

- **Board of Directors**  
**Water Planning, Quality and Resources Committee**

October 12, 2004 Board Meeting

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9-5

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**Subject**

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Approve revisions to Annexation Policy in the Metropolitan Water District Administrative Code § 3107: Water-Use Efficiency Guidelines

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**Description**

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Staff and the annexing member agencies have developed a joint proposal to change the Administrative Code § 3107, which addresses Metropolitan's water-use efficiency (WUE) guidelines for annexation to strengthen its provisions for compliance, enforcement, and reporting. The current code only requires compliance "where practicable". Since the current code requirements were enacted, new standards and reporting mechanisms regarding WUE have been developed on a statewide basis. Hence, it is timely to revise the code to create an approach that is clearly articulated, achievable, enforceable and commonly understood by all affected parties.

In revising the WUE guideline, staff and member agencies subject to the guidelines took into account the following issues and considerations:

- Over the past five years, less than five percent of the annual increase in regional water demand came from annexed lands subject to annexation approvals;
- Not all member agencies are subject to annexation approvals; with 14 member cities and four cities in San Diego County being exempt under state law;
- Over the last several years, annexations were pursued by only six member agencies; and
- Having WUE guidelines for annexed areas alone hold those areas to a higher standard than infill development in the existing service area of the annexing agency.

In developing this joint recommendation, staff and member agencies having the greatest number of annexations, went through an extensive process to create enforceable and reportable criteria. The key issue of note is that the joint proposal expands the WUE objectives to apply to the annexing member agencies' entire service area. Staff and the involved agencies believe this approach would be effective in addressing all growth – annexed and infill development – and avoids cumbersome and impractical enforcement in individual developments, which would stretch across numerous layers of public agencies. These recommendations would improve upon the existing annexation guidelines in several other ways, including:

- All agencies involved in the chain of water deliveries to the annexed lands will be signatory to the Memorandum of Understanding regarding Conservation Best Management Practices (BMPs);
- BMPs will be conditioned on all new development within the annexing member agency;
- Annexing member agencies will make all Metropolitan conservation programs for development available and provide other specific programs for new development in their service area;
- Recycled water will be required whenever the California State Water Code allows it to be required ([Attachment 1](#));
- Annual reporting on WUE implementation for the entire member agency is required for six years following their last annexation; and

- Agencies failing to submit their annual report will not be eligible to have their subsequent annexations presented to the Board.

Further, the existing code places a “where practicable” standard on each and every WUE guideline. The recommended changes in this board letter remove this language, which conditioned enforcement of past WUE guidelines.

The reporting requirements will be effective for annexation requests starting after April 1, 2005.

Assessing Past Annexations: In addition to revising Administrative Code § 3107, staff and affected member agencies recommend assessing effectiveness of water-use efficiency measures of past annexations. Information from past annexed areas would be collected and analyzed to assess the water use efficiency of those areas. The Board would be informed of the findings.

Future Steps in Improving Water-Use Efficiency of New Development: Staff will continue to work with the member agencies, public works departments and other knowledgeable sources regarding effective water-use efficiency practices within new development. Initial approaches will emphasize voluntary and incentive-based actions that the public and decision makers regarding development could embrace. As an example of these efforts, staff has worked with the Building Industry Association (BIA) and its members in southern California on pilot programs to install drought-tolerant landscaping and plumbing fixtures with water-savings potential in excess of current building standards. To date, and with the help of the BIA, Metropolitan has received expressed interest in our programs from ten large building and development companies. Due to the limited enforcement resources available to member agencies and local land use authorities, and the positive and substantial responses to voluntary programs supported by Metropolitan and others in our service area over the past eight years, continued voluntary, but verifiable, conservation programs are preferred absent extraordinary conditions.

## **Policy**

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Metropolitan Water District Administrative Code § 3107: Water-Use Efficiency Guidelines

By Minute Item 45195, dated February 2003, the Board adopted policy principles regarding water conservation activities.

## **California Environmental Quality Act (CEQA)**

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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). Prior to formal approval of annexations and water standby charges from the Board for specific projects, CEQA documentation will be prepared by the Lead Agency and processed in accordance with CEQA and the State CEQA Guidelines. As the Responsible Agency, Metropolitan’s Board will then review and consider the CEQA documentation before taking further action.

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**

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### **Option #1**

Adopt the CEQA determination and revisions to § 3107 of the Administrative Code as shown in [Attachment 2](#).

**Fiscal Impact:** None

**Option #2**

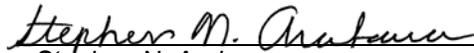
Do not adopt revisions to § 3107 of the Administrative Code.

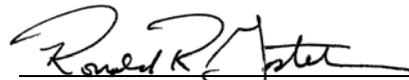
**Fiscal Impact:** None

**Staff Recommendation**

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Option #1

 Stephen N. Arakawa Manager, Water Resource Management	9/29/2004 Date
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 Ronald R. Gastelum Chief Executive Officer	9/29/2004 Date
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**Attachment 1 – California State Code Sections 13550-13554**

**Attachment 2 – Revisions in the Metropolitan Water District Administrative Code § 3107:  
Water-Use Efficiency Guidelines**

BLA #2433

**California State Code Sections 13550-13554**

13550. (a) The Legislature hereby finds and declares that the use of potable domestic water for nonpotable uses, including, but not limited to, cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses, is a waste or an unreasonable use of the water within the meaning of Section 2 of Article X of the California Constitution if recycled water is available which meets all of the following conditions, as determined by the state board, after notice to any person or entity who may be ordered to use recycled water or to cease using potable water and a hearing held pursuant to Article 2 (commencing with Section 648) of Chapter 1.5 of Division 3 of Title 23 of the California Code of Regulations:

(1) The source of recycled water is of adequate quality for these uses and is available for these uses. In determining adequate quality, the state board shall consider all relevant factors, including, but not limited to, food and employee safety, and level and types of specific constituents in the recycled water affecting these uses, on a user-by-user basis. In addition, the state board shall consider the effect of the use of recycled water in lieu of potable water on the generation of hazardous waste and on the quality of wastewater discharges subject to regional, state, or federal permits.

(2) The recycled water may be furnished for these uses at a reasonable cost to the user. In determining reasonable cost, the state board shall consider all relevant factors, including, but not limited to, the present and projected costs of supplying, delivering, and treating potable domestic water for these uses and the present and projected costs of supplying and delivering recycled water for these uses, and shall find that the cost of supplying the treated recycled water is comparable to, or less than, the cost of supplying potable domestic water.

(3) After concurrence with the State Department of Health Services, the use of recycled water from the proposed source will not be detrimental to public health.

(4) The use of recycled water for these uses will not adversely affect downstream water rights, will not degrade water quality, and is determined not to be injurious to plantlife, fish, and wildlife.

(b) In making the determination pursuant to subdivision (a), the state board shall consider the impact of the cost and quality of the nonpotable water on each individual user.

(c) The state board may require a public agency or person subject to this article to furnish information which the state board determines to be relevant to making the determination required in subdivision (a).

13551. A person or public agency, including a state agency, city, county, city and county, district, or any other political subdivision of the state, shall not use water from any source of quality suitable for potable domestic use for nonpotable uses, including cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses if suitable recycled water is available as provided in Section 13550; however, any use of recycled water in lieu of water suitable for potable domestic use shall, to the extent of the recycled water so used, be deemed to constitute a reasonable beneficial use of that water and the use of recycled water shall not cause any loss or diminution of any existing water right.

13552. The amendments to Sections 13550 and 13551 of the Water Code made during the first year of the 1991-92 Regular Session are not intended to alter any rights, remedies, or obligations which may exist prior to January 1, 1992, pursuant to, but not limited to, those sections or Chapter 8.5 (commencing with Section 1501) of Part 1 of Division 1 of the Public Utilities Code.

13552.2. (a) The Legislature hereby finds and declares that the use of potable domestic water for the irrigation of residential landscaping is a waste or an unreasonable use of water within the meaning of Section 2 of Article X of the California Constitution if recycled water, for this use, is available to the residents and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(b) The state board may require a public agency or person subject to this section to submit information that the state board determines may be relevant in making the determination required in subdivision (a).

13552.4. (a) Any public agency, including a state agency, city, county, city and county, district, or any other political subdivision of the state, may require the use of recycled water for irrigation of residential landscaping, if all of the following requirements are met:

(1) Recycled water, for this use, is available to the user and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(2) The use of recycled water does not cause any loss or diminution of any existing water right.

(3) The irrigation systems are constructed in accordance with Chapter 3 (commencing with Section 60301) of Division 4 of Title 22 of the California Code Regulations.

(b) This section applies to both of the following:

(1) New subdivisions for which the building permit is issued on or after March 15, 1994, or, if a building permit is not required, new structures for which construction begins on or after March 15, 1994, for which the State Department of Health Services has approved the use of recycled water.

(2) Any residence that is retrofitted to permit the use of recycled water for landscape irrigation and for which the State Department of Health Services has approved the use of recycled water.

(c) (1) Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to any project which only involves the repiping, redesign, or use of recycled water for irrigation of residential landscaping necessary to comply with a requirement prescribed by a public agency under subdivision (a).

(2) The exemption in paragraph (1) does not apply to any project to develop recycled water, to construct conveyance facilities for recycled water, or any other project not specified in this subdivision.

13552.6. (a) The Legislature hereby finds and declares that the use of potable domestic water for floor trap priming, cooling towers, and air-conditioning devices is a waste or an unreasonable use of water within the meaning of Section 2 of Article X of the California Constitution if recycled water, for these uses, is available to the user, and the water meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(b) The state board may require a public agency or person subject to this section to submit information that the state board determines may be relevant in making the determination required in subdivision (a).

13552.8. (a) Any public agency, including a state agency, city, county, city and county, district, or any other political subdivision of the state, may require the use of recycled water in floor trap priming, cooling towers, and air-conditioning devices, if all of the following requirements are met:

(1) Recycled water, for these uses, is available to the user and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(2) The use of recycled water does not cause any loss or diminution of any existing water right.

(3) If public exposure to aerosols, mist, or spray may occur, appropriate mist mitigation or mist control is provided, such as the use of mist arrestors or the addition of biocides to the water in accordance with criteria established pursuant to Section 13521.

(4) The person intending to use recycled water has prepared an engineering report pursuant to Section 60323 of Title 22 of the California Code of Regulations that includes plumbing design, cross-connection control, and monitoring requirements for the public agency, which are in compliance with criteria established pursuant to Section 13521.

(b) This section applies to both of the following:

(1) New industrial facilities and subdivisions for which the building permit is issued on or after March 15, 1994, or, if a building permit is not required, new structures for which construction begins on or after March 15, 1994, for which the State Department of Health Services has approved the use of recycled water.

(2) Any structure that is retrofitted to permit the use of recycled water for floor traps, cooling towers, or air-conditioning devices, for which the State Department of Health Services has approved the use of recycled water.

(c) (1) Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to any project which only involves the repiping, redesign, or use of recycled water for floor trap priming, cooling towers, or air-conditioning devices necessary to comply with a requirement prescribed by a public agency under subdivision (a)

(2) The exemption in paragraph (1) does not apply to any project to develop recycled water, to construct conveyance facilities for recycled water, or any other project not specified in this subdivision.

13553. (a) The Legislature hereby finds and declares that the use of potable domestic water for toilet and urinal flushing in structures is a waste or an unreasonable use of water within the meaning of Section 2 of Article X of the California Constitution if recycled water, for these uses, is available to the user and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(b) The state board may require a public agency or person subject to this section to furnish whatever information may be relevant to making the determination required in subdivision (a).

(c) For the purposes of this section and Section 13554, "structure" or "structures" means commercial, retail, and office buildings, theaters, auditoriums, schools, hotels, apartments, barracks, dormitories, jails, prisons, and reformatories, and other structures as determined by the State Department of Health Services.

(d) Nothing in this section or Section 13554 applies to a pilot program adopted pursuant to Section 13553.1.

13553.1. (a) The Legislature hereby finds and declares that certain coastal areas of the state have been using sea water to flush toilets and urinals as a means of conserving potable water; that this practice precludes the beneficial reuse of treated wastewater and has had a deleterious effect on the proper wastewater treatment process, and has led to corrosion of the sea water distribution pipelines and wastewater collection systems; and that this situation must be changed.

(b) There is a need for a pilot program to demonstrate that conversion to the use of recycled water in residential buildings for toilet and urinal flushing does not pose a threat to public health and safety.

(c) A city that is providing a separate distribution system for sea water for use in flushing toilets and urinals in residential structures may, by ordinance, authorize the use of recycled water for the flushing of toilets and urinals in residential structures if the level of treatment and the use of the recycled water meets the criteria set by the State Department of Health Services.

13554. (a) Any public agency, including a state agency, city, county, city and county, district, or any other political subdivision of the state, may require the use of recycled water for toilet and urinal flushing in structures, except a mental hospital or other facility operated by a public agency for the treatment of persons with mental disorders, if all of the following requirements are met:

(1) Recycled water, for these uses, is available to the user and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(2) The use of recycled water does not cause any loss or diminution of any existing water right.

(3) The public agency has prepared an engineering report pursuant to Section 60323 of Title 22 of the California Code of Regulations that includes plumbing design, cross-connection control, and monitoring requirements for the use site, which are in compliance with criteria established pursuant to Section 13521.

(b) This section applies only to either of the following:

(1) New structures for which the building permit is issued on or after March 15, 1992, or, if a building permit is not required, new structures for which construction begins on or after March 15, 1992.

(2) Any construction pursuant to subdivision (a) for which the State Department of Health Services has, prior to January 1, 1992, approved the use of recycled water.

(c) Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to any project which only involves the repiping, redesign, or use of recycled water by a structure necessary to comply with a requirement issued by a public agency under subdivision (a). This exemption does not apply to any project to develop recycled water, to construct conveyance facilities for recycled water, or any other project not specified in this subdivision.

13554.3. The State Water Resources Control Board may establish a reasonable schedule of fees by which it is reimbursed for the costs it incurs pursuant to Sections 13553 and 13554.

**§ 3107. Water Use Efficiency Guidelines.**

~~To the extent practicable, local water purveyors and owners of parcels, as appropriate, within an area for which a request for annexation is considered by the Board, shall comply. The member agency representing the parcels considered for annexation shall submit evidence of compliance with the following:~~

(a) Annual member agency water demand shall be minimized by incorporating water conservation measures into ~~the new~~ development plans and service agreements. Use of ~~local~~ groundwater, local surface water, and ~~reclaimed recycled~~ wastewater supplies shall be maximized to reduce demands on the District.

(b) Peak demands on the District shall be minimized by construction and operation of local storage and groundwater production facilities and water conservation measures. ~~In cases where the annexed area is served by an existing water delivery system, this provision may be satisfied by showing that these facilities will be added to the existing system. Member agencies shall offer all District sponsored water conservation programs to new developments and encourage participation in those programs. Member agencies shall offer a specific program, independent of District funding, to new development to encourage water use efficiency of landscapes or other water savings opportunity.~~

(c) ~~Reclaimed wastewater or other non-potable water shall be used on all golf courses; decorative lakes; and other landscaped areas exceeding one acre, including multi-family complexes, commercial and industrial developments, and similar areas. Reclaimed wastewater and other non-potable supplies shall be used for industrial processes and other suitable uses. If such supplies do not presently exist, a dual distribution system shall be constructed to accommodate such supplies when they become available in the future. Recycled water of adequate quality shall be used whenever it is available to be used, in accordance with California Water Code Sections 13550 - 13554.~~

(d) "Best management practices" conservation measures, ~~as identified by the District from time to time,~~ shall be conditioned on applied in all new ~~and existing~~ developments within the ~~annexed area~~ member agency consistent with applicable City or County building codes for areas already within the District, and to District water conservation guidelines for annexing areas. ~~At least one model home constructed in each new development within the annexed area shall demonstrate a water conserving landscape.~~

~~(e) (e)~~ Local storage, groundwater production capacity, system interconnections, and other measures shall be able to sustain a 7-day interruption in service from the District pursuant to MWD Administrative Code Section 4503 "Suspension of Deliveries."

(f) The member agency, wholesale water agency, and local water purveyor of the annexing area shall be signatories and in compliance with the California Urban Water Conservation Council (CUWCC) Memorandum of Understanding (MOU) Regarding Urban Water Conservation in California.

~~The member public agency within which the annexed area is located shall be responsible for assuring compliance with these provisions and shall report to the District regarding such compliance.~~

The District may request amendments to the water conservation measures to be imposed on new development within the member agency based on current water-use efficiency policies and reasonable conservation practices and measures.

#### Reporting Requirement

The member public agency shall be responsible for assuring compliance with these provisions and shall report to the District on a yearly basis regarding such compliance. Reports would include the following information regarding the member agency:

- (a) Incorporated conservation measures in new development plans and service agreements;
- (b) Recycled water, groundwater, and local surface water use including total annual production of local water supplies;
- (c) 7-day interruption contingency;
- (d) Report as submitted to CUWCC; and
- (e) Member agency and local water purveyor shall have submitted a current Urban Water Management Plan (UWMP) provided the agency or purveyor is required to submit an UWMP under State law.

District staff shall review the reports and provide an annual information report to the Board on member agencies' reporting compliance. District staff will ensure that the annexing member agency is in compliance with its reporting before presenting subsequent annexation requests to the Board. Staff shall provide any prior member agency reports to the Board for its consideration in future annexation requests. The District's CEO or designee is authorized to make minor adjustments to reporting requirements for member agencies as deemed reasonable and appropriate.

Reporting requirements under this section of the Code are required for annexation requests after April 1, 2005. Reporting will be continuous on an annual basis for a six-year period following the latest annexation by the member agency.