

- **Board of Directors**
Business and Finance Committee

June 10, 2008 Board Meeting

7-1

Subject

Approve amendment of the Metropolitan Water District Asset Financing Corporation Bylaws

Description

The Metropolitan Water District Asset Financing Corporation (“Corporation”) is a California nonprofit corporation formed in June 1996 to assist Metropolitan by acquiring, constructing, operating and leasing capital facilities and equipment. The Corporation has so far been inactive but maintained its existence to give Metropolitan the flexibility to use this financing mechanism.

The Corporation amended its Bylaws on May 12, 2008, to conform to changes in Metropolitan’s committee structure. The Bylaws previously stated that the Corporation’s directors include the Chair of Metropolitan’s Board, two directors appointed at large by the Chair of Metropolitan’s Board, the Chair of the committee of Metropolitan’s Board responsible for making recommendations with regard to real property and asset management matters, and the Chair of the committee responsible for making recommendations with regard to budget, finance and investment matters, or their designees. Currently the Business and Finance Committee is responsible for making recommendations in both of these areas. The Bylaws were amended to designate the Chair and Vice Chair of the Business and Finance Committee as directors of the Corporation in this situation, as shown in [Attachment 1](#) to this board letter.

Pursuant to the Corporation’s Bylaws, Metropolitan’s Board must approve any amendments to the Bylaws. Although the Corporation has no funding activities at this time, this action will keep the Corporation updated and in good standing in the event the Board desires to use the Corporation in a financing in the future.

Policy

Metropolitan may enter into contracts and acquire, construct, operate and maintain works, facilities, improvements and property (MWD Act Sections 122 and 130).

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 other government fiscal activities, which do not involve any commitment to any specific project that 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

Option #1

Adopt the CEQA determination and approve changes to the Corporation's Bylaws adopted by its board of directors on May 12, 2008, as shown on [Attachment 1](#).

Fiscal Impact: None

Business Analysis: Conforms Bylaws to Metropolitan's existing committee structure and maintains viability of the Corporation.

Option #2

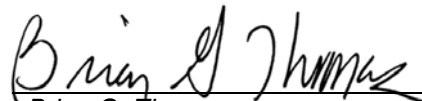
Dissolve the Corporation

Fiscal Impact: None

Business Analysis: Reduces financing flexibility; however, there will be no further need to maintain the existence of the Corporation.

Staff Recommendation

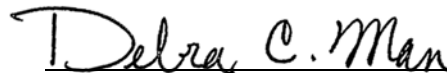
Option #1



Brian G. Thomas
Chief Financial Officer

5/21/2008

Date



Debra C. Man
for Jeffrey Kightlinger
General Manager

5/22/2008

Date

[Attachment 1 – Proposed Amended Bylaws](#)

BLA #6180

AMENDED BYLAWS

for the regulation, except

as otherwise provided by statute or

its Articles of Incorporation,

OF

THE METROPOLITAN WATER DISTRICT ASSET FINANCING CORPORATION

A California nonprofit public benefit corporation

ARTICLE I. OFFICES.

Section 1. Principal Office. The corporation's principal office shall be fixed and located at such place within the County of Los Angeles as the Board of Directors (the "Board") of this corporation shall determine. The Board is granted full power and authority to change said principal office from one location within the County of Los Angeles to another.

Section 2. Other Offices. Branch or subordinate offices may at any time be established by the Board at any place or places.

ARTICLE II. MEMBERSHIP.

There shall be no members of the corporation.

ARTICLE III. DIRECTORS.

Section 1. Powers. Subject to limitations of the Articles of Incorporation of the Corporation, of these Bylaws, and of the laws of the State of California, the activities and affairs of the corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board. The Board may delegate the management of the activities of the corporation to any person or persons, a management company or committees however composed, provided that any such delegation other than to a committee of the Board or to the staff of The Metropolitan Water District of Southern California ("Metropolitan") must be approved by the Board of Directors of Metropolitan, and provided, moreover, that the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Board shall have the following powers in addition to the other powers enumerated in these Bylaws:

(a) To select and remove all of the other officers, agents and employees of the corporation, prescribe such powers and duties for them not inconsistent with law, with the Articles of Incorporation or these Bylaws and require from them security for faithful service.

(b) To conduct, manage and control the affairs and business of the corporation and make such rules and regulations therefor not inconsistent with law, with the Articles of Incorporation, or these Bylaws, as they may deem necessary or appropriate.

(c) To adopt, make and use a corporate seal and to alter the form of such seal from time to time as they may deem necessary or appropriate.

(d) To borrow money and incur indebtedness for the purpose of the corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and instruments securing the payment of the same.

(e) To appoint an Executive Committee (subject to the provisions of the Bylaws) and other committees, and to delegate to the Executive Committee any of the powers and authority of the Board in the management of the business and affairs of the corporation, except the power to amend or repeal Bylaws. Right of notice and participation by Metropolitan representatives at any committee meeting shall be the same as that provided in Article VI, Section 2.

Section 2. Number of Directors. The authorized number of directors shall be five (5) until changed by amendment of the Articles of Incorporation or by a Bylaw.

Section 3. Designation of Directors. The directors of the Corporation shall consist of five (5) directors. The directors of the Corporation shall include the Chair of the Board of Directors of Metropolitan, the Chair~~man~~ of the committee of Metropolitan's Board of Directors responsible for making recommendations with regard to real property and asset management matters and the Chair~~man~~ of the committee of Metropolitan's Board of Directors responsible for making recommendations with regard to ~~budget, finance and investment~~ business and finance matters, or their designees. If a single committee is responsible for making recommendations with regard to both real property and asset management matters and business and finance matters, the directors of the corporation shall include the Chair and Vice Chair of such committee. The remaining two (2) directors shall be appointed at-large by the Chairman of the Board of Directors of Metropolitan from among the Board of Directors of Metropolitan (the "At-Large Directors").

Section 4. Term of Offices. ~~At-Large Directors shall initially be appointed by the Chairman of the Board of Directors of Metropolitan for a term ending on December 31, 1996. [change to June 30]~~ The At-Large Directors shall hold office until replaced by the Chairman of the Board of Directors of Metropolitan. The other directors shall hold office until a successor has been designated and qualified, or until changed by amendment of the Articles of Incorporation or by a Bylaw.

Section 5. Vacancies. Resignation and Removal. In the event that Metropolitan has a vacancy with regards to one of the five positions then serving on the Board, the "acting, interim," or "replacement" director shall serve as director of the Corporation until the Board of Directors of Metropolitan or the Chairman of the Board of Directors of Metropolitan, as applicable, designates a permanent successor to the vacant office.

Subject to the provisions of Section 5226 of the California Nonprofit Public Benefit Corporation Law, any director shall resign effective upon his or resignation, removal or replacement from his or her position as a director of Metropolitan.

The Board may declare vacant the office of a director who has been declared of unsound mind by a final order of court, or convicted of a felony, or been found by a final order or judgment of any court to have breached any duty arising under Article 3 of the California Nonprofit Public Benefit Corporation Law.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of the director's term of office.

Section 6. Place of Meeting. Meetings of the Board shall be held at any place within or without the State of California which has been designated from time to time by the Board. In the absence of such designation, regular meetings shall be held at the principal office of the corporation.

Section 7. Organizational Meetings. Subject to Section 10 hereof, the Board shall hold a regular meeting each year for the purpose of organization, election of officers, and the transaction of other business.

Section 8. Other Regular Meetings. Subject to Section 10 hereof, other regular meetings of the Board shall be held on such dates and at such times as the Board shall fix by resolution.

Section 9. Special Meetings. Special meetings of the Board for any purpose or purposes may be called at any time by the President, any Vice-President, the Secretary or any two directors. Any person calling such meeting shall cause notice of the meeting to be given pursuant to the requirements set forth below and subject to the requirements of Section 10 hereof.

Special Meetings of the Board shall be held upon four (4) days' written notice by first class mail or forty-eight (48) hours' written notice given personally or by telex, facsimile, or other similar means of communication. Any such notice shall be addressed or delivered to each director of the corporation or as may have been given to the corporation by the director for purposes of notice or, if such address is not shown on such records or is not readily ascertainable, at the place in which meetings of the directors are regularly held. Such notice shall also be addressed and delivered to the Board of Directors of Metropolitan and to any newspaper of general circulation, radio station, or television station requesting such notice in writing. Such notice shall further be posted at least twenty-four (24) hours prior to the special meeting in a location that is freely accessible to members of the public. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at such meetings.

Notice must be received at least twenty-four (24) hours before the time of the meeting. Written notice by first class mail shall be deemed to have been received on the second day following its deposit in the United States mail (unless such second day is a Sunday in which case such notice shall be deemed to be received on the following business day). Written notice other than by first class mail shall be deemed to have been received at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission or actually transmitted by the person giving the notice by electronic means, to the recipient.

Section 10. Ralph Brown Act. All meetings of the Board and any committee thereof shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the Government Code of the State of California).

Section 11. Quorum. A majority of the authorized number of directors constitutes a quorum of the Board for the transaction of business, except to adjourn as provided in Section 13 of this Article III. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board, unless a greater number be required by law or by the Articles of Incorporation, except as provided in the next sentence. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal

of directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

Section 12. Waiver of Notice. Notice of a meeting need not be given to any director who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

Section 13. Adjournment. The directors present, whether or not a quorum is present, may adjourn any directors' meeting to another time and place as specified in an order of adjournment. If no directors are present, the Secretary or an Assistant Secretary may adjourn any directors' meeting to another time and place as specified in a notice of adjournment. Such order or notice of adjournment shall be conspicuously posted on or near the door of the place where the meeting was held within twenty-four (24) hours of the adjournment.

Section 14. Rights of Inspection. Every director and every member of the Board of Directors of Metropolitan shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the corporation. Agendas of public meetings or other documents or writings distributed for discussion or consideration at a public meeting shall be disclosable to the public upon request without delay subject to the provisions of the Public Records Act (commencing with Section 6250 of the Government Code of the State of California).

Section 15. Committees. The Board may appoint one or more committees, each consisting of two or more directors, and delegate to such committees any of the authority of the Board except with respect to:

- (a) The approval of any action for which the California Nonprofit Public Benefit Corporation Law also requires approval of the members or approval of a majority of all members (such limitation of committee action shall apply whether or not the corporation has members);
- (b) The filling of vacancies on the Board or in any committee;
- (c) The amendment or repeal of Bylaws or the adoption of new Bylaws;
- (d) The amendment or repeal of any resolution of the Board which by its express terms is not so amenable or repealable; or
- (e) The appointment of other committees of the Board of the members thereof.

Any such committee must be created, and the members thereof appointed, by resolution adopted by a majority of the authorized number of directors then in office, provided a quorum is present, and any such committee may be designated an Executive Committee or by such other name as the Board shall specify. The Board may appoint, in the same manner, alternate members of any committee who may replace any absent member at any meeting of the committee. The Board shall have the power to prescribe the manner in which proceedings of any such committees shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless the Board or such committee shall otherwise provide, the regular and special meetings and other actions of any such committee shall be governed by the

provisions of this Article III applicable to meetings and actions of the Board. Minutes shall be kept of each meeting of each committee.

Section 16. Fees and Compensation. Directors and members of committees shall not receive compensation for their services; provided, however, directors and members of committees may be reimbursed for expenses, as may be fixed or determined by the Board and ratified by the Board of Directors of Metropolitan.

ARTICLE IV. OFFICERS.

Section 1. Officers. The officers of the corporation shall be a President, a Secretary and a Treasurer. The corporation may also have, at the discretion of the Board, a Chairman of the Board, one or more Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers as may be elected or appointed in accordance with the provisions of Section 3 of this Article IV. Any number of offices may be held by the same person except as provided in the Articles of Incorporation or in these Bylaws and except that neither the Secretary nor the Treasurer may serve concurrently as the President or Chairman of the Board.

Section 2. Election. The officers of the corporation, except such officers as may be elected by or appointed in accordance with the provisions of Section 3 or Section 5 of this Article IV, shall be chosen annually by, and shall serve at the pleasure of the Board, and shall hold their respective offices until their resignation, removal; or other disqualification from service, or until their respective successors shall be elected.

Section 3. Subordinate Officers. The Board may elect, and may empower the President to appoint, such other officers, who need not be directors of the corporation, as the business of the corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in these Bylaws or as the Board may from time to time determine.

Section 4. Removal and Resignation. Any officer may be removed, either with or without cause, by the Board at any time or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board. Any such removal shall be without prejudice to the rights, if any, of the officer under any contracts of employment of the officer.

Any officer may resign at any time by giving written notice to the corporation, but without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular election or appointment to such office, provided that such vacancies shall be filled as they occur and not on an annual basis.

Section 6. Chairman of the Board. The Chairman of the Board, if there shall be such an officer, shall, if present, preside at all meetings of the Board and exercise and perform such other powers and duties as may be from time to time assigned by the Board.

Section 7. President. Subject to such powers, if any, as may be given by the Board to the Chairman of the Board, if there be such an officer, the President is the general manager and chief executive officer of the corporation and has, subject to the control of the Board, general supervision, direction and control of the business and officers of the corporation. In the absence of the Chairman of the Board, or if there be none, the President shall preside at all meetings of the Board. The President has the general powers and duties of management usually vested in the office of president and general manager of a corporation and such other powers and duties as may be prescribed by the Board.

Section 8. Vice Presidents. In the absence or disability of the President, the Vice Presidents, if any be appointed, in order of their rank as fixed by the Board or, if not ranked, the Vice President designated by the Board, shall perform all the duties of the President and, when so acting, shall have all the powers of; and be subject to all the restrictions upon, the President. The Vice Presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board.

Section 9. Secretary. The Secretary shall keep or cause to be kept, at the principal office or such other place as the Board may order, a book of minutes of all meetings of the Board and its committees, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Board and committee meetings, and the proceedings thereof. The Secretary shall keep, or cause to be kept, at the principal office in the State of California the original or a copy of the corporation's Articles of Incorporation and Bylaws, as amended to date.

The Secretary shall give, or cause to be given, notice of all meetings of the Board and any committees thereof required by these Bylaws or by law to be given, shall keep the seal of the corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board.

Section 10. Treasurer. The Treasurer is the chief financial officer of the corporation and shall keep and maintain, or cause to be maintained, adequate and correct accounts of the properties and business transactions of the corporation. The books of account shall at all times be open to inspection by any director.

The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the corporation as may be ordered by the Board, shall render to the President and the directors, whenever they request it, an account of all transactions as Treasurer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board.

ARTICLE V. OTHER PROVISIONS.

Section 1. Endorsement of Documents: Contracts. Subject to the provisions of applicable law, any note, mortgage, evidence of indebtedness, contract, conveyance or other instrument in writing and any assignment or endorsement thereof executed or entered into between the corporation and any other person, when signed by the President or any Vice President and the Secretary or any Assistant Secretary of the corporation, shall be valid and binding on the corporation in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same. Any such instruments may be signed by any other person or persons and in such manner as from

time to time shall be determined by the Board, and, unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or amount.

Section 2. Representation of Shares of Other Corporations. The President or any other officer or officers authorized by the Board or the President are each authorized to vote, represent and exercise on behalf of the corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of the corporation. The authority herein granted may be exercised either by any such officer in person or by any other person authorized so to do by proxy or power of attorney duly executed by said officer.

Section 3. Indemnification. The Corporation shall, to the maximum extent permitted by the California Nonprofit Public Benefit Corporation Law, and in accordance with that law, indemnify each of its agents against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact any such person is or was an agent of the corporation. For purposes of this section, an "agent" of the corporation includes any person who is or was a director, officer, employee or other agent of the corporation and is or was acting within the scope of his or her employment or his or her designated or reasonably implied responsibilities.

Section 4. Construction and Definitions. Unless the context otherwise requires, the general provisions, rules of construction and definitions contained in the General Provisions and Definitions of the California Nonprofit Corporation Law and in the California Nonprofit Public Benefit Corporation Law shall govern the construction of these Bylaws.

ARTICLE VI. NOTICE AND REPORTING TO METROPOLITAN.

Section 1. Notice of Meetings. Notice of all meetings of the Board, and any committees thereof shall be given to the Board of Directors of Metropolitan in writing in the same manner as notices are given to the directors of the corporation. Notices shall be directed to the Board of Directors of The Metropolitan Water District of Southern California, 700 N. Alameda St., Los Angeles, CA 90012, Attention: Executive Secretary. Failure to give such notice shall not in any way invalidate any action taken by the Board at any such meeting.

Section 2. Participation of the Board of Directors of Metropolitan. Members or their designees of the Board of Directors of Metropolitan shall have the right to attend meetings of the Board, and committees thereof and to make recommendations thereto.

Section 3. Quarterly Reports to Metropolitan. The corporation shall provide to the Board of Directors of Metropolitan a report of the corporation on a quarterly basis if warranted by activity. Such report shall describe such matters as, but not be limited to, the status of the financial affairs of the corporation, including the status of any existing or proposed obligations or contractual arrangements of the corporation, the status of the operations and management of the corporation's facilities and assets, the proposed transfer or encumbrance of any of the corporation's facilities or assets, the activities of any committee of the corporation, and the status of any vacancies on the Board or in any committee.

ARTICLE VII. EMERGENCY PROVISIONS.

In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, the Board may hold an emergency meeting without complying with the notice and posting requirements for special meetings set forth in Article III, Section 9 hereof. Such emergency meeting may be called by a director or an officer and notice need be given only to such of the directors, officers or members of the committee, as the case may be, as it may be feasible to reach at the time and by such means as may be feasible at the time including, without limitation, publication or radio.

The director or directors in attendance at the meeting of the Board, and the member or members of the Executive Committee, if any, in attendance at the meeting of the committee, shall constitute a quorum. If none is in attendance at the meeting, the officers or other persons designated on a list approved by the Board before the emergency, all in such order of priority and subject to such conditions and for such period of time (not longer than reasonably necessary after the termination of the emergency) as may be provided in the resolution approving the list, shall, to the extent required to provide a quorum at any meeting of the Board or of the Executive Committee, be deemed directors or members of the committee, as the case may be, for such meeting.

The Board, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such emergency any or all officers or agents of the corporation shall for any reason be rendered incapable of discharging their duties. The Board, either before or during any such emergency, may, effective in the emergency, change the principal office or designate several alternative offices or authorize the officers to do so.

ARTICLE VIII. AMENDMENTS.

Except as otherwise provided by the Articles of Incorporation or Bylaws, new Bylaws may be adopted or these Bylaws may be amended or repealed by the Board; provided, however, that these Bylaws shall not be amended or repealed without the consent of the Board of Directors of Metropolitan.

CERTIFICATE OF SECRETARY
of
THE METROPOLITAN WATER DISTRICT ASSET FINANCING CORPORATION
(a California nonprofit public benefit corporation)

I hereby certify that I am the duly elected and acting Secretary of said corporation and that the foregoing Bylaws, comprising 9 pages, constitute the Bylaws of said corporation as duly adopted at a meeting of the Board of Directors thereof held on May 12, 2008.

Sydney B. Bennion
Secretary

CERTIFICATE OF BOARD EXECUTIVE SECRETARY
of
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
(a California nonprofit public benefit corporation)

I hereby certify that I am duly appointed and acting Board Executive Secretary of The Metropolitan Water District of Southern California and that the foregoing Bylaws, comprising 9 pages, were duly approved, as required by the Bylaws, at a meeting of the Board of Directors of Metropolitan held on June 10, 2008.

Dawn M. Chin
Board Executive Secretary

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