



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

May 12, 2009 Board Meeting

8-2

Subject

Adopt resolution to continue Metropolitan's Water Standby Charge for fiscal year 2009/10

Description

On April 14, 2009, Metropolitan's Board of Directors adopted Resolution 9087, fixing and adopting the Readiness-to-Serve Charge. Resolution 9087 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. **Attachment 1** is a form of resolution that, if adopted by the Board, will continue the water standby charge on nonexempt real property within the service areas of participating member public agencies for FY 2009/10. 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 continue the standby charge for the coming fiscal year at the same rate as prior years, no additional procedures are required for approval.

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 of the California Constitution (Proposition 218).

The resolution also authorizes the General Manager 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 General Manager.

The FY 2009/10 standby charges are being continued under Section 134.5 of the Metropolitan Water District Act and in accordance with Section 53753 of the California Government Code and the Uniform Standby Charge Procedures Act, which provide that continuation of previously adopted standby charges may be accomplished solely pursuant to resolution of Metropolitan's Board of Directors.

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 2009/10 standby charges are being continued under Sections 134.5 and 134.7 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

Option #1

Adopt the CEQA determination and the resolution to continue the water standby charge for FY 2009/10.

Fiscal Impact: Continue to collect \$44 million (approximately) in standby charges

Option #2

Do not approve continuation 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: Metropolitan would continue to recover the full Readiness-to-Serve Charge, but member agencies would be required to pay through their own rates and charges.

Staff Recommendation

Option #1


Brian G. Thomas
Chief Financial Officer

4/23/2009
Date


Jeffrey Nightlinger
General Manager

4/27/2009
Date

Attachment 1 – Resolution

BLA #6576

**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

RESOLUTION [____]

**RESOLUTION OF THE BOARD OF DIRECTORS OF
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA
CONTINUING WATER STANDBY CHARGES
FOR FISCAL YEAR 2009/10**

WHEREAS, at its meeting on April 14, 2009, the Board adopted Resolution 9087, “Resolution of the Board of Directors of The Metropolitan Water District of Southern California Fixing and Adopting Readiness-to-Serve-Charge for Fiscal Year 2009/10”;

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

WHEREAS, Section 134.7 of the Metropolitan Water District Act authorizes the Board, by resolution, to continue in subsequent years a standby charge that was established pursuant to the procedures in effect at the time the standby charge was established;

WHEREAS, Metropolitan’s standby charges fixed prior to 1997 were established pursuant to the procedures authorized by Section 134.5 of the Metropolitan Water District Act and the Uniform Standby Charge Procedures Act (USCPA), Sections 54984-54984.9, inclusive, of the Government Code, and Metropolitan’s standby charges fixed in 1997 and thereafter also were established pursuant to the procedures set forth in Article XIID, Section 4 of the California Constitution; and

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 December 2008, which is on file with the Board Executive Secretary of Metropolitan.

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 continues its water standby charge for fiscal year 2009/10 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 continuation 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 continuation 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 continuation of pre-1997 standby charges for fiscal year 2008/09. 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 continuation of post-1997 standby charges for fiscal year 2009/10. The Engineer's Report lists parcels annexed or to be annexed to Metropolitan and to electing members during the 2009/10 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 Board 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 Engineers Report shall be as follows:

2009/10 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 |

**2009/10 Water Standby Charge
(continued)**

| Member Agency | Amount |
|------------------------------|---------------|
| 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 continue to 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 General Manager, 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 General Manager may develop and implement additional criteria and guidelines for exemptions in order to effectuate the intent expressed herein.

(b) The General Manager 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, 2009. The General Manager 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 General Manager shall also establish reasonable procedures for the filing and timing of the appeals from his determination.

(c) The Business and Finance Committee of Metropolitan's Board of Directors shall hear appeals from determinations by the General Manager to deny or qualify an application for exemption from the water standby charge. The Business and Finance Committee shall consider such appeals and make recommendations to the Board to affirm or reverse the General Manager'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 General Manager 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 General Manager 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 12, 2009.

Board Executive Secretary
The Metropolitan Water District
of Southern California