

April 7, 1993

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

AMENDMENTS TO SENATE BILL 1225 RELATING TO
THE SAN DIEGO WASTEWATER MANAGEMENT DISTRICT
AND THE METHODOLOGY USED FOR THE WEIGHTED VOTE

At a meeting of the Board of Directors for the San Diego Wastewater Management District ("District") on March 26, 1993, a motion was passed to review the possibility of amending the legislation for the District. Specifically, the Board of Directors endorsed amendments which would alter the current methodology used for invoking a weighted vote by the Board of Directors.

At present, Section 314 of the San Diego Wastewater District Act ("Act") provides that each Board member of the District, except for The City of San Diego, shall have one vote on any motion, resolution, or ordinance. Section 316 of the Act sets forth how the weighted vote is determined. This section provides:

- (a) Weighted voting shall be based upon the average daily flow of wastewater discharged by all member agencies, except the City of San Diego, into facilities of the district, as determined and established at the first meeting in July of each year by resolution of the board. When the weighted vote is taken there shall be a total of 100 possible votes. Fifty of those votes shall be allocated to the City of San Diego, irrespective of its average daily flow. The allocation of the remaining 50 votes to the remaining member agencies shall be determined pursuant to subdivision (b).

(b) The average daily flow of the remaining member agencies shall be totaled and the ratio of each agency's portion to this total shall be calculated and the resulting fraction shall be multiplied by 50, with decimals of 0.50 or greater rounded up to the next whole number, thereby determining the number of the remaining 50 votes to be allocated to the agency. For purposes of this section, the average daily flow of the San Diego County Water Authority shall be equal to the average daily flow of the member agency with the smallest flow. In no event shall a member agency have less than one vote. If a member agency has more than one member on the board, the board members of that member agency shall cast the vote or votes allocated to that member agency as a unit, as determined by the majority of the member agency's board members who are present. The affirmative vote of members representing more than 50 percent of the total number of votes of all members shall be necessary and, except as otherwise provided, shall be sufficient to carry any motion, resolution, or ordinance before the board.

Under the proposed amendment, in order for a prior roll call vote to be nullified by a weighted vote, two conditions must be met. First, a simple majority of the members of the Board must vote in favor of the resolution, motion, or ordinance. At present, that simple majority would be eleven (11) votes, or San Diego and at least five (5) other votes. Second, the vote also must be carried by Board members representing a majority of the flow into the wastewater system.

Inasmuch as The City of San Diego represents approximately seventy percent (70%) of the wastewater flow, the City will have the ability, should it so choose, to veto any measure if a weighted voted is used. Conversely, however, the City will need to build a greater consensus on measures it wishes passed via a weighted vote because it will have to obtain five (5) votes from

other Board Directors in order for the measure to pass.

The proposal endorsed by the Board of Directors does not address the issue of block voting. At present, the legislation requires that if a member agency has more than one member on the Board (e.g., County of San Diego, City of San Diego, Chula Vista), the Board Directors representing that agency must vote as a unit, as determined by the majority of the member agency's Board Directors who are present. If this proposal is adopted, we would suggest that the requirement of the block voting be included.

One additional change suggested by the proposal concerns which matters may not be voted upon by a weighted vote. According to the proposal approved by the Board of Directors, matters pertaining to the terms of employment for the District's General Manager and General Counsel would not be subject to a weighted vote. The current provisions of the Act do not have any such restrictions.

Finally, we would note that the proposed weighted vote endorsed by the District does not violate the Equal Protection Clause principle of "one person, one vote." The one person, one vote principle, first enunciated in the "reapportionment cases" (see, e.g., *Baker v. Carr*, 369 U.S. 186 (1962); *Wesberry v. Sanders*, 376 U.S.1 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964)), "means that as nearly as practical one man's vote . . . is to be worth as much as another's." See *Reynolds v. Sims*, 377 U.S. at 559. Accordingly, ". . . the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Id.* at 555.

Subsequent United States Supreme Court cases, however, have recognized that where members of a public agency are not elected by the people, either directly or indirectly, the one person, one vote principle is not applicable. In *Sailors v. Bd. of Education*, 387 U.S. 105 (1967), a county school board was not chosen by the electorate but by delegates of local school boards. The court concluded that although the members must be elected officials, the electorate does not vote for the members as such. Thus, the members of the board are not elected by the people either directly or indirectly and the one person, one vote principle is not violated. (But cf., *Bd. of Estimate of NYC v. Morris*, 489 U.S. 688 (1989).)

With respect to the District Board of Directors, although each of its members must be elected officials they are not elected for the purpose of serving the Board. As such, the one person, one vote principle is not violated by the use of a weighted vote procedure by the Board.

Attached for your review is a draft of a proposed amendment to Section 316 of the Act. This draft attempts to incorporate the issues addressed above.

Respectfully submitted,
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City Attorney

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Attachment

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