

MEMORANDUM OF LAW

DATE: August 19, 1986

TO: Henry Pepper, Deputy Director, Water  
Utilities, Services Division  
FROM: City Attorney  
SUBJECT: Definition of Waste of Water

You requested our review of San Diego Municipal Code section 67.37(e) which makes it unlawful to "willfully or neglectfully waste water ...." The question is posed as to what definition is used for waste of water and what legal action may be maintained.

While undefined in the San Diego Municipal Code, waste of water has been defined by the courts, and, with respect to artesian wells, by the California Water Code. In construing the term "waste" with respect to water, the California Supreme Court said:

An accepted definition of the term "waste," as applied to the use of water, may be said to be: "To use needlessly or without valuable result; to employ prodigally or without any considerable return or effect, and to use without serving a purpose." (Webster's New International Dict., 2d ed.) The term is necessarily relative.

Meridian, Ltd. v. San Francisco,  
13 Cal.2d 424, 447 (1939)

Similarly in prohibiting "waste" from artesian wells, the California Water Code defines waste as follows:

Sec. 301. Waste defined

For the purposes of this article, waste is the causing, suffering, or permitting any water flowing from an artesian well, to run either:

(a) Into any natural watercourse or channel, or into any bay or pond, unless the water is used thereafter for irrigation or domestic use.

(b) Into any street, road, or highway.

(c) Upon the land of any person or upon the public land of the United States or of the State, unless it is used thereon for irrigation, domestic use, or the propagation of fish.

In interpreting San Diego Municipal Code section 67.37(e), we adopt the thought of the court that the term means use without valuable result or without serving any purpose. The evidence of such waste may be taken from the above-quoted statute. Thus when water simply runs off into a channel or off into the street, the water is truly being wasted and the prohibition of Section 67.37(e) is triggered.

The violation of restrictions imposed by the San Diego Municipal Code is a misdemeanor criminal offense punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than six (6) months or by both fine and imprisonment. San Diego Municipal Code section 11.12. While the form letter referenced in your memorandum is understandably positive, if you quote Section 67.37(e) the potential of criminal sanctions should be added.

We must advise, of course, that the decision to pursue criminal sanctions in any given case rests in the professional judgment of the prosecutor and not in the department. *People v. Municipal Court*, 27 Cal.App.3d 193 (1972).

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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