

MINUTES
REGULAR MEETING OF THE
BOARD OF DIRECTORS
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
FEBRUARY 9, 1999

43368 The Board of Directors of The Metropolitan Water District of Southern California met in Regular Meeting in the Board Room located in the building at 700 North Alameda Street in the City of Los Angeles, State of California, on Tuesday, February 9, 1999.

The Meeting was called to order by Chairman Pace at 9:30 a.m.

43369 The Meeting was opened with an invocation by Director Wyatt L. Troxel.

43370 The Pledge of Allegiance to the Flag was given, led by Director Edward C. Little.

43371 Secretary Murph called the roll. Those answering present were: Directors Abdo, Bannister, Barbosa, Barker, Blake, Brick, Castro, Coughran, Fellow, Foley, Forbes, Frahm, Gilbert, Grandsen, Hansen, Herman, Hill, King, Kosmont, Krauel, Krieger, Lantz, Lewis, Little, Luddy, McMurray, Moret, Morris, Morse, Murph, Murray, Mylne, O'Neil, Owen, Pace, Peterson, Rez, Stanton, Tinker, Troxel, Turner, Watton, Wein, Witt, and Wright.

Those not answering were: Directors Freeman, Huntley, Miller, Rascon, and Webster.

The Chair declared a quorum present.

43372 Chairman Pace inquired if there were any additions to the agenda. There being none, the Chair declared only those matters listed on the agenda would be considered.

43373 Chairman Pace invited members of the public to address the Board on matters within the Board's jurisdiction.

Felicia Marcus, EPA Administrator, addressed the Board regarding issues on CALFED, water conservation and reclamation, perchlorate, and MTBE. She complimented the Board on its leadership role in the historic and complex CALFED process over the years in helping to break the gridlock in the water wars, first with the Monterey Accord and then the CALFED process. On water conservation and reclamation, she expressed special tribute to Metropolitan's role which is finally being recognized by others outside of the water industry, such as teams of environmentalists and other leadership people. Ms. Marcus stated that the perchlorate issue is of high priority to the EPA. The EPA is also reviewing the MTBE issue. She thanked Metropolitan's staff in working with the EPA on these matters.

Mark Goldberg, Director of Community Development, City of Hemet, referred to Agenda Item 9-5 and stated the Board's action will have an impact on the proposed funding for the marinas and boat launch ramps at the Eastside Reservoir.

Lloyd Allen, director from Imperial Irrigation District, stated his district supports the California 4.4 Plan and is willing to cooperate with Metropolitan on river reoperations, but he was distressed with Metropolitan's position of asking the Secretary of the Interior to review the reallocation of the Colorado River.

Andy Horne, director from Imperial Irrigation District, commented that through political realities he understands that IID will have to share their water allocation but that it should be done through a cooperative effort. He stated that under the current IID board there will no profiteering from the sale of their water, but they will not allow their water allocation to be taken away.

Steven Abbott, attorney representing the Coachella Valley Water District, referred to the letter from Tom Levy, General Manager-Chief Engineer of Coachella, dated February 8, 1999, expressing their concerns with Metropolitan's request to the Secretary of the Interior for reallocation of the Colorado River water rights among the California agencies.

43374 On behalf of the Board and in recognition of their outstanding service, Chairman Pace presented plaques to the former Board Officers:

Christine M. Frahm, Vice Chair, January 1, 1995 through December 31, 1998

William G. Luddy, Vice Chairman, March 11, 1997 through December 31, 1998

Wayne T. McMurray, Vice Chairman, January 1, 1997 through December 31, 1998

Regina Murph, Board Secretary, December 14, 1993 through February 9, 1999

Chairman Pace presented to Immediate Past Chairman Foley a pin emblematic of his service as Board Chairman from December 14, 1993 through December 31, 1998.

43375 There being no objection, the Chair ordered the reading of the Minutes of the Meeting held October 13, 1998, dispensed with, a copy having been mailed to each Director.

Director Stanton moved, seconded by Board Secretary Murph and carried, approving the foregoing Minutes as mailed.

43376 The General Counsel's letter dated January 4, 1999, was presented, transmitting the credentials evidencing the appointment by San Diego County Water Authority of Mark W. Watton as one of its representatives on Metropolitan's Board for an indefinite term, replacing Dale Mason.

General Counsel Taylor reported the credentials had been examined and found legally sufficient.

The Chair reported the Oath of Office had been administered to Mr. Watton on February 8, 1999, and ordered the Oath filed.

Following an introduction by Director Frahm, Mr. Watton took his seat as a Director representing San Diego County Water Authority.

43377 The General Counsel's letter dated February 5, 1999, was presented, transmitting the credentials evidencing the appointment by Inland Empire Utilities Agency of Gene Koopman as

one of its representatives on Metropolitan's Board for an indefinite term, replacing Bill M. Hill.

General Counsel Taylor reported the credentials had been examined and found legally sufficient.

Bobbi Becker, Notary Public, administered the Oath of Office to Mr. Koopman. The Chair ordered the Oath filed.

Following an introduction by Director Hill, Mr. Koopman took his seat as a Director representing Inland Empire Utilities Agency.

43378 Director Frahm moved, seconded by Board Secretary Murph and carried, approving the recommendation of the Executive Committee that Director Watton be assigned to the Budget and Finance and Communications and Legislation Committees, and Director Koopman to the Engineering and Operations and Communications and Legislation Committees.

43379 Vice Chairman Brick moved, seconded by Director Frahm and carried, (1) approving the recommendation of the Executive Committee that Director Brick be transferred to the Water Planning and Resources Committee from the Engineering and Operations Committee, and Director Hansen be assigned to the Special Audit Committee; and (2) accepting the resignation of Director Castro from the Engineering and Operations Committee and the Subcommittee on Organization and Personnel.

43380 Special Nominating Committee Chairman Rez reported the committee, consisting of Directors Blake, Fellow, Grandsen, Hill, and himself considered the candidates for Board Secretary and three nonofficer members of the Executive Committee which will be voted upon individually.

Committee Chairman Rez moved the nomination of Director Helen Z. Hansen for Board Secretary for the term ending December 31, 2000. Director Blake seconded the motion.

Chairman Pace called for other nominations from the floor. Hearing none, Director Barker moved, seconded by Director Murph and carried, that the nominations be closed. The Chair then stated that the nomination of Director Hansen for Board Secretary has been carried by a unanimous vote.

For position one as a nonofficer member of the Executive Committee, Special Nominating Committee Chairman Rez moved the nomination of Director Glen D. Peterson for a second

two-year term ending December 31, 2000. Director Morris seconded the motion.

Chairman Pace called for other nominations from the floor. Hearing none, Director Blake moved, seconded by Director Murph and carried, that the nominations be closed. The Chair then stated that Director Peterson has been duly elected as a nonofficer member of the Executive Committee.

For position two as a nonofficer member of the Executive Committee, Special Nominating Committee Chairman Rez noted that Director Blake did not participate nor vote; and he therefore moved the nomination of Director Blake for a term ending December 31, 2000. The motion was seconded by Director Coughran.

Chairman Pace called for other nominations from the floor. Hearing none, Director Morris moved, seconded by Director Stanton and carried, that the nominations be closed. The Chair then stated that Director Blake has been duly elected as a nonofficer member of the Executive Committee.

For position three as a nonofficer member of the Executive Committee, Special Nominating Committee Chairman Rez moved the nomination of Director Bill D. Wright for a term ending December 31, 2000. Director Blake seconded the motion.

Chairman Pace called for other nominations from the floor. Hearing none, Director Morris moved, seconded by Director Murph and carried, that the nominations be closed. The Chair then stated that Director Wright has been duly elected as a nonofficer member of the Executive Committee.

43381 Vice Chairman Brick moved, seconded by Director Witt and carried, authorizing the preparation of Commendatory Resolutions for former Directors Joseph Parker, Richard Mayér, Mark Dymally, Carol Kwan, and Dale Mason.

43382 Vice Chairman Brick reported that Item 6H, the changes to the new procedures pertaining to Board and Committees' structures, has been deferred by the Executive Committee.

Director Gilbert withdrew from the Meeting at 10:36 a.m.

Director Wright withdrew from the Meeting at 10:38 a.m.

Director Herman withdrew from the Meeting at 10:40 a.m.

43383 Strategic Plan Steering Committee Chairman King announced he was stepping aside as chairman of the committee due to his appointment as Chair of the Communications and Legislation Committee, and stated Director Kosmont would lead the process. Director Kosmont then outlined the additional work requested of the strategic planning consultants by the Strategic Plan Steering Committee at its January 19 meeting. The additional work would focus on narrowing the alternative visions and providing information regarding potential impacts of these alternatives to rates and reliability, among other factors.

Director Kosmont then moved, seconded by Director Morris, that the Board authorize the amendment of Agreement No. 18285 with PricewaterhouseCoopers LLP for Strategic Planning consulting services, to increase the original budget of \$600,000 by \$175,000 to a total not-to-exceed amount of \$775,000, to perform additional work during the extension of Phase I of the Strategic Planning Process, as set forth in the Strategic Plan Steering Committee Chairman's letter dated January 26, 1999.

Following a discussion regarding the issues involved in the Strategic Plan and the participation of Directors at the meetings and workshops, the Chair called for a vote on the motion, which carried.

Director Wright returned to the Meeting at 10:43 a.m.

Director Moret withdrew from the Meeting at 10:45 a.m.

43384 Chairman Pace stated that while the search for the General Manager is ongoing, he has asked Deputy General Manager Timothy Quinn to come down from Sacramento and remain at the Headquarters as the Acting General Manager. Chairman Pace reported that the firm of Heidrick & Struggles has been retained for Phase II of the search for a new General Manager, with the firm outlining an aggressive search timeline, as follows: Interviews scheduled to begin in three weeks, top candidates to be presented to the Search Committee in five weeks, selected finalists to be presented to the Board in seven weeks, and the offer made to the final candidate in eight weeks. The Chair further reported on the status of the Colorado River negotiations and of the meetings held with representatives from the various entities involved.

Director Moret returned to the Meeting at 11:06 a.m.

43385 Regarding the Strategic Plan, Director Kosmont had no further report.

43386 Regarding the Colorado River matters, Paul Cunningham, the lead negotiator for Metropolitan, reported that a meeting was held with representatives from the Department of the Interior, Imperial Irrigation District, and Coachella Valley Water District which was very constructive. They discussed a California 4.4 Plan to address the situation in which California might be limited to 4.4 million acre-feet of water. Under the allocation plan developed in 1931, Metropolitan's share is 550,000 acre-feet (of the first 4.4 million acre-feet of California's entitlement), which is a fourth priority. Under the 4.4 Plan, it is anticipated that the IID-San Diego transfer will be included and be part of the quantification. Also discussed was the amount of water IID will transfer to San Diego and what treatment will be made to conserve water. Mr. Cunningham also reported that in December the Secretary of the Interior announced the MOU with IID and Coachella, and under that MOU, it was important to understand what Metropolitan will be left with. River reoperations were also discussed.

Mr. Cunningham stated that at a meeting with the seven basin states, concerns were expressed that the IID-Coachella MOU did not adequately address the need that the California urban coastal plain would receive enough water to fill the Colorado Aqueduct after 2015, and the 4.4 Plan was to get California disciplined. Mr. Cunningham's overall assessment of the Colorado River discussions was that we are making progress.

In response to a question, Mr. Cunningham stated that the Federal government is in charge of the Colorado River water and ultimately that authority may be exercised to serve the public interest. Mr. Cunningham stated that by asking the Secretary what is in the public interest, this is a dialog that is long overdue and needs to be conducted as these negotiations are going on and as the California Plan is developed. Whether the authority of the Federal government can be exercised without compensating those parties who now enjoy the benefit of the use of that Colorado River water and who may not enjoy it in the future is another question. Mr. Cunningham discussed the importance of having this discussion and of leaving the issue open for discussion.

A discussion took place regarding the dissemination of information by Metropolitan to the member agencies, legislators, media, and others.

Director Blake withdrew from the Meeting at 11:35 a.m.

43387 Deputy General Manager Quinn reported on the salinity summit held on January 27 which was well attended by members of the various water organizations and regulatory agencies statewide. There was broad acceptance of the salinity management plan worked out by Metropolitan in cooperation with its member agencies and others, and there is a wide commitment to implement that plan, both from a technical and a political perspective. Discussions took place regarding how salinity reductions can be a reality in both the CALFED and Colorado River water management. Mr. Quinn announced a workshop on CALFED matters and the Drought and Water Surplus Management Plan is tentatively set for February 22, 1999 (subsequently held on March 23).

43388 General Counsel Taylor reported that negotiations are continuing on the wheeling litigation. Presently they are reviewing the rate structure of Metropolitan and the various components of a wheeling charge. In regard to the appeal, it still has not been filed and if it were filed shortly, it would take about a year before oral arguments could take place. Mr. Taylor commented on the departure at the end of the month of Senior Deputy General Counsel Sydney Bennion, who did an outstanding job for the District, to work for the County of Los Angeles, and he wished her the best and continued success in her new endeavor.

43389 The reports of the Standing Committee Chairs are as follows:

Chairman Pace reported nothing further from the Executive Committee.

Budget and Finance Committee Chairman Castro reported the committee spent most of the time on the presentation regarding the cost overrun situation at the Eastside Reservoir and made some suggestions to the Engineering Division as to what might be a simpler and easier way to explain the financial situation out there. Director Castro stated that Agenda Item 8-12, the purchase of maintenance rights for the Microsoft Office '95 Product Suite, was deferred by the committee and should be pulled from the Board agenda.

Director Owen withdrew from the Meeting at 11:48 a.m.

Engineering and Operations Committee Chairman Luddy reported the committee discussed at length Agenda Item 9-5, the clean boating requirements at the Eastside Reservoir. The committee also reviewed how information can be more easily comprehensibly reported on projects coming through for approval,

especially from a financing standpoint as to whether an item is in or out of the budget.

Legal and Claims Committee Vice Chair Hansen reported that the committee had a lengthy discussion on Agenda Item 9-8, the report on the Kiewit-Granite claim, and requested Agenda Item 9-8 be added to the Consent Calendar.

Communications and Legislation Committee Chairman King reported his committee has taken an aggressive and high profile position and has made several trips to Sacramento and met with newly elected and continuing legislators, and especially those members of the water committee. All the members of the committee will be involved with meeting legislators, as well as any other Directors who wish to participate.

Chairman Pace reported on his meeting over the weekend with several legislators from the Assembly and comments were favorable in regard that the Directors were interacting with the legislators and the time taken to visit with them to bring them up to date on the current issues.

Water Planning and Resources Committee Chair Frahm reported that the committee received reports from the various "ag" districts and discussed Colorado River issues. Director Frahm commented on the forthcoming workshop tentatively planned for February 22 to consider two issues: the CALFED alternatives whereby the committee expressed a strong desire to have more input in that process, and the deferral of the Drought Management Plan. The committee deferred Agenda Item 9-6, the implementation of CALFED's preferred alternatives, and should be taken off the Board agenda; and requested that Agenda Item 9-5 be added to the Consent Calendar.

Director Troxel requested advanced summaries of Board presentations to be given to the various legislative committee hearings be distributed to Directors.

Director King moved, seconded by Director Stanton and carried, and the Board approved the Consent Calendar Items, **M.I. 43390 through M.I. 43403**, as follows:

43390 Authorized the General Manager to execute an agreement with Porter Ranch Development Company substantially on the terms outlined in the General Manager's letter dated January 19, 1999, for relocation of approximately 300 feet of Metropolitan's 54-inch-inside-diameter West Valley Feeder No. 1 pipeline, subject to the agreement being in form approved by the General Counsel.

43391 Authorized the General Manager to execute an agreement with East Valley Water District substantially on the terms outlined in the General Manager's letter dated January 19, 1999, in an amount not to exceed \$1,250,000 to relocate a domestic water well within the Highland Pipeline alignment of the Inland Feeder Project, subject to the agreement being in form approved by the General Counsel.

Directors Frahm, Krauel, Lewis, Tinker, and Turner requested to be recorded as voting no.

43392 To complete additional work required for the repair of the Sepulveda Feeder Pipeline, the Board authorized (1) No. 2 to Appropriation No. 15348, an increase of \$305,000 to a total amount of \$885,000 from the Pay-As-You-Go Fund; and (2) the General Manager to have additional work performed for design and construction, as set forth in the General Manager's letter dated January 19, 1999.

43393 To construct the Robert B. Diemer Filtration Plant Sedimentation Basin No. 4 Spillway, the Board (1) authorized Appropriation No. 15331 in the amount of \$1,600,000 from the Pay-As-You-Go Fund; (2) authorized the General Manager to have all work performed; and (3) delegated to the General Manager the authority to award a lump-sum construction contract not to exceed \$800,000, subject to the contract being in form approved by the General Counsel, as set forth in the General Manager's letter dated January 19, 1999.

43394 The Board (1) authorized the General Manager to execute a Local Resources Program agreement with Municipal Water District of Orange County and Mesa Consolidated Water District to implement the Colored Water Treatment Facility consistent with the major terms and conditions set forth in the General Manager's letter dated January 26, 1999, subject to the agreement being in form approved by the General Counsel; and (2) certified it has reviewed and considered the information provided in the Environmental Impact Report for the above facility and adopted the Lead Agency's findings related to the project.

Directors Bannister, Foley, Huntley, King, and Witt requested to be recorded as abstaining.

43395 The Board (1) authorized the General Manager to execute a Local Resources Program agreement with Western Municipal Water District of Riverside County and the City of Corona to implement the Temescal Basin Desalting Facility consistent with the major

terms and conditions set forth in the General Manager's letter dated January 26, 1999, subject to the agreement being in form approved by the General Counsel; and (2) certified it has reviewed and considered the information provided in the Mitigated Negative Declaration for the above facility and adopted the Lead Agency's findings related to the project.

43396 The Board (1) authorized the General Manager to execute a Local Resources Program agreement with Las Virgenes Municipal Water District to implement the Westlake Wells - Tapia WRF Intertie Project consistent with the major terms and conditions set forth in the General Manager's letter dated January 26, 1999, subject to the agreement being in form approved by the General Counsel; and (2) certified it has reviewed and considered the information provided in the Negative Declaration for the above project and adopted the Lead Agency's findings related to the project.

Director Peterson requested to be recorded as abstaining.

43397 Authorized the General Manager to execute an agreement to participate in Southern California Edison's High Efficiency Residential Clothes Washer Rebate Program to provide up to 15,000 rebates of \$35 per customer for a total expenditure of \$525,000, subject to the agreement being in form approved by the General Counsel, as set forth in the General Manager's letter dated January 26, 1999.

43398 Authorized the General Manager to execute an amendment extending the term of a pilot agreement with the Department of Water Resources for a State Water Project supply program (American Basin Project), subject to the amendment being in form approved by the General Counsel, as set forth in the General Manager's letter dated January 26, 1999.

43399 Authorized the General Manager to participate in and contribute \$10,000 to the joint effort to develop procedures to guide alternatives analysis for Clean Water Act Section 404 permitting sponsored by the American Society for Testing and Materials, as set forth in the letter signed jointly by the General Manager and the General Counsel dated January 26, 1999.

43400 Expressed support and seek amendments to H.R. 393 (Miller)--remediation of the uranium mill tailings site near Moab, Utah, as set forth in the General Manager's letter dated January 22, 1999.

43401 Approved the recommendations set forth in the General Counsel's confidential letter dated January 15, 1999, regarding the Kiewit-Granite claim arising out of the construction of Metropolitan's Eastside Reservoir East Dam, and the amendment to contract for legal services to finance costs of the audit and claim negotiations.

43402 Authorized the acquiring of property for the Eastside Reservoir Project (MWD Parcel 144-001-875, Assessor's Parcel 469-190-026) owned by Howard C. Cagle and Lana M. Cagle, as set forth in the General Manager's confidential letter dated January 4, 1999.

43403 Approved a policy that boats powered by humans, sail, or electric motor shall be allowed on the reservoir for fishing and pleasure boating; and until such time as MTBE is eliminated from the fuel supply, or non-polluting marine engines are available, no gasoline powered boating will be permitted on the reservoir, as set forth in the General Manager's revised letter dated February 8, 1999.

Directors Bannister and Hansen requested to be recorded as voting no.

Mark Goldberg from the City of Hemet asked whether the Board action taken would affect the funding for the boat ramps. Assistant Chief Engineer Majors replied that there is not a clear understanding of what the effect will be for the funding of the grants and loans for the marinas and the boat ramps. He stated that the policy being considered by the Board is one which balances water quality and boating and will make a very good pitch in March to the Boating and Waterways Commission.

Director Moret withdrew from the Meeting at 11:58 a.m.

Director King stated that, in lieu of the vote taken by the Board on boating and waterways, the Commission has not had any meetings due to the lack of a quorum and the new Governor will be making appointments, and this may be an appropriate time for Metropolitan's Board to write a letter addressing our concerns for water quality issues and asking the Governor to make appointments that are reflective of the environmental nature and public health issues.

43404 To construct the West Dam earthwork component of the Eastside Reservoir project, Engineering and Operations Committee Chairman Luddy moved, seconded by Director Morris and carried, and the Board authorized the award of a fixed price construction

contract in the amount of \$13,332,245 to Ford Construction Company, Inc., as set forth in the General Manager's letter dated January 26, 1999.

43405 To procure oxygen/ozone system equipment for the Joseph Jensen and Henry J. Mills Filtration Plants, Engineering and Operations Committee Chairman Luddy moved, seconded by Director Abdo, and the Board (1) authorized \$34,700,000 in Appropriation No. 15173 (Board Action No. 5) for a total of \$78,700,000 from the Revenue Bond Construction/Pay-As-You-Go Funds, to finance all budgeted costs; and (2) awarded a procurement contract to Ozonia North America in the amount of \$18,638,500 for Bid Item Nos. 1-3 and 9-16 under Specifications No. 1346A, subject to the contract being in form approved by the General Counsel, as set forth in the General Manager's letter dated January 19, 1999.

Director Lewis withdrew from the Meeting at 12:00 p.m.

43406 To construct a warehouse and storage building, including offices, outdoor storage, vehicle wash rack, vehicle parking, city street improvements, and relocating an existing weather tower at the Henry J. Mills Filtration Plant, Engineering and Operations Committee Chairman Luddy moved, seconded by Director Watton and carried, and the Board (1) authorized \$2,122,000 in Appropriation No. 15305 (Board Action No. 2) for a total of \$2,272,000 from the Pay-As-You-Go Fund, to finance all costs; (2) authorized the General Manager to have all work performed including design and construction; and (3) awarded a lump-sum contract in the amount of \$1,552,000 to Hayward Construction Company, Inc., as set forth in the General Manager's letter dated January 19, 1999.

43407 To perform preliminary and final design and construction activities for the relocation of approximately 1,625 feet of the Orange County Feeder, Engineering and Operations Committee Chairman Luddy moved, seconded by Director Morris and carried, and the Board authorized (1) Appropriation No. 15330 (Board Action No. 1) in the amount of \$2,100,000 of out-of-budget funds from the Pay-As-You-Go Fund, to finance all associated costs; and (2) the General Manager to have all work performed associated with relocating the Orange County Feeder, as set forth in the General Manager's letter dated January 19, 1999.

Director Castro withdrew from the Meeting at 12:02 p.m.

43408 At 12:02 p.m., Chairman Pace called a public hearing. General Counsel Taylor reported that this is a hearing to correct a technical defect which the trial court found and although he

did not agree with the court, the quickest way to solve this problem is to have the public hearing at this time and to seek to amend the Resolution of Necessity.

The Chair then stated the hearing has been called to receive comments on the Amendment to the Resolution of Necessity 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 No. INFED1-27-870PEA2, owned by San Bernardino Valley Water Conservation District, and invited interested parties who requested to be heard.

Justin McCarthy, attorney for Robertson's Ready Mix, Inc., the lessee on the property, stated that (1) Metropolitan has not allocated sufficient money to acquire the interest in the property which requires a minimum of \$5 million plus expenses; (2) Metropolitan is not in a position to amend its complaint or to pass a new resolution for condemnation for the reasons that were advised and that it cannot be done and is improper to do it that way; and (3) if Metropolitan does not reconsider its actions, it will be opposed in the courts again in Santa Barbara without further delay. Mr. McCarthy stated that Mr. Cosgrove who represents the Conservation District will make his presentation and on behalf of his client, Mr. McCarthy will adopt his presentation and his letter on behalf of Robertson's Ready Mix.

David Cosgrove, representing San Bernardino Valley Water Conservation District, requested a copy of the transcript or tape of the hearing and asked for a record of the vote on the proposed amendment. Mr. Cosgrove asked that a summary of his written remarks be incorporated in the record. He then commented on the eminent domain law and described the inaccuracies of the original Resolution of Necessity and stated that it cannot be fixed via an amendment. The proper way to do that would be to rescind the Resolution and adopt a new one. He stated that the condemnation action is not as productive as further negotiations might be and asked that the Board vote no on the Resolution and redirect staff to work with the Conservation District in a more cooperative as opposed to a more adversarial litigation mode.

Deputy General Counsel Brainard stated he did not agree with Mr. Cosgrove's characterizations of the eminent domain law. Since Metropolitan is not changing the necessity of the take nor the description of the property, he could not agree with Mr. Cosgrove, and that what is being required is to eliminate an uncertainty that the judge found in the Resolution of Necessity. The judge did not invalidate the proceeding or the Resolution of Necessity and that allowed Metropolitan to go forward with an

amendment within days of this hearing as opposed to dismissing the case or putting us over for several months on a critical piece of property required for the project.

General Counsel Taylor stated he is willing to continue negotiations but the need is there at this time for an Order of Possession for the property. As a result of the delays caused by this matter, the construction schedule has been altered. The main holdup in these discussions is the money, but we need to have possession of the property and all that is being asked today is to correct the matter so we can proceed with construction that is ongoing.

The Chair closed the public hearing at 12:09 p.m.

Following the public hearing, Director Little then moved, seconded by Director Peterson, that the Board, by a two-thirds vote, adopt an amendment to the Resolution of Necessity (**Resolution 8626**), amending Resolution 8614, to condemn the property described in Exhibit A and shown on Exhibit B to Attachment 1 to Exhibit 1 to the letter of the General Counsel dated January 21, 1999, in accordance with the law, and directing the General Counsel to pursue condemnation to acquire said property to said amended Resolution of Necessity; said Resolution entitled:

RESOLUTION 8626--AN AMENDMENT TO RESOLUTION 8614
(As Adopted October 13, 1998)

The Chair called for a vote on the motion.

The following is a record of the vote on the motion:

Ayes: Anaheim (Dir. Stanton, 1,687 votes), Burbank (Dir. Lantz, 889 votes), Calleguas Municipal Water District (Aye: Dir. Grandson. Absent: Dir. Miller. 3,554 votes), Central Basin Municipal Water District (Ayes: Dirs. Morse and Pace; Absent: Dir. Castro. 5,846 votes), Inland Empire Utilities Agency (Dirs. Koopman and Troxel, 3,380 votes), Coastal Municipal Water District (Aye: Dir. McMurray. Absent: Dir. Owen. 2,904 votes), Compton (Dir. Murph, 170 votes), Foothill Municipal Water District (Dir. O'Neil, 580 votes), Glendale (Dir. Rez, 1,117 votes), Las Virgenes Municipal Water District (Dir. Peterson, 882 votes), Long Beach (Dir. Hansen, 1,779 votes), Los Angeles (Ayes: Dirs. Kosmont, Luddy, and Wein. Absent: Dirs. Freeman, Herman, and Moret. 18,608 votes), Municipal Water District of Orange County (Ayes: Dirs. Bannister, Foley, King, and Witt. Absent: Dir. Huntley. 12,186 votes), Pasadena (Dir. Brick, 924 votes),

San Marino (Dir. Morris, 203 votes), Santa Ana (Dir. Coughran, 1,049 votes), Santa Monica (Dir. Abdo, 1,016 votes), Three Valleys Municipal Water District (Dir. Barbosa, 2,589 votes), Torrance (Dir. Wright, 1,173 votes), Upper San Gabriel Valley Municipal Water District (Dirs. Fellow and Forbes, 3,712 votes), West Basin Municipal Water District (Dirs. Barker, Little, and Murray, 6,493 votes), Western Municipal Water District of Riverside County (Dirs. Krieger and Mylne, 6,493 votes). Total 73,472 votes.

Noes: San Diego County Water Authority (Noes: Dirs. Frahm, Krauel, Tinker, Turner, and Watton. Absent: Dir. Lewis. 14,791 votes) Total 14,791 votes.

Abstains: None.

Absent: Beverly Hills (Dir. Webster, 855 votes), Eastern Municipal Water District (Dir. Gilbert, 1,815 votes), Fullerton (Dir. Blake, 662 votes), San Fernando (Dir. Rascon, 76 votes). Total 3,408 votes.

The Chair declared the motion carried by a vote of 73,472 ayes, 14,791 noes, and 3,408 absent, representing more than the required two-thirds vote.

43409 The Chair announced that Agenda Item 10-12, the Draft Water Surplus and Drought Management Plan, has been deferred.

43410 The following listed communications were submitted for the information of the Board:

- a. Letter of the General Manager dated January 19, 1999, reporting on the operating data for the month of December 1998.
- b. Letter of the General Counsel dated January 26, 1999, transmitting the activity report of the Legal Department for the month of January.
- c. Letter of the Auditor dated January 25, 1999, transmitting the activity report of the Audit Department for the month of January.
- d. Letter of the General Manager dated January 15, 1999, transmitting the Executive Financial Summary for the month of December 1998.

- e. Letter of the Auditor dated January 21, 1999, transmitting the Audited Cash Basis Financial Statements as of September 30, 1998.
- f. Letter of the General Manager dated January 25, 1999, transmitting the December 1998 Variance Report.
- g. Letter of the General Manager dated January 19, 1999, transmitting the Capital Program Variance Report, December 1998.
- h. Letter of the General Manager dated 21, 1999, reporting on the inactive appropriations--January 1997 through December 1998.
- i. Letter of the General Manager dated January 26, 1999, submitting the monthly project status report for the Eastside Reservoir Project--December 1998.
- j. Letter of the General Manager dated January 19, 1999, submitting the monthly project status report for the Inland Feeder Project--December 1998.
- k. Letter of the General Manager dated January 19, 1999, submitting an update on implementation of the Engineering Division Management Plan.

43411 Engineering and Operations Committee Chairman Luddy stated that the committee will be requesting staff to report back with parameters for design-build options for the visitor center.

43412 There being no objection, Chairman Pace adjourned the Meeting at 12:15 p.m.


SECRETARY


CHAIRMAN

RUTAN & TUCKER, LLP

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

30

JAMES R. MOORE*
PAUL FRÉDERIC MARK
RICHARD A. CURNUTT
LEONARD A. HANPEL
JOHN B. HURLBUT, JR.
MICHAEL W. IMMELL
MILFORD W. DAHL, JR.
THEODORE I. WALLACE, JR.*
GILBERT N. KRUGER
JOSEPH D. CARRUTH
RICHARD P. SIMS
JAMES B. O'NEAL
ROBERT C. BRAUN
THOMAS S. SALINGER*
DAVID C. LARSEN*
CLIFFORD E. FRIEDEN
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February 8, 1999

Hon. President and Members of the Board of Directors
Metropolitan Water District of Southern California
700 N. Alameda Street
Los Angeles, California 90012

Re: Proposed Amendment to Resolution of Necessity No. 8614

Gentlemen:

This office, and the undersigned in particular, represent the San Bernardino Valley Water Conservation District ("District"). As you may be aware, the District is the owner of property located in the Santa Ana River Wash, across which the Metropolitan Water District ("MWD") seeks to acquire various pipeline and other easements to accommodate the Inland Feeder Pipeline. Toward this end, litigation was initiated, entitled Metropolitan Water District of Southern California v. San Bernardino Valley Water Conservation District, et al.; Santa Barbara Superior Court Case No. 227537. In connection with proceedings for an order for prejudgment possession in that case, the Honorable J. William McLafferty ruled that the resolution of necessity previously passed by MWD in this matter, Resolution No. 8614, was fatally defective. As a consequence of the ruling on this and related proceedings, the prior Order for Prejudgment Possession has been vacated.

We have received notice of MWD's intent to amend the resolution. This is apparently an attempt to correct the deficiencies found by Judge McLafferty in connection with the litigation which is currently filed. For the reasons set forth below, we believe that the attempted amendment is legally invalid, and will be ineffective to remedy the defects the court has already found with MWD's eminent domain proceeding to date. We therefore respectfully request the Board to reject the proposed amendment, and to instruct staff to dismiss the eminent domain action, and refile it in the Superior Court of the County of San Bernardino.

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As you may be aware, the Eminent Domain Law, and specifically Code of Civil Procedure § 1245.220, indicates that a public entity "may not commence" an eminent domain proceeding until its governing body has adopted a resolution of necessity that meets the requirements of this article. Under Code of Civil Procedure § 1250.110, an action is "commenced" with the filing of the complaint by the court. Here, Judge McLafferty has already ruled that MWD has not yet passed a resolution meeting the requirements of the Eminent Domain Law. Since the existing action has already "commenced" with filing of the complaint, no amendment at this point can meet the requirement that this resolution be in existence at the time the lawsuit is initiated.

It also appears that staff is attempting to create a procedure which the Eminent Domain Law does not condone. Code of Civil Procedure § 1245.255(c) permits a public entity to either rescind a resolution of necessity, or adopt a new one, but makes no reference to the amendment process which staff now suggests your Board undertake. Further, that provision requires that any rescission of the resolution of necessity, or refileing of the new one, carries the same consequences as dismissal of an eminent domain action. Under Code of Civil Procedure § 1260.120, this requires payment to condemnees of litigation expenses incurred pursuant to the defective resolution.

Staff's attempt to convince your Board to amend the current resolution is an apparent attempt to escape the directives of this statute. We believe this attempt is contrary to the Eminent Domain Law, and will so argue to the court in the event MWD's attorneys in the pending lawsuit attempt to argue this amendment somehow cures the defects the court has already found in MWD's processing of the action to date.

Pursuant to the notice on the resolution of necessity, the District has limited its comments herein to those matters presented in the amendment. Based on the foregoing, we request the Board to reject the amendment, and instruct staff to dismiss the currently pending eminent domain action, in favor of one which can be commenced with a valid resolution of necessity.

Very truly yours,

RUTAN & TUCKER, LLP


David B. Cosgrove