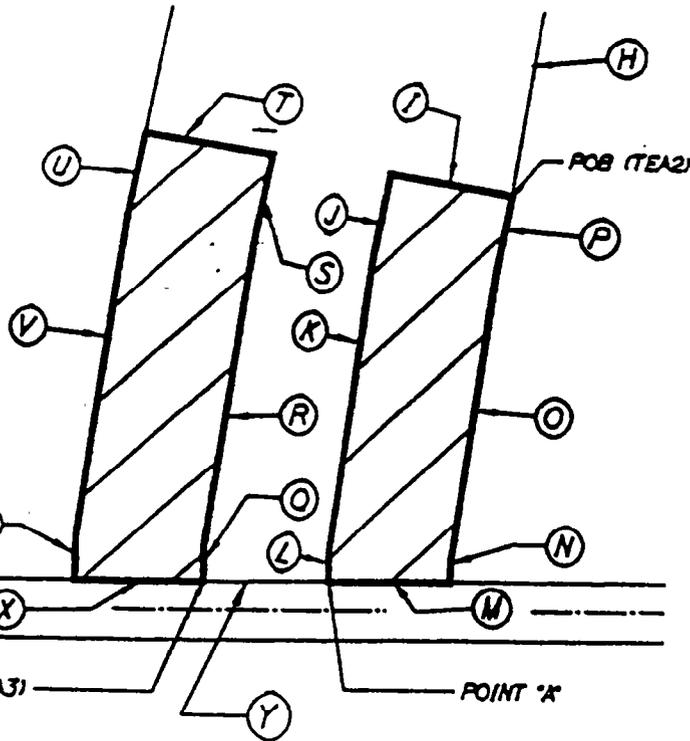
THE METROPOLITAN WATER DISTRICT
 OF SOUTHERN CALIFORNIA
 INLAND FEEDER
 TEMPORARY EASEMENT
 SAN BERNARDINO COUNTY
 FLOOD CONTROL DISTRICT
 TO
 MWD
 INFEDI-30-170TEA2, TEA3

EXHIBIT B

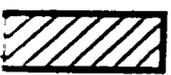
THIS EXHIBIT IS TO BE ATTACHED TO THE LEGAL DESCRIPTION
 FOR GOVERNMENT LOTS 1 & 2, SEC. 14, T. 1 N., R. 4 W., S.B.M.,
 AND FOR LOT 38 OF THE MUSCUIABE RANCHO
 COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

LINE TABLE

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I	N80°33'41"W	200.00
J	S09°26'18"W	126.03
K	S06°38'17"W	513.41
L	S00°31'25"E	50.37
M	N89°28'35"E	200.00
N	N00°31'25"W	37.86
O	N06°38'17"E	496.00
P	N09°26'18"E	121.14
Q	N00°31'25"W	62.38
R	N06°38'17"E	530.78
S	N09°26'18"E	130.94
T	N80°33'42"W	200.00
U	S09°26'18"W	135.83
V	S06°38'17"W	548.18
W	S00°31'25"E	74.90
X	N89°28'35"E	200.00
Y	S89°28'35"W	200.00

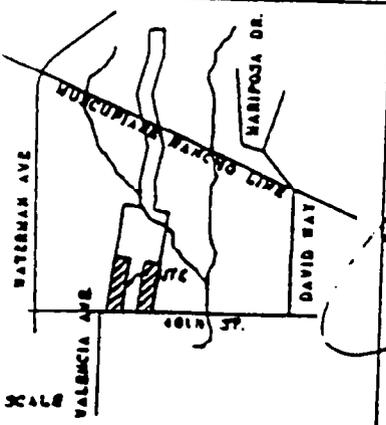


LEGEND



TEMPORARY EASEMENT
 NFED1-30-170TEA2 (3.087 ACS.)
 NFED1-30-170TEA3 (3.405 ACS.)
 (6.492 ACS. TOTAL)

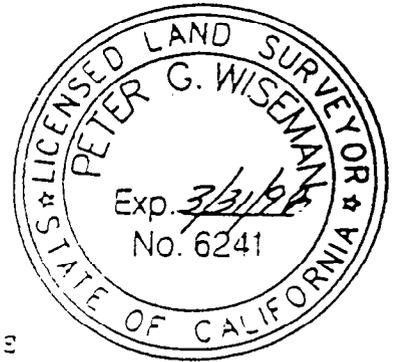
VICINITY MAP



PREPARED UNDER
 MY SUPERVISION



NOT TO SCALE



[Signature]
 Peter G. Wiseman P.L.S. 6241

DATE 10/30/96

THE METROPOLITAN WATER DISTRICT
 OF SOUTHERN CALIFORNIA
 INLAND FEEDER
 TEMPORARY EASEMENT
 SAN BERNARDINO COUNTY
 FLOOD CONTROL DISTRICT
 TO
 MWD
 NFED1-30-170TEA2, TEA3