

DATE: June 11, 1990

TO: Ken Thompson, Water Production Division,
Water Utilities Department
FROM: City Attorney
SUBJECT: Authority of The City of San Diego Regarding
1988 Water Reclamation Bond Law Loan Funds

You have informed me that the Water Utilities Department of The City of San Diego wishes to apply for and receive a low interest loan from the State of California for a planned water reclamation construction project at the Aquaculture Plant. The loan amount would be approximately 4.5 million dollars; the term of the loan would be twenty (20) years; and the interest rate would be approximately three percent (3 percent). The loan would be secured by unallocated reserves of the Water Utility. This loan program was created by the Clean Water Bond Law of 1984 (California Water Code sections 13999 et seq.).

In connection with the application for this loan, you have requested a legal memorandum from this office regarding concerns which have been raised by the State Water Resources Control Board centering around the legitimacy of the City's authority to enter into a contract to receive these funds, and whether or not a special election is required before the City may "borrow" funds under this program.

The City of San Diego is a charter city with the broad corporate powers expressed in article I of the San Diego City Charter. Section 1 therein states in pertinent part:

The municipal corporation now existing and known as "The City of San Diego" . . . may own and operate public utilities, including the joint or sole operation and ownership of utilities for the purchase, development, and supply of water . . . for the use of the City and its inhabitants and others; and generally shall have all municipal powers, functions,

rights, privileges and immunities of every name and nature whatsoever now or hereafter authorized to be granted to municipal corporations by the Constitution and laws of the State of California.

California Water Code section 13999.10 sets aside twenty five million dollars (\$25,000,000) in the Water Reclamation Account created under the Clean Water Bond Law of 1984. The specific purpose of this fund is to make loans to municipalities like The

City of San Diego, for water reclamation projects which will provide reclaimed water for beneficial uses.

The City's authority to enter into a contract with the State pursuant to the Clean Water Bond Law of 1984 is not dependent upon a specific grant of power. In *Ruane v. City of San Diego*, 267 Cal. App. 2d 548 (1968), the court stated:

A charter city "has all powers over municipal affairs, otherwise lawfully exercised, subject only to the clear and explicit limitations and restrictions contained in the charter." (*City of Grass Valley v. Walkinshaw*, 34 Cal. 2d 595, 598.) Limitations and restrictions upon such powers must be expressly stated in the charter and may not be implied. (*Ibid.*) When the exercise thereof is questioned the issue is not whether the charter grants the power, but whether the charter limits or restricts the power. (*West Coast Adver. Co. v. San Francisco*, 14 Cal. 2d 516, 521 95 P.2d 138.)

Id. at 558. See also *Miller v. City of Sacramento*, 66 Cal. App. 3d 863, 868 (1977).

Clearly, the San Diego City Charter provides the power for the City to enter into a contract enabling participation in a state program specifically designed to assist municipalities in putting reclaimed water to beneficial uses. In an exercise of this power the City Council approved Resolution No. R-274078, whereby the City Manager was fully authorized and empowered to apply for and receive applicable funds under the Clean Water Bond Law of 1984.

Notwithstanding the bare powers expressed or implied in the charter enabling the City to contract with the state, the City

must be mindful of charter restrictions pertaining to contracting indebtedness, as well as constitutional provisions pertaining to debt limitation. However, for reasons which will be discussed herein, these restrictive provisions do not apply to this proposed contract.

The constitutional debt limitation provision which addresses municipalities is found in the California Constitution, section 18 of article XVI, and provides in pertinent part:

No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without

the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose . . . nor unless before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also provision to constitute a sinking fund for the payment of the principal thereof, on or before maturity, which shall not exceed forty years from the time of contracting the same

Simply stated, this provision generally prohibits the City Council from encumbering the general funds of the City beyond the year's income without first obtaining the consent of two-thirds of the electorate. *City of Palm Springs v. Ringwald*, 52 Cal. 2d 620, 627 (1959). The City of San Diego incorporates this same prohibition into its charter, in section 99.

One of the numerous exceptions carved out of this general prohibition is the "special fund" doctrine. Under this doctrine, voter approval will not be required if the debt is not "a legally enforceable obligation against the local government's general funds or taxing power." 67 Ops. Cal. Att'y Gen. 349, 353 (1984). See also *City of Oxnard v. Dale*, 45 Cal. 2d 729 (1955).

Charter section 53 creates within the administrative organization of the City a separate utility known as the Water Utility. This same section establishes a "special fund" wherein all revenues of the Water Utility shall be deposited. It is against this fund that contractual indebtedness incurred by the development, conservation or distribution of water shall be charged.

Similarly, San Diego Municipal Code section 64.0403 established by ordinance, a "special fund" wherein all revenues derived from the operation of the wastewater system shall be deposited. Use of this fund is limited to: 1) paying the cost of maintenance and operation of the City's wastewater system; 2) paying all or any part of the cost and expense of extending, constructing, reconstructing, or improving the City's wastewater system or any part thereof; and 3) any purpose authorized by Section 90.2 of the City Charter. (Under Section 90.2 of the City Charter, water reclamation facilities may be constructed and operated as part of the water system or the sewer system.)

Both systems contain then a charter or municipal code provision establishing a "special fund" from which the state's loan would be repaid. In either case, repayment under the proposed loan contract will not effect an increase in property

taxes or threaten foreclosure upon government property. See City of Redondo Beach v. Taxpayers, Property Owners, etc., City of Redondo Beach, 54 Cal. 2d 126, 131 (1960). Therefore, it is our conclusion that the debt created by this contract would be outside the scope of the voter requirement.

The remaining provisions of the San Diego City Charter restricting indebtedness pertain to general obligation and revenue bonds. As this loan would not constitute bonded indebtedness, discussion of charter sections 90, 90.1 and 90.2 is unnecessary.

If the application process so requires, feel free to incorporate this memorandum. Should you need additional assistance in this matter, please call me.

JOHN W. WITT, City Attorney

By

Richard L. Pinckard

Deputy City Attorney

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ML-90-71