

DATE: July 19, 1988

TO: Steve Hogan, Deputy Water Utilities Director
FROM: City Attorney
SUBJECT: Metropolitan Sewerage System Potential Flow and Charge Adjustment

In a recent memorandum, you cataloged an ongoing problem that has plagued The City of San Diego as operator of the Metropolitan Sewerage System since 1979. Succinctly summarized, that problem relates to the method of billing member agencies for operation and maintenance expenses. The sewage disposal agreements at Sections 10 and 11 (original and later participating agreements respectively) call for proportionate allocation of costs based on the volume of sewage the respective agency taxes the total flow of the Metropolitan System. However, since 1979, the participating agencies have disputed the accuracy of the calculation of total flow thus, directly bearing on the accuracy of the proper proportion of operation and maintenance costs.

While accommodations have been made in the interim based on a June 14, 1982 letter request of the Metropolitan Subcommittee, a final settlement of this dispute has not been reached.

Anticipating such a final settlement, you ask:

1. Must the City Council approve the final settlement?
2. Is the City required to pay interest on the final settlement?
3. Can the settlement be structured to prevent further claims arising from this issue?

Our response follows seriatim.

1. As previously noted, Sections 10 and 11 of the Standard Sewage Disposal Agreement provide for the proportional payment of administrative, maintenance and operation expenses. Similarly the standard agreement provides that when any amount is disputed

it may not be withheld but " . . . any amount determined by competent authority or by arbitration to have been improperly allocated . . . shall be refunded . . . by City." Standard Sewage Disposal Agreement, sections 10 and 11.

Since your inquiry suggests a mutually arrived at settlement agreement, we need not refer to Sections 21 and 25, which are the formal arbitration provisions of the Standard Sewage Disposal Agreement. Rather we will assume that an as yet unreached, but mutually acceptable settlement, will be reached between the City and the Metropolitan Agencies. In this context you ask whether the settlement must be approved by the City Council.

Since such a settlement would represent the compromise of a

claim for money against a public entity, any such settlement that exceeds twenty thousand dollars (\$20,000) must be approved by the City Council. California Government Code section 935.4; Council Police 000-9 V. In as much as the figures discussed as a possible settlement run into the millions of dollars, the settlement must be approved by the City Council.

2. With respect to required interest, Sections 10 and 11 are silent referring only to "refund" of the amount "improperly allocated." Hence the disposal agreements do not mandate interest. You are, therefore, free to agree to an appropriate figure as provided in California Government Code section 906(c) which in pertinent part provides:

(c) The public entity and the claimant may agree in writing to vary the terms prescribed by subdivision (b) not pertinent, including but not limited to, any one or more of the following:

(1) An agreement that no interest will be payable on the amount allowed on the claim.

(2) An agreement that interest on the amount allowed on the claim will commence to accrue at a time other than the time specified in paragraph (1) or (2) of subdivision (b). interest to accrue 30 days after date of settlement

(3) An agreement that interest on the amount allowed on the claim will accrue at a different rate than is specified in paragraph (3) of subdivision (b).

(Note: The current rate of interest collectable on a judgment referenced in subdivision (b) is ten (10) percent per annum. California Code of Civil Procedure section 685.010.)

Hence you are free to negotiate an acceptable amount of interest, but are not mandated to do so by the disposal agreements.

3. Settlement can and should be structured to include a "release of claims" to finalize any refund agreed upon. Once you have a final agreement, we will be happy to assist in preparing a specific release of claims. We have taken the liberty of attaching hereto a form for such a release that would necessarily be particularized to the final settlement. (See attached Exhibit A)

The above provisions answer the three (3) questions posed in your memorandum and we remain available to assist you in finalizing the charge adjustments contemplated in resolving this ongoing dispute.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:js:453(x043.2)

Attachment

ML-88-69