

RESOLUTION NUMBER R- 294655

ADOPTED ON MAR 19 2001

RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO SUPPORTING LEGAL CLARIFICATION OF PREFERENTIAL RIGHTS UNDER SECTION 135 OF THE METROPOLITAN WATER DISTRICT ACT.

WHEREAS, the San Diego County Water Authority [Water Authority] provides wholesale water service to 23 member public agencies in the San Diego region, including the City of San Diego; and

WHEREAS, the Water Authority has responsibility to provide imported water supplies to meet the needs of the region's \$103 billion economy and to sustain the quality of life of the region's nearly three million people; and

WHEREAS, the Water Authority is a member agency of the Metropolitan Water District of Southern California [MWD] and is currently dependent on it for all of the water supply it imports to serve the needs of the Water Authority's own members including the City of San Diego; and

WHEREAS, for over fifty years MWD has promised, assured and represented to the Water Authority, and the public it serves, that it would provide them with sufficient water to meet their stated needs; and

WHEREAS, in good faith reliance on MWD's past assurances, the Water Authority expanded its territory, built public works and made its own assurances that it would provide the San Diego region with a reliable supply of water; and

WHEREAS, the City of San Diego has relied upon the assurances of a continuing and reliable water supply from the Water Authority and MWD for the adoption and implementation of a comprehensive, long-term general plan for the development of its community; and

WHEREAS, MWD was created under the Metropolitan Water District Act [the MWD Act]; and

WHEREAS, Section 135 of the MWD Act establishes a "preferential right" to MWD's water supplies for each of MWD's 26 member agencies based on each agency's payment of MWD's capital costs and operating expense; and

WHEREAS, as currently interpreted and applied by MWD, a member agency's preferential right to water under Section 135 bears no relationship to its payment of MWD's capital costs and operating expense or to its stated water needs; and

WHEREAS, MWD's interpretation and application of Section 135 is inconsistent with its own promises, assurances and representations to provide water to meet the Water Authority's stated needs; and

WHEREAS, through June 30, 2000, the Water Authority has paid MWD nearly \$3 billion for the capital costs and operating expense of MWD water works, representing twenty-two percent (22%) of all member agencies' total historical payments to MWD; and

WHEREAS, of this amount, only \$514 million is counted by MWD in its calculation of the Water Authority's preferential right under Section 135, resulting in an entitlement to less than fifteen percent (15%) of MWD's water supply; and

WHEREAS, this calculation leaves the Water Authority with a preferential right to less than one-half of the water supply it purchases, year in and year out, from MWD - a shortfall of about 300,000 acre feet of water; and

WHEREAS, by way of contrast, through June 30, 2000, the City of Los Angeles has paid MWD approximately \$1.6 billion for the capital costs and operating expense of MWD water works, representing twelve percent (12%) of all member agencies' total historical payments to MWD; and

WHEREAS, of this amount \$792 is counted by MWD in its calculation of Los Angeles' preferential right under Section 135, resulting in an entitlement to more than twenty-two percent (22%) of MWD's water supply; and

WHEREAS, this calculation leaves the City of Los Angeles with a preferential right to about two times as much water as the amount of its regular water purchases from MWD; and

WHEREAS, the City of Los Angeles claims that its right to purchase water from MWD is governed by Section 135 as currently interpreted and applied by MWD, and may be exercised at any time, in the sole discretion of Los Angeles, notwithstanding the availability to it of alternative water supplies and irrespective of any resulting reductions in supplies delivered to the Water Authority; and

WHEREAS, MWD's current revenue policies and programs allocate MWD's capital costs and operating expenses as though Section 135 rights do not exist, thus leaving the Water Authority with the obligation to pay the capital costs and operating expense of water supplies that are subject to claims by Los Angeles; and

WHEREAS, past payments by the Water Authority to MWD pale in comparison to the future revenues and indebtedness that are projected to meet the water supply demands of MWD member agencies, in excess of \$54 billion over the next 20 years; and

Corrected 3/2/01

WHEREAS, the Water Authority has made numerous efforts to resolve the dispute over preferential rights through MWD board processes and committees, mediations and facilitations over the years, all without success; and

WHEREAS, the Water Authority has filed an action in the San Diego Superior Court (Case No. GIC 761526), in an effort to finally resolve the controversy and achieve certainty as to its MWD supply reliability and cost; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the foregoing recitals are true and correct.
2. That the City of San Diego hereby expresses its support of the actions taken by the San Diego County Water Authority to seek legal clarification of preferential rights under Section 135 of the Metropolitan Water District Act.
3. That the City of San Diego hereby urges MWD, in the interest of fairness, to remain neutral in this dispute between and among its member agencies.
4. That the City Clerk shall forward a copy of this resolution to the Water Authority and to MWD for due consideration..

APPROVED: CASEY GWINN, City Attorney

By

Deborah L. Berger  
Deputy City Attorney

DLB:pev  
2/16/01  
Or.Dept:Water  
Aud.Cert:N/A  
R-2001-1172  
Form=r&t.frm  
L:\BERGER\Water\CWA\Formal Docs\Sect135.wpd