



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Date: March 23, 2024
To: Board of Directors
From: Marcia Scully, General Counsel
Subject: Response to Board Information Request re Metropolitan Water District Act, Section 315 Overview

Summary

On March 12, 2024, at Workshop #3 for the Proposed Biennial Budget for fiscal years 2024/25 and 2025/26 and proposed rates and charges for calendar years 2025 and 2026, staff received a request for information regarding Section 315 of the Metropolitan Water District Act (MWD Act). In this memorandum, the General Counsel provides an overview of the process referenced in Section 315, and other related sections of the MWD Act, which involves an agency becoming a “declaring public agency” for purposes of ad valorem property taxes within their area.

The Act provides a process for a public agency to become a “declaring public agency,” which means it declares it will pay to Metropolitan the State Water Project ad valorem property tax (SWP AV tax) obligation of the properties within its service area, in whole or in part. The process requires the declaring public agency’s legislative body to approve that declaration and to pay the tax obligation out of that agency’s own funds.

The manner in which that agency recovers the costs of the SWP AV tax payment is within the discretion and legal scope of that agency. For example, the MWD Act provides that a declaring public agency may add the costs to its charges for water sales. However, there are constitutional provisions and other laws enacted after the declaring public agency statutes that apply to rates, charges and other fees for service, which a court may find impacts the use of the declaring public agency option. Each agency should evaluate their options for recovering the costs of paying taxes in-lieu of their property owners pursuant to the MWD Act.

The declaring public agency process does not affect the uniformity of Metropolitan’s rates or charges. It reduces or eliminates SWP AV taxes from the property tax bills within its area, but the difference is paid to Metropolitan by the declaring public agency.

Overview of the “Declaring Public Agency” Process

What is a “declaring public agency”?

A declaring public agency is an agency that adopts a motion to declare to Metropolitan that it will pay to Metropolitan—out of its own agency funds—the SWP AV tax liability of real properties within its jurisdiction. By making such declaration and following the required process, the agency

would pay the SWP AV taxes to Metropolitan, in whole or in part, in lieu of the real properties within its area. The MWD Act provides that a “declaring public agency” means:

any public agency ... whose corporate area, in whole or in part, is taxable by a metropolitan water district and which has declared its intention to pay out of its agency funds the whole or a stated percentage of the district’s taxes, pursuant to Section 331.

MWD Act, § 300 (underline added). An agency becomes a declaring public agency by making the “declaration of intention ... by order upon motion, which order shall recite that such agency, pursuant to the provisions of Section 336, will elect to pay the whole or such stated percentage of the amount of taxes of the district to be derived from such declaring public agency. *Id.* at § 331.

Declaring public agencies are authorized pursuant to the provisions of the MWD Act to pay to Metropolitan, “out of funds derived from the sale of water or other funds not appropriated to some other use, such amounts as may be determined upon by the [legislative bodies] having control of such funds.” MWD Act, § 315. They “may elect to pay out of the agency funds of such agency, other than funds derived from ad valorem property taxes, all or the stated percentage, as the case may be, of the amount of tax which would otherwise be levied upon property within such agency.” MWD Act, § 336. However, there are constitutional provisions, such as Proposition 218 and Proposition 26, and other laws enacted after the declaring public agency statutes that apply to rates, charges and other fees for service. A court could find these later-enacted laws impact the use of the declaring public agency option. Each agency should evaluate their options for recovering the costs of paying taxes in-lieu of their property owners pursuant to the MWD Act.

If declaring to pay a portion, then that portion “shall be 1 percent or a whole multiple” of the tax liability. MWD Act, § 331. “The amount of the payment so made by any such agency shall be deducted from the amount of taxes which would otherwise be levied against property lying in such agency as provided in Section 310.” *Id.* at § 315.

Does the declaring public agency election affect Metropolitan’s adopted service rates, charges, or SWP AV tax rates?

The declaration does not change Metropolitan’s uniform service rates or charges. The recovery of a higher tax rate by Metropolitan may reduce its overall revenue requirements for the rates and charges for service to all of its member agencies uniformly. The difference for the declaring public agency would be that it can choose to pay that fixed revenue directly to Metropolitan and recover it instead through the water bills it issues to its customers.

The option is available for each individual agency as an option to pay to Metropolitan in lieu of its real property owners paying the Metropolitan SWP AV tax, in whole or in part. The declaration does not affect the MWD SWP AV tax in non-declaring areas, but does reduce or eliminate the Metropolitan SWP AV tax rate only within the declaring public agency’s jurisdiction. From Metropolitan’s perspective, the revenue it anticipates to receive from Metropolitan SWP AV taxes

does not change; there is only a change in the identity of the payor in the declaring public agency's area.

What is the process for becoming a declaring public agency?

An agency wishing to pay its property owner SWP AV taxes, in whole or in part, begins by passing a motion at its legislative body, approving the payments. MWD Act, § 331. Immediately thereafter, the declaring public agency shall file a certified copy of the declaration with the controller of Metropolitan, with the county assessor of the county within which such agency lies, and with the State Board of Equalization, along with its incorporation documents and documents representing the legal description of the boundaries of that agency. MWD Act, § 332.

A declaring public agency must also submit to the controller "a statement showing its financial condition as of the close of the fiscal year immediately preceding, the funds from which it is intended that such payment will be made and the sources of revenue to be used therefore," and proof that the required documents were filed with the county assessor and with the State Board of Equalization. MWD Act, § 333. If it appears to the Metropolitan controller that the agency's financial condition "reasonably will assure the payment of such amount of taxes," then the controller "shall accept such declaration of intention." *Id.* at § 334.

Metropolitan then is responsible for calculating the total SWP AV tax revenue in accordance with the agency's declaration, the county assessor rolls, the credits or other costs associated with the levy, as well as setting up a payment schedule with the declaring public agency. MWD Act, §§ 306, 309, 316, 337, and 340. Notably, if the declaring public agency fails to make the declared payments, the tax obligation returns to the real properties within that agency's area. MWD Act, § 339. The declaring public agency shall be charged a penalty of 8%, which shall be collected from the real properties if not paid by that agency. *Id.* at § 340.

What is the timeline for an agency to declare to pay in lieu of its property owners?

The process normally begins in December, the year prior to the Metropolitan Board action in August fixing the SWP AV tax rates. MWD Act, §§ 331, 332. However, "[a]ll provisions in th[e] act, or in any ordinance adopted pursuant to th[e] act, relating to the respective times when the various acts pertaining to the levy of taxes are to be performed are directory only, and failure to perform any such act or acts within the time so specified shall not impair the authority herein conferred to perform all subsequent acts relating to the levy of such taxes." MWD Act, § 320. Accordingly, in the current year, the process for a declaring public agency can be undertaken so long as it can be completed by the time Metropolitan staff proposes SWP AV tax rates for the regular August Board meeting.

Metropolitan normally sets its SWP AV tax rates at the Board's regular August meeting, which is held the third week of August. Therefore, the process required for an agency to declare its in lieu payment obligation for fiscal year 2024/25 would have to be expedited to be completed by July 1, 2024. In order to meet the deadline to complete the process by then, an agency would have to approve the declaration at its own meeting by May 31, 2024. If a member agency anticipates declaring under the provisions for fiscal year 2025/26, then it should try to follow the timeline indicated by the Act to declare by December 2024. Declaring public agencies must notify Metropolitan each year regarding their intention to declare for the following fiscal year. Metropolitan's controller must evaluate the provided information every year as well. However,

there is no requirement that the agency's motion be limited to one year. That agency must determine whether it wishes to, and may, declare for multiple years.

Referenced MWD Act Sections Referenced Relating to Declaring Public Agencies Process

Sec. 300. [Definition of Declaring Public Agency]

As used in this part, "declaring public agency" means any public agency, any irrigation district, California water district or any other public corporation or agency of the State of California, of similar character and with power to acquire and distribute water, whose corporate area, in whole or in part, is taxable by a metropolitan water district and which has declared its intention to pay out of its agency funds the whole or a stated percentage of the district's taxes, pursuant to Section 331.

Sec. 306. [Segregation of Assessed Valuations -- Declaring Public Agencies]

In the event that the controller of the district notifies the State Board of Equalization and the appropriate county assessor pursuant to Section 335 of the acceptance of the declaration of intention of any declaring public agency to make payments in lieu of taxes pursuant to the provisions of Chapter 2 (commencing with Section 331) of this part, the State Board of Equalization and the county assessor shall prepare the assessments for the next ensuing fiscal year of all property taxable by such metropolitan water district lying in such declaring public agency, segregated in such manner that the county auditor of each county within which such agency or any part thereof shall lie, in issuing his certificate to the controller of such metropolitan water district on or before the 15th day of August of such year, pursuant to the requirements of Section 305, will be able to segregate the assessed valuation of all property in his county taxable by such metropolitan water district lying in such agency, and it shall be the duty of each such county auditor to make such segregation in such certificate.

Sec. 309. [Tax Levies. - Declaring Public Agencies]

The board shall also cause to be computed and shall declare in the resolution adopted pursuant to Section 307 the amount of money to be derived by virtue of the tax levy from the area of the district lying within each member public agency and within each declaring public agency for which a certificate segregating the assessed valuation of all property within the agency has been received from the county auditor by the controller of the district. In such resolution the board shall also fix and determine the times and proportional amounts of installments through which any declaring public agency may elect to make payment in lieu of taxes as provided in Section 336, and may provide for deductions or refunds of amounts determined by the board to be equal to the fees which would be required to be paid pursuant to Section 312 if taxes were levied and collected by county officials, and equal to the interest, as determined by the board, that could be earned by the district on payments made pursuant to Section 338 between such date of payment and the dates the amount of such payment would have been payable under this section for purposes other than those referred to in Section 338. If two or more overlapping declaring

public agencies have elected to make payments in lieu of taxes which in total produce more than the taxes applicable to property common to such agencies, such installments will be proportionately reduced so as to produce such taxes. The board shall immediately transmit certified copies of such resolution to the presiding officer of the governing body of each member public agency and declaring public agency.

Sec. 315. [Payments by Declaring Public Agencies in Lieu of Taxes]

Declaring public agencies are hereby authorized pursuant to the provisions of Chapter 2 (commencing with Section 331) of this part to pay to metropolitan water districts, out of funds derived from the sale of water or other funds not appropriated to some other use, such amounts as may be determined upon by the governing bodies, or other bodies, boards, commissions or officers having control of such funds. Any such payment in avoidance of taxes shall be credited to the appropriate member public agency or agencies. The amount of the payment so made by any such agency shall be deducted from the amount of taxes which would otherwise be levied against property lying in such agency as provided in Section 310.

In the event that payment so made by any public agency shall exceed the amount of taxes which would otherwise have been levied against property within such agency, the amount of such excess without interest shall be carried over and applied in reduction of taxes levied during the ensuing year or years.

Sec. 316. [Reimbursement to Agencies for Preliminary District Expenses]

Any declaring public agency which incurs expenses in the investigation of or preliminary work upon any works or projects taken over by the district may receive, and the district so taking over any such works or projects may make to such agency, reimbursement for all such sums so expended, or to be expended, for expenses incurred in such investigation or preliminary work to the extent that the board shall find that such expenditures have benefited the district.

Sec. 320. [Time provisions Directory Only]

All provisions in this act, or in any ordinance adopted pursuant to this act, relating to the respective times when the various acts pertaining to the levy of taxes are to be performed are directory only, and failure to perform any such act or acts within the time so specified shall not impair the authority herein conferred to perform all subsequent acts relating to the levy of such taxes.

Sec. 331. [Adoption of Declaration of Intention]

On or before the 10th day of December in any year the governing body of any public agency may declare its intention to pay out of its agency funds the whole or a stated percentage of the amount of taxes to be derived from the area of the district within such agency, as such amount shall be fixed in the next succeeding August by resolution of the board. If such governing body shall so declare its intention to pay a stated percentage less the whole of the amount of taxes so to be derived, such stated percentage shall be 1 percent or a whole multiple thereof. Such

declaration of intention shall be made by order upon motion, which order shall recite that such agency, pursuant to the provisions of Section 336, will elect to pay the whole or such stated percentage of the amount of taxes of the district to be derived from such declaring public agency.

Sec. 332. [Filing of Declaration of Intention]

Immediately upon the adoption of a declaration of intention pursuant to Section 331 and not later than the 10th day of December in such year, a certified copy of the declaration shall be filed by such declaring public agency with the controller of the district, with the county assessor of the county within which such agency lies, and with the State Board of Equalization, accompanied in each instance by a statement of the creation of such agency or of the change of boundaries of such agency or of the part thereof within the district, setting forth the legal description of the boundaries of such agency as so created or so changed and of the part thereof within the district, together with a map or plat indicating such boundaries. Such statement and such map or plat need not accompany the respective certified copy of such declaration of intention so to be filed where such agency since its creation and the last change in boundaries of such agency and of the part thereof included within the district already has filed with the board of directors and with the county assessor and with the State Board of Equalization, as the case may be, pursuant to Section 382 of Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code or other applicable provisions of law, a statement of the creation of such agency or of the change of boundaries of such agency or of the part thereof within the district, setting forth the legal description of the boundaries of such agency as so created or so changed and of the part thereof within the district, together with a map or plat indicating such boundaries.

Sec. 333. [Other Documents to be Filed With Controller]

Concurrently with the certification to the controller of the district pursuant to Section 332 of the declaration of intention, accompanied by such statement and map or plat where required, such declaring public agency shall transmit to the controller of the district a statement showing its financial condition as of the close of the fiscal year immediately preceding, the funds from which it is intended that such payment will be made and the sources of revenue to be used therefore, and not later than the 15th day of December in such year shall file with the controller proof that a certified copy of the declaration and such statement and map or plat have been filed with the county assessor and with the State Board of Equalization. In instances where such statement and map or plat are not required by Section 332 to accompany the certified copy of the declaration so filed, such proof shall evidence the fact that the requirements of Section 332 have been otherwise fulfilled.

Sec. 334. [Acceptance of Declaration of Intention by Controller]

Upon the filing with the controller of the district pursuant to Section 332 of the certified copy of the declaration of intention accompanied by the statement and map or plat, where

required, and the filing pursuant to Section 333 of the financial statement and of the required proof, the controller, if it appears that the financial condition of such agency reasonably will assure the payment of such amount of taxes, shall accept such declaration of intention.

Sec. 335. [Notice to Board of Equalization and Assessor]

If the declaration of intention is accepted pursuant to Section 334, the controller, on or before the 23rd day of December, shall so notify the State Board of Equalization and the county assessor of the county wherein such declaring public agency is situated, and any other officer whose duty it is to collect taxes under the provisions of Section 12 of Article XIII of the Constitution of the State of California. Thereupon the county assessor or other officer shall not collect in such agency prior to the next ensuing first day of September, the amount of such taxes for the benefit of the district that is to be paid out of the agency funds of such agency, as indicated in the declaration of intention.

Sec. 336. [Election to Pay Out of Agency Funds]

On or before the 27th day of August of each year the governing body of each declaring public agency whose declaration of intention has been accepted pursuant to Section 334, may elect to pay out of the agency funds of such agency, other than funds derived from ad valorem property taxes, all or the stated percentage, as the case may be, of the amount of tax which would otherwise be levied upon property within such agency. Such election shall be made in strict compliance with, and fulfillment of, the declaration of intention made by such agency pursuant to Section 331.

Sec. 337. [Order for Payment out of Agency Funds]

Any election pursuant to Section 336 shall be made by order upon motion, which shall recite that such payment shall be made in cash concurrently with the certification of such order to the controller of the district, or that such payment shall be made in installments at such times and in such amounts as shall be in accordance with the requirements of the board adopted pursuant to Section 309. In the event that any declaring public agency shall adopt an order making any such election, it shall immediately certify to the controller of the district a copy of such order.

Sec. 339. [Failure to Make Intended Election]

If any declaring public agency whose declaration of intention has been accepted pursuant to Section 334 shall fail to make its intended election in accordance with Section 331 and in compliance with all applicable requirements, the controller of the district, on or before the first day of September, shall so notify the county auditor of the county in which such agency shall lie and thereupon the county assessor or county tax collector of said county or other officer whose duty it then is to collect such taxes, forthwith shall collect for the benefit of the district such taxes to the extent that such agency shall so fail to make its intended election to pay such taxes out of its agency funds. No penalties shall attach to such taxes as are collected by the first day of

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December.

Sec. 340. [Penalty for Delinquency of Agency]

If any declaring public agency fails to comply with the terms of the order electing to make payments to the district pursuant to this article in lieu of taxation, the amount of the delinquency, plus a penalty of 8 percent, shall be added to the taxes to be collected during the ensuing fiscal year, from the property within such delinquent agency, and thereafter for a period of two years no order or ordinance shall be sufficient to exempt the property in such agency from taxation unless it be accompanied by payment in cash of the amount which would otherwise be collected from owners of property within the agency, together with all moneys due but unpaid under any previous order.