

October 15, 1998

**To:** Board of Directors (Legal and Claims Committee--Action)

**From:** General Manager \_\_\_\_\_

**Submitted by:** Gary M. Snyder \_\_\_\_\_  
Chief Engineer

**Subject:** Resolution of Necessity Directing the General Counsel to Condemn Property Required for the Inland Feeder Project in San Bernardino County, California, identified by MWD's Right-of-Way Parcel Number INFED1-28-370PEA1 and -TEA1 and Owner's Name: Frank Tyler

## **RECOMMENDATION**

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It is recommended that the Board of Directors adopt, by a two-thirds vote, the resolution of necessity to condemn the property described in Exhibits A and B, attached hereto, in accordance with the eminent domain, and directing the General Counsel to commence condemnation proceedings to acquire the property.

## **EXECUTIVE SUMMARY**

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Metropolitan will require a permanent subsurface pipeline easement and a five year temporary construction easement across real property owned by Frank Tyler and as described in Exhibits A and B, attached hereto, located in San Bernardino County, California, for portions of the Inland Feeder Project. No offer to purchase has been made because the property owner cannot be located with reasonable diligence. A resolution of necessity is recommended to authorize the commencing of an eminent domain action to acquire the property.

## **DETAILED REPORT**

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Metropolitan seeks a permanent subsurface pipeline easement (INFED1-28-370PEA1) and a five-year temporary construction easement (INFED1-28-370TEA1) across property owned by Frank Tyler located in the south-central part of the City of Highlands west of Boulder Avenue (State Highway 30) and fronting Abbey Way. The total area of the subject property is a 0.735 acre, 25 foot wide strip of rural land. Ownership of the property is not connected to any adjacent larger property. The property is a remnant parcel. The San Bernardino County Recorder's Office identifies the property owner as Frank Tyler. A title report shows that Frank Tyler obtained an interest by a decree of distribution recorded on September 12, 1947. No taxes are being paid on this property. INFED1-28-370PEA1 is a permanent pipeline easement comprising of .045 acre and INFED1-28-370TEA1 is a five year temporary construction easement comprising .690 acre of land. Both the temporary and permanent easement have been appraised at \$100.

An attempt to contact the property owner has been made, but the San Bernardino County Assessor's Office has no information and there is no telephone listing. The property appears on the assessor parcel map as a portion of dedicated Abbey Way. However, neither the County of San Bernardino nor the City of Highland have accepted this area into the public road system. The property is partially paved.

No 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 was sent because, after due diligence, the property owner could be located. No written request was received and the property owner did not appear at the hearing. A written summary of the hearing and the recommendation of the Special Committee on Real Property Management is attached. The Special Committee voted to recommend approval of the proposed resolution.

Transmitted herewith is the form of resolution declaring the necessity of the Project and the acquisition of the permanent and temporary 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 permanent subsurface pipeline and temporary easement.

On February 9, 1993, the 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. The Board's action on the subject resolution is therefore in compliance with CEQA. No further environmental documentation or review is necessary for the Board to act on this request.

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**Attachment 8-9A**

**Attachment 8-9B**

**Exhibit A**

**Exhibit B**

**Attachment 8-9A**

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

On October 27, 1998, at the offices of The Metropolitan Water District of Southern California, located at 350 South Grand Avenue, Los Angeles, California 90071, Room 311, 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.

Senior Deputy General Counsel Lauren Brainard advised the Committee that it has been delegated the authority by Metropolitan's Board of Directors to hold the hearing required by law as a prerequisite to the adoption of a resolution 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 easements to be acquired are necessary for the Project.

Mr. Brainard further advised the Committee that an attempt to contact the property owner had been made, but the San Bernardino County Assessor's Office had no information and there is no telephone listing. The property appears on the assessor parcel map as a portion of dedicated Abbey Way. However, neither the County of San Bernardino nor the City of Highland have accepted this area into the public road system. No notice of intention to adopt a resolution of necessity was served, nor an offer to purchase the easements were made because the property owner cannot be located.

Mr. Brainard made a presentation regarding the Inland Feeder Project, and identified the subject take as a permanent subsurface pipeline easement and a five year temporary construction easement in San Bernardino County located in the south-central part of the City of Highland west of Boulder Avenue and fronting on Abbey Way. The total area of the subject property is a 25 foot wide strip of rural land. Ownership of the property is not connected to any adjacent larger property. The property is a remnant parcel.

The Committee voted to recommend adoption of the resolution of necessity.

**Attachment 8-9B**

**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 properties situated in the County of San Bernardino are necessary therefor.

Section 2. The permanent and temporary easements to be acquired for the public use set forth in section 1, above, consist of a parcel of land described in Exhibits A attached hereto and incorporated herein by reference and shown on Exhibits B attached hereto and incorporated herein by reference.

Section 3. The District's Board hereby declares its intention to acquire the permanent and temporary 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 permanent and temporary easements described in Exhibits A and B attached hereto are necessary for the proposed Project.

Section 6. The District's Board hereby finds and determines that after reasonable diligence the record property owner could not be located and that therefore, an offer as required by Government Code section 7267.2 could not be made to the owner of record of the property described in Exhibits A and B, attached hereto.

Section 7. 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 permanent and temporary 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 easement 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 meeting of the Board of Directors of The Metropolitan Water District of Southern California held the 10th day of November, 1998, 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 temporary easement for a term of five (5) years commencing on the effective date of an order for possession, in the property located in the County of San Bernardino, State of California, described herein as Parcel INFED1-28-370TEA1, and as shown on Exhibit B, attached hereto, for purposes of construction of a water conveyance pipeline, and subject to the following conditions:

Prior to termination of the easement, all facilities or soils placed on the property by Metropolitan or its contractor shall be removed and the property and any improvements located thereon shall be restored or repaired to a condition as near as practicable to the condition that existed prior to Metropolitan's use of the easement. Metropolitan will not be required to restore vegetation to its pre-existing condition.

2. A permanent easement in the property described as Parcel INFED1-28-370PEA1, for the purpose of constructing, reconstructing, maintaining, operating, enlarging, removing, and replacing a line or lines of pipe at any time, and from time to time, for water transportation, with every appendage or structure necessary or convenient to be installed at any time in connection therewith; subject to the following conditions.

- A. Owner shall not change the existing grade or otherwise modify the topography of the property affected by this easement without the prior consent of Metropolitan.
- B. No building or other structure excepting pavement for road or parking use shall be constructed or maintained upon any portion of the easement by Owner.
- C. Owner shall not plant trees or any other deep root vegetation within the easement area. Should Metropolitan require use of any portion of the easement area for replacement, relocation or installation of its pipeline, or for future pipelines, Owner shall remove any improvements at his or her own expense.
- D. Owner shall retain the right of access over and across the easement area, and Metropolitan shall not unreasonably interfere with such right of access.

**Exhibit B**

EXHIBIT A

INFED1-28-370PEA1  
(Permanent Easement)  
Frank Tyler

The southerly 25.00 feet of the southwest quarter of the southwest quarter (SW1/4SW1/4) of Section 2 Township 1 South, Range 3 West, San Bernardino Meridian in the City of Highland, County of San Bernardino, State of California.

EXCEPTING therefrom the westerly 30.00 feet of said SW1/4SW1/4.

ALSO EXCEPTING therefrom that portion of said SW1/4SW1/4 lying easterly and northeasterly of the following described line:

Commencing at the southwest corner of said Section 2, as marked by 2" iron pipe, 4" below surface, as shown on map filed in Book 105, pages 32 through 35 inclusive of Record of Surveys, records of said County; thence along the southerly line of said Section 2, S 89° 33' 29" E 122.11 feet to the POINT OF BEGINNING; thence leaving the southerly line of said Section 2, N 47° 21' 28" W 37.22 feet to a point on the northerly line of said 25 feet.

PREPARED UNDER MY SUPERVISION

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

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Date



