

January 21, 1999

To: Board of Directors

From: General Counsel

Subject: Hearing on Amendment and Amendment to Resolution of Necessity Directing General Counsel to Condemn Property Required for the Inland Feeder Project in San Bernardino County, California, identified as portions of Lots 1, 2, and 3 of Section 7, Township 1 South, Range 2 West, San Bernardino Meridian, MWD's Right-of-Way Parcel Number INFED 1-27-870PEA2 and Owner's Name: San Bernardino Valley Water Conservation District

RECOMMENDATION(S)

That the Board of Directors hold a hearing on the proposed amendment to the resolution of necessity attached hereto as **Exhibit 1**, and adopt, by a two-thirds (2/3) vote, said amendment to the resolution of necessity to condemn the property described in **Exhibit A** ("Subject Property") and shown on **Exhibit B to Attachment 1 to Exhibit 1**, in accordance with the law, and directing the General Counsel to pursue condemnation to acquire said property, pursuant to said amended resolution of necessity.

EXECUTIVE SUMMARY

On October 13, 1998, the Board adopted Resolution Number 8614, attached as **Attachment 1 to Exhibit 1**, authorizing the General Counsel to seek condemnation of the subject property. On January 13, 1999, a court sustained a demurrer to the Complaint seeking condemnation of the subject property, on the grounds that the Complaint, and therefore, the underlying resolution of necessity were uncertain in certain particulars. Metropolitan was given thirty days leave to amend the Complaint to clarify those uncertainties, which, of necessity, requires an amendment to the resolution of necessity. The amendments, as set forth on **Exhibit 1**, while technical in nature, are necessary in order for the General Counsel to obtain possession of the subject property which is critical to the Inland Feeder Project.

DETAILED REPORT

On October 13, 1998, the Board adopted a resolution of necessity (Resolution Number 8614) authorizing the General Counsel to acquire property interests owned by the San Bernardino Valley Water Conservation District ("Water Conservation District") consisting of a permanent pipeline easement and a slope easement located in the Upper Santa Ana River Wash along the eastern line of Cone Camp Road, south of Greenspot Road, in the County of San Bernardino. The easement was required for construction of the pipeline while the potential for mining operations which could jeopardize the integrity of the pipeline requires the slope easement for

lateral and subjacent support. A copy of Resolution 8614 is attached at **Attachment 1 to Exhibit 1**.

Subsequent to adoption of the resolution of necessity, a Complaint in Eminent Domain seeking the subject property was filed in San Bernardino County, with venue subsequently transferred to Santa Barbara County. There, on January 13, 1999, Judge J. William McLafferty sustained demurrers to the Complaint in Eminent domain on the basis of uncertainty. It was asserted by Defendants that the resolution of necessity failed to contain a specific reference to the section of the Metropolitan Water District Act granting Metropolitan authority to proceed with this eminent domain proceeding as contrasted with the Complaint, which contains a reference to two separate sections, one of which provides for the power of eminent domain, and the other of which provides for Metropolitan's right to use streets and cross streams or rivers with its facilities. Defendants also asserted that the resolution and Complaint were uncertain in that they did not contain an adequate description of the total project. After sustaining the demurrers, Judge McLafferty granted Metropolitan thirty days leave to amend the Complaint. If the Complaint is not amended in that period of time, the case may be dismissed. Amendment of the Complaint, of course, necessitates amendment of the resolution of necessity.

Eminent domain law requires that in order to adopt or amend a resolution of necessity, the owner(s) of any rights in the subject property must be afforded the opportunity to appear and be heard. Appropriate notice of the Board's intention to adopt the amendment to the resolution and opportunity to appear and be heard was timely served on the Water Conservation District and its lessee, Robertson's Ready Mix, Inc. A quorum of the Board is required for such a hearing and a resolution of necessity requires approval by a two-thirds vote of the total Board.

Attached hereto as **Exhibit 1** is an Amendment to Resolution Number 8614 which leaves Resolution Number 8614 in full force and effect with the exception of two changes as follows:

1. Amends section 3 of Resolution Number 8614 to read (with additions from Resolution 8614 in italics and deletions crossed out):

“The District’s Board hereby declares its intention to acquire the permanent 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), *namely West’s Water Code Appendix § 109-141 and by reaffirming its granted powers to place water conveyance facilities across any stream of water or water course as authorized by the Metropolitan Water District Act (Stats. 1969, Ch.. 209 as amended) and identified as West Water Code Appendix § 109-142.*”

2. Augments Resolution Number 8614 to include a diagram **Exhibit C** to further describe the location of the subject property relative to the project for which it is to be taken.

LRB:rl

Attachment 9-7A

Attachment 9-7A

Exhibit 1

**RESOLUTION NO. _____
AN AMENDMENT TO RESOLUTION NO. 8614
(As Adopted October 13, 1998)**

A Resolution of the Board of Directors of The Metropolitan Water District of Southern California creating an amendment to Resolution 8614, which directed the condemnation of certain properties 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 on October 13, 1998, by a vote of more than two-thirds of all its members, adopted Resolution 8614 which found and determined 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 therefore. A copy of Resolution 8614 is attached hereto as Attachment 1.

Section 2. The District’s Board hereby amends Section 3 of Resolution 8614 to read as follows: “The District’s Board hereby declares its intention to acquire the permanent 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), namely West’s Water Code Appendix § 109-141 and by reaffirming its granted powers to place water conveyance facilities across any stream of water or water course as authorized by The Metropolitan Water District Act (Stats. 1969, Ch. 209 as amended) and identified as West’s Water Code Appendix § 109-142.”

Section 3. The District’s Board hereby augments the drawings, maps, and/or diagrams depicting the permanent easements to be acquired for the public use as set forth in Resolution 8614. The new diagram depicting the property being acquired in relation to the project as a whole is attached hereto as Exhibit “C” and incorporated herein by reference.

Section 4. The District’s Board hereby finds and determines that with the exception of the foregoing amendments identified in sections 2 and 3 above, Resolution 8614 is still in full force and effect and incorporated herein by reference.

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 9th day of

February, 1999, by a vote of two-thirds of more than all of 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

Attachment 1 to Exhibit 1

RESOLUTION 8614

**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 easements to be acquired for the public use set forth in section 1, above, consist of the parcels of land described in Exhibit A attached hereto and incorporated herein by reference and shown on Exhibit B attached hereto and incorporated herein by reference.

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

Section 6. The District's Board finds and determines that pursuant to Section 1240.510, et seq. of the California Code of Civil Procedure, the public use for which the District is acquiring the easement 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's Board finds and determines that, pursuant to Section 1240.610 et seq. of the California Code of Civil Procedure, the public use for which the District is acquiring the permanent easement 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, for the purpose of condemning and acquiring the permanent 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 meeting of the Board of Directors of The Metropolitan Water District of Southern California held the 13th day of October, 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.

Executive Secretary
The Metropolitan Water District of
Southern California

EXHIBIT A

INFED1-27-870PEA2
(Permanent Easements)
San Bernardino Valley
Water Conservation District

Parcel A -- Pipeline Easement

A permanent easement to construct, reconstruct, maintain, operate, enlarge, remove, and replace 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, within the property described herein as Parcel A of Parcel INFED1-27-870PEA2 and shown on Exhibit B attached hereto and incorporated herein by reference.

This easement is subject to the following conditions:

1. This easement is subject to the rights of San Bernardino Valley Water Conservation District to make use of the surface of the easement area for ditches, canals, or similar water conveyance facilities for the transfer of water.
2. Except for the water conveyance facilities constructed by San Bernardino Valley Water Conservation District, no change to the existing grade or other modification of the topography of the easement area which affects the depth of cover over or weight of cover on the pipeline(s) shall be made without the prior written consent of The Metropolitan Water District of Southern California, which consent shall not be unreasonably withheld.
3. Except for the water conveyance facilities constructed by San Bernardino Valley Water Conservation District and any roads constructed at existing grade, no building, wall, or other permanent structure shall be constructed or maintained within the easement area without the prior written consent of The Metropolitan Water District of Southern California, which consent shall not be unreasonably withheld.
4. No trees shall be planted within 15 feet of the centerline of any line or lines of pipe constructed within the easement area. Trees shall be permitted to be planted and maintained on the remaining portion of easement area; provided, however, if The Metropolitan Water District of Southern California should require use of the remaining portion of the easement area for replacement or relocation of its pipeline(s), or for a future pipeline, any such trees shall be removed by Owner and no trees shall be replanted within 15 feet of the centerline of the replaced, relocated, or future pipeline.

5. The Metropolitan Water District of Southern California shall not interfere with reasonable access over and across the easement area during the term of this easement.

Parcel B -- Easement for Lateral and Subjacent Support

A permanent easement to provide lateral and subjacent support for a line or lines of pipe for water transportation located within the permanent pipeline easement area described as Parcel A, above, acquired concurrently and contiguous with this easement. The easement granted herein is over, across and within the property described as Parcel B of Parcel INFED1-27-870PEA2 and shown on Exhibit B attached hereto and incorporated herein by reference. Subject to the right of San Bernardino Valley Water Conservation District to construct and maintain ditches, canals, or similar water conveyance facilities for the transfer of water, and subject to the construction and maintenance of roads at existing grade, no grading, excavation or earth movement of any kind shall be permitted or performed within the area of this easement.

EXHIBIT A

INFED1-27-870PEA2
(Permanent Easement)
San Bernardino Valley
Water Conservation District

Those certain parcels of land hereinafter designated Parcels "A" and "B", in Section 7, Township 1 South, Range 2 West, San Bernardino Meridian, in the County of San Bernardino, State of California, described as follows:

PARCEL A

The westerly 250 feet of Lots 1, 2 and 3 of said Section 7.

All as shown on Exhibit "B", attached hereto and made a part hereof.

PARCEL B

The easterly 450 feet of the westerly 700 feet of Lots 1, 2, and 3 of said Section 7.

EXCEPTING from said easterly 450 feet that portion lying above a plane that begins on the west line of said easterly 450 feet and slopes downward at a uniform ratio of 3 foot horizontal to 1 foot vertical (3:1) at right angles from the existing ground elevation along said west line of said easterly 450 feet. All as shown on Exhibit "B" attached hereto and made a part hereof.

PREPARED UNDER MY SUPERVISION

Peter G. Wiseman P.L.S. 6241



Date

September 10, 1998

EXHIBIT B

Page 1 of 2

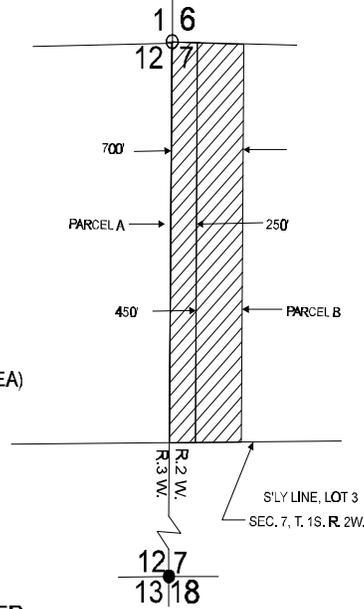
POR. SEC. 7, T. 1 S., R. 2 W., S.B.M.
COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA
THIS EXHIBIT IS TO BE ATTACHED TO THE LEGAL DESCRIPTION

PLAN VIEW

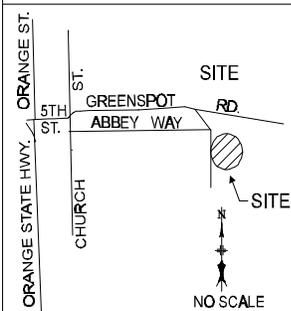
LEGEND



INFED1-27-870PEA2
PARCEL A: 22.805
PARCEL B: 41.048
TOTAL AREA: 63.853
3:1 SLOPE (HORIZ. AREA)



VICINITY MAP



PREPARED UNDER
MY SUPERVISION

Peter G. Wiseman P.L.S. 6241

DATE



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

INLAND FEEDER PERMANENT EASEMENT

SAN BERNARDINO VALLEY
WATER CONSERVATION DISTRICT

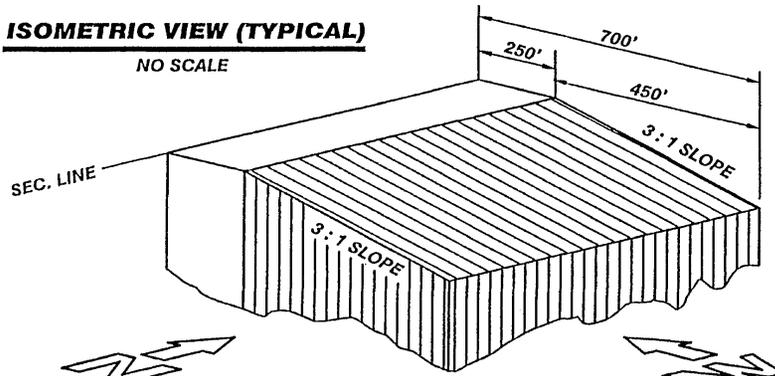
TO
MWD
INFED1-27-870PEA2

EXHIBIT B
 POR, SEC. 7, T. 1 S., R. 2 W., S.B.M.
 COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA
 THIS EXHIBIT IS TO BE ATTACHED TO THE LEGAL DESCRIPTION

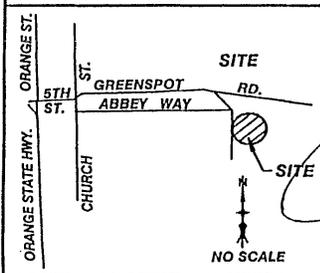
LEGEND
 **PARCEL B : INFED1-27-870PEA2**
450' WIDE PERMANENT EASEMENT

ISOMETRIC VIEW (TYPICAL)

NO SCALE

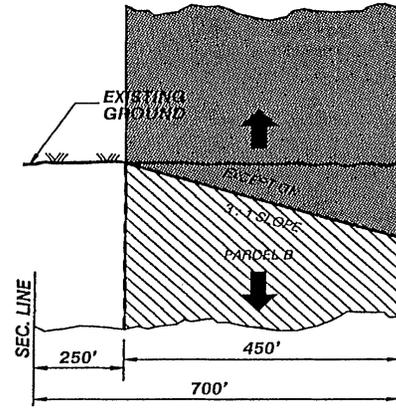
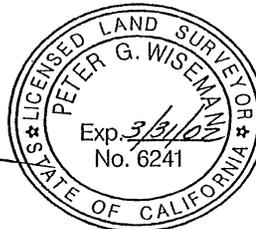


VICINITY MAP



PREPARED UNDER
MY SUPERVISION

Peter G. Wiseman
 Peter G. Wiseman P.L.S. 6241
 DATE 9/4/98



END VIEW - LOOKING NORTH

NO SCALE

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

INLAND FEEDER
PERMANENT EASEMENT
 SAN BERNARDINO VALLEY
 WATER CONSERVATION DISTRICT
 TO
 MWD
 INFED1-27-870PEA2