

- **Board of Directors**
Communications, Outreach and Legislation Committee

October 12, 2004 Board Meeting

8-7

Subject

Authorize request to ACWA to sponsor a Public Records Act amendment to exempt records relating to the location and security of public water systems and facilities

Description

After the terrorist acts of September 11, 2001, Metropolitan and other public agencies in California, and throughout the United States, became concerned about the general release of public records with information and data relating to the security and exact location of their facilities to the public pursuant to public records act requests. Prior to this date, this information was routinely released to the public.

Since September 11, 2001, based on security concerns, Metropolitan has only released information relating to the location and security of its system and facilities when the requesting party demonstrates the need for specific information relating to a particular facility. As the California Public Records Act (PRA) does not have a specific exemption from the release of these records, Metropolitan has relied on a general exemption in the California Public Records Act for withholding information because the facts of a particular case demonstrate that “the public interest serviced by not disclosing the record clearly outweighs the public interest served by disclosure of the record” (Gov. Code § 6255). However, this general exemption does not provide adequate protection to Metropolitan and other public water agencies against having to disclose this information based on general security concerns. Under the general exemption, each request and denial must be individually evaluated and supported. For example, in Connecticut, which has a similar general exemption to its public records act, lower courts have held that information could not be withheld on the basis of unspecified security risks.

Definitive protection from the disclosure of information related to security and location of public water systems and facilities in California can only be accomplished with a specific exemption in the PRA. Since September 11, 2001, at least 34 states and the District of Columbia have enacted legislation to exempt various information about water systems from disclosure under their state’s public records acts. In fact, in January of 2004, legislation was enacted in California which added an exemption from disclosure of documents prepared by or for a state or local agency “that accesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency’s operations *and* that is for distribution or consideration in a closed session” (Gov. Code § 6254(aa); emphasis added). While this exemption is helpful, it does not protect information from disclosure that is not for distribution or consideration in closed session, or which generally relates to the location of public systems and facilities.

As this matter affects all public water agencies in California, it is proposed that the Board authorize staff to request that the Association of California Water Agencies (ACWA) sponsor legislation adding a specific exemption to the PRA for geological data, security plans, assessments, reports or measures pertaining to a California public water system and public water system facilities. The proposed language for the PRA amendment is set forth in [Attachment 1](#).

Policy

Metropolitan Water District Administrative Code § 2491 (a): Proposal for state legislation affecting Metropolitan and other public water agencies in California; protection of Metropolitan’s water system and facilities

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, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) 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 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options/Fiscal Impacts

Option #1

Adopt the CEQA determination and authorize staff to request that ACWA sponsor legislation adding a specific exemption to the PRA for geological data, security plans, assessments, reports or measures pertaining to a California public water system and public water system facilities.

Fiscal Impact: No fiscal impact

Option #2

Maintain the status quo concerning PRA requests for records relating to the security or location of Metropolitan's system and facilities.

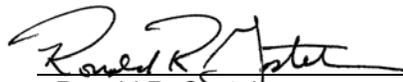
Fiscal Impact: Possible future costs to defend a Metropolitan decision to withhold these types of record

Staff Recommendation

Option #1


Adán Ortega, Jr.
Vice President, External Affairs

9/27/2004
Date


Ronald R. Gastelum
Chief Executive Officer

9/27/2004
Date

Attachment 1 – Proposed Amendment to Government Code Section 6254 (e)

Proposed Amendment to Government Code Section 6254 (e):

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(e) Geological and geophysical data, plant production data, security plans, assessments, reports or measures, and similar information relating to utility systems development or market or crop reports, that are obtained in confidence from any person or which pertain to a public water system and public water system facilities.