

- **Board of Directors**
Budget, Finance and Investment Committee

May 11, 2004 Board Meeting

9-1

Subject

Adopt resolution to impose and extend a Water Standby Charge for fiscal year 2004/05

Description

On Jan. 13, 2004, Metropolitan's Board of Directors adopted Resolution 8887, declaring its intention to impose a Readiness-to-Serve Charge to be allocated among member public agencies. Resolution 8887 provided participating member agencies the ability to have a portion of their Readiness-to-Serve Charge collected by Water Standby Charges within their respective service areas. On March 9, 2004, the Board adopted Resolution 8898, fixing and adopting the Readiness-to-Serve Charge for FY 2004/05. On April 13, 2004, Metropolitan conducted a public hearing to allow interested parties to express their views regarding the proposed Standby Charges. No members of the public addressed the proposed Standby Charges at the public hearing.

Attachment 1 is a form of resolution that, if adopted by the Board, will impose and extend a Water Standby Charge on non-exempt real property within the service areas of participating member public agencies for FY 2004/05. As indicated in the resolution, 22 of Metropolitan's 26 member agencies have opted to have the Standby Charge imposed within their service areas. The Standby Charge, per acre or per parcel if less than an acre, within each participating member agency has remained the same since FY 1993/94. Because Metropolitan proposes to re-impose the Standby Charge for the coming fiscal year at the same rate as prior years, and proceeds of the charge will be used for purposes specified in Section 5 of Article XIID of the California Constitution (Proposition 218), no additional procedures under Proposition 218 are required for approval.

Recently annexed land within participating member agencies, which did not have Standby Charges imposed prior to the passage of Proposition 218, may be subject to new Standby Charges. These new Standby Charges will be imposed in the same amounts as existing Standby Charges within the applicable member agency, but under the procedures required by Article XIID.

The resolution also authorizes the Chief Executive Officer to act upon applications for exemption of certain lands from imposition of the Water Standby Charge in accordance with the terms and conditions for exemption specified in the resolution. In addition, the resolution provides for an appeals process to review and make recommendations to the Board on appeals by property owners who have been denied exemption, with final determinations to be made by the Board. The exemption criteria are the same as those adopted for prior years and will be subject to specific guidelines set by the Chief Executive Officer.

The fiscal year 2004/05 Standby Charges are being imposed and extended under Section 134.5 of the Metropolitan Water District Act and in accordance with the Uniform Standby Charge Procedures Act. Under the USCPA, if Metropolitan receives written protests representing 15 percent or more of the approximately 4 million parcels subject to the charges, the Board can still adopt or modify the charges. However, the charges will be ineffective until approved by a majority vote in an election within the service area. If the written protests represent 40 percent or more of the parcels, the charge cannot be implemented for this year. If protests in the amount of 15 percent or more of the affected parcels are received on or before May 11, 2004, the resolution will not go into effect.

Funds collected from the proposed Water Standby Charge will be segregated to ensure that they are used only for the purposes for which the Standby Charge is imposed.

Policy

The FY 2004/05 Standby Charges are being imposed and extended under § 134.5 of the Metropolitan Water District Act and in accordance with provisions of the Uniform Standby Charge Procedures Act.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA, because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed action is not subject to CEQA because it involves the creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project, which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15378(b)(4) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options/Fiscal Impacts

Option #1

Adopt the CEQA determination and the resolution to impose and extend a Water Standby Charge.

Fiscal Impact: Continue to collect \$42 million (approximately) in Standby Charges.

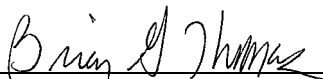
Option #2

Do not approve imposition of the Water Standby Charge, which would require certain member agencies to collect the Standby Charge portion of the Readiness-to-Serve Charge by other means.

Fiscal Impact: None. Metropolitan would continue to recover the full Readiness-to-Serve Charge.

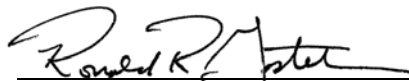
Staff Recommendation

Option #1



Brian G. Thomas
Chief Financial Officer

4/19/2004
Date



Ronald R. Gastelum
Chief Executive Officer

4/22/2004
Date

Attachment 1 – Resolution Fixing and Adopting Water Standby Charge

**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

RESOLUTION [____]

**RESOLUTION OF THE BOARD OF DIRECTORS OF
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA
FIXING AND ADOPTING WATER STANDBY CHARGES
FOR FISCAL YEAR 2004/05**

WHEREAS, by Resolution 8887, adopted at its meeting held on January 13, 2004 the Board of Directors (Board) of The Metropolitan Water District of Southern California (Metropolitan) resolved and determined that the public interest and necessity require Metropolitan to develop a reliable source of revenues less susceptible to seasonal and annual variation, through imposition of a readiness-to-serve charge to be collected from Metropolitan's member public agencies; and that said readiness-to-serve charge should be in an amount sufficient to provide for payment of the debt service, not paid from ad valorem property taxes, of capital expenditures for projects needed to meet the reliability and quality needs at existing demand levels;

WHEREAS, at its meeting on March 9, 2004, the Board adopted Resolution 8898, "Resolution of the Board of Directors of The Metropolitan Water District of Southern California Fixing and Adopting Readiness-to-Serve-Charge for Fiscal Year 2004/05";

WHEREAS, pursuant to Resolution 8898, Metropolitan fixed and adopted a readiness-to-serve charge for fiscal year 2004/05 in the amount of \$80,000,000 allocated among member agencies and levied as described therein;

WHEREAS, certain member public agencies of Metropolitan have elected to provide collection of all or a portion of their readiness-to-serve charge obligation through a Metropolitan water standby charge imposed on parcels within those member agencies;

WHEREAS, Metropolitan may fix different standby charge rates for parcels situated within different member public agencies;

WHEREAS, Metropolitan is willing to comply with the requests of member public agencies opting to have Metropolitan reimpose water standby charges within their respective territories, on the terms and subject to the conditions contained herein;

WHEREAS, the provisions of the Uniform Standby Charge Procedures Act (USCPA), Sections 54984-54984.9, inclusive, of the Government Code, are available to any local agency

authorized by law to provide water or water service, and authorized to fix, levy, or collect any standby or availability charge or assessment in connection with the provision of that service;

WHEREAS, notice was given to the public and to each member public agency of Metropolitan of the intention of Metropolitan's Board to consider and take action at its regular meeting to be held May 11, 2004, on the Chief Executive Officer's recommendation to impose a water standby charge for fiscal year 2004/05 under authority of Section 134.5 of the Metropolitan Water District Act and the USCPA on land within the member public agencies providing such written request to Metropolitan, at the rates per acre of land, or per parcel of land less than an acre, specified in Resolution 8887;

WHEREAS, the particular charge, per acre or per parcel, applicable to land within each member public agency, the method of its calculation, and the specific data used in its determination are as specified in the Engineer's Report (the "Engineer's Report") dated January 2004, which was attached to Resolution 8887 and is on file with the Executive Secretary of Metropolitan;

WHEREAS, the Board conducted a public hearing at its regular meeting on April 13, 2004 at which time interested parties were given the opportunity to present their views regarding the proposed water standby charge and the Engineer's Report and to file any written protests for consideration prior to final implementation of the proposed water standby charges;

WHEREAS, notice of the proposed water standby charge and of a public hearing on the date and at the time and location specified in Resolution 8887 was published prior to the commencement of said hearing, pursuant to Resolution 8887, in various newspapers of general circulation within Metropolitan's service area; and

WHEREAS, under the USCPA if written protests are received representing 15 percent or more of the parcels subject to the proposed water standby charges, which are not withdrawn, the Board may still adopt, revise, change, reduce or modify a charge, but such charges shall be ineffective until approved by a majority of the voters in an election within the affected territory, and if written protests are received representing 40 percent of the parcels subject to the proposed water standby charges no further proceedings may be had on such charges for at least one year.

NOW THEREFORE, the Board of Directors of The Metropolitan Water District of Southern California does hereby resolve, determine and order as follows:

Section 1. That the Board of Directors of Metropolitan, pursuant to the Engineer's Report, finds that lands within Metropolitan are benefited as described in such report and on that basis, hereby fixes and adopts a water standby charge for fiscal year 2004/05 on land within requesting member agencies of Metropolitan to which water is made available for any purpose, whether water is actually used or not, as specified in the Engineer's Report.

Section 2. That the rates of such water standby charge, per acre of land, or per parcel of land less than an acre, as shown in the Engineer's Report, may vary by member public agency, and shall not exceed the amount of Metropolitan's 1995/96 standby charge for the member public agency. The standby charge applicable to each electing member public agency, the method of its calculation, and the specific data used in its determination are as specified in the Engineer's Report which was prepared by a

registered professional engineer certified by the State of California, which methodology is in accordance with Section 134.5 of the Metropolitan Water District Act.

Section 3. The water standby charge includes the reimposition of water standby charges on parcels with respect to which water standby charges have been imposed in fiscal year 1996/97 and annually thereafter (“pre-1997 standby charges”) and the levy of standby charges on certain parcels annexed to Metropolitan and to an electing member agency after January 1997 (“post-1997 standby charges”). Only land within each electing member public agency with respect to which standby charges were imposed in fiscal year 1996/97 will be subject to the reimposition of pre-1997 standby charges for fiscal year 2004/05. Only land annexed to Metropolitan and to an electing member public agency with respect to which standby charges were approved in accordance with the procedures of Article XIID, Section 4 of the California Constitution will be subject to the imposition or reimposition, as the case may be, of post-1997 standby charges for fiscal year 2004/05. The Engineer’s Report lists parcels annexed or to be annexed to Metropolitan and to electing members during the 2004/05 fiscal year, such parcels being subject to the post-1997 standby charge. All parcels referenced in the Engineer’s Report, which are not listed as being subject to post-1997 standby charges, shall be subject to pre-1997 standby charges. These parcels are identified in a listing filed with the Executive Secretary.

Section 4. That the water standby charge, per parcel or per acre, applicable to land within each electing member public agency as allocated in the Engineer's Report shall be as follows:

2004/05 Water Standby Charge

Member Agency	Amount
Anaheim	\$8.55
Beverly Hills	-0-
Burbank	14.20
Calleguas MWD	9.58
Central Basin MWD	10.44
Inland Empire Utilities Agency	7.59
Coastal MWD*	11.60
Compton	8.92
Eastern MWD	6.94
Foothill MWD	10.28
Fullerton	10.71
Glendale	12.23
Las Virgenes MWD	8.03
Long Beach	12.16
Los Angeles	-0-
MWD of Orange Co.**	10.09
Pasadena	11.73
San Diego CWA	11.51
San Fernando	7.87
San Marino	8.24
Santa Ana	7.88
Santa Monica	-0-
Three Valleys MWD	12.21
Torrance	12.23

Upper San Gabriel Valley MWD	9.27
West Basin MWD	-0-
Western MWD of Riverside Co.	9.23

* Applicable to parcels included within territory of former Coastal MWD.

** Exclusive of parcels included within territory of former Coastal MWD.

Section 5. That with respect to post-1997 standby charges, the Engineer's Report separates the special benefits from the general benefits and identifies each of the parcels on which a special benefit is conferred. No post-1997 standby charges on any parcel exceed the reasonable cost of the proportional special benefit conferred on that parcel, as shown in the Engineer's Report.

Section 6. That the water standby charge shall be collected on the tax rolls, together with the *ad valorem* property taxes that are levied by Metropolitan for the payment of pre-1978 voter approved indebtedness. Standby charges so collected shall be applied as a credit against the applicable member agency's obligation to pay its readiness-to-serve charge. After such member agency's readiness-to-serve charge allocation is fully satisfied, any additional collections shall be credited to other outstanding obligations of such member agency to Metropolitan or future readiness-to-serve obligations of such agency. Any member agency requesting to have all or a portion of its readiness-to-serve charge obligation collected through standby charge levies within its territory as provided herein shall pay any portion not collected through net standby charge collections to Metropolitan within fifty (50) days after Metropolitan issues an invoice for remaining readiness-to-serve charges to such member agency, as provided in Administrative Code Section 4507.

Section 7. That the following exemption procedures apply with respect to pre-1997 standby charges:

(a) It is the intent of the Board that the following lands shall be exempt from the pre-1997 water standby charge: (1) lands owned by the Government of the United States, the State of California, or by any political subdivision thereof or any entity of local government; (2) lands permanently committed to open space and maintained in their natural state that are not now and will not in the future be supplied water; (3) lands not included in (1) or (2) above, which the Chief Executive Officer, in his discretion, finds do not now and cannot reasonably be expected to derive a benefit from the projects to which the proceeds of the water standby charge will be applied; and (4) lands within any member public agency, subagency, or city if the governing body of such public entity elects and commits to pay out of funds available for that purpose, in installments at the time and in the amounts established by Metropolitan, the entire amount of the water standby charge which would otherwise be imposed upon lands within those public entities. However, no exemption from the pre-1997 water standby charge shall reduce the applicable member agency's readiness-to-serve charge obligation. The Chief Executive Officer may develop and implement additional criteria and guidelines for exemptions in order to effectuate the intent expressed herein.

(b) The Chief Executive Officer shall establish and make available to interested applicants procedures for filing and consideration of applications for exemption from the water standby charge pursuant to subsections (2) and (3) of Section 7(a) above. All applications for such exemption and documents supporting such claims must be received by Metropolitan in writing on or before December 31, 2004. The Chief Executive Officer is further directed to review any such applications for

exemption submitted in a timely manner to determine whether the lands to which they pertain are eligible for such exemption and to allow or disallow such applications based upon those guidelines. The Chief Executive Officer shall also establish reasonable procedures for the filing and timing of the appeals from his determination.

(c) The Budget, Finance and Investment Committee of Metropolitan's Board of Directors shall hear appeals from determinations by the Chief Executive Officer to deny or qualify an application for exemption from the water standby charge. The Budget, Finance and Investment Committee shall consider such appeals and make recommendations to the Board to affirm or reverse the Chief Executive Officer's determinations. The Board shall act upon such recommendations and its decision as to such appeals shall be final.

Section 8. That no exemption from the water standby charge shall reduce the applicable member agency's readiness-to-serve charge obligation, nor shall any failure to collect, or any delay in collecting, any standby charges excuse or delay payment of any portion of the readiness-to-serve charge when due. All amounts collected as water standby charges pursuant to this Resolution shall be applied solely as credits to the readiness-to-serve charge of the applicable member agency, with any excess collections being carried forward and credited against other outstanding obligations of such member agency to Metropolitan.

Section 9. That the readiness-to-serve charge is imposed by Metropolitan as a rate, fee or charge on its member agencies, and is not a fee or charge imposed upon real property or upon persons as incidents of property ownership, and the water standby charge is imposed within the respective territories of electing member agencies as a mechanism for collection of the readiness-to-serve charge. In the event that the water standby charge, or any portion thereof, is determined to be an unauthorized or invalid fee, charge or assessment by a final judgment in any proceeding at law or in equity, which judgment is not subject to appeal, or if the collection of the water standby charge shall be permanently enjoined and appeals of such injunction have been declined or exhausted, or if Metropolitan shall determine to rescind or revoke the water standby charge, then no further standby charge shall be collected within any member agency and each member agency which has requested imposition of Metropolitan water standby charges as a means of collecting its readiness-to-serve charge obligation shall pay such readiness-to-serve charge obligation in full, as if imposition of such water standby charges had never been sought.

Section 10. That the Chief Executive Officer is hereby authorized and directed to take all necessary action to secure the collection of the water standby charge by the appropriate county officials, including payment of the reasonable cost of collection.

Section 11. That the Chief Executive Officer and the General Counsel are hereby authorized to do all things necessary and desirable to accomplish the purposes of this Resolution, including, without limitation, the commencement or defense of litigation.

Section 12. That this Board finds that the adoption of the charges provided in this Resolution is not defined as a Project under the provisions of the California Environmental Quality Act ("CEQA") since it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed action is not subject to CEQA because it involves the creation of government funding mechanisms or other

government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines).

Section 13. That if any provision of this Resolution or the application to any member agency, property or person whatsoever is held invalid, that invalidity shall not affect other provisions or applications of this Resolution which can be given effect without the invalid portion or application, and to that end the provisions of this Resolution are severable.

I HEREBY CERTIFY that the foregoing is a full, true and correct copy of a Resolution adopted by the Board of Directors of The Metropolitan Water District of Southern California, at its meeting held on May 11, 2004.

Executive Secretary
The Metropolitan Water District
of Southern California