

MEMORANDUM OF LAW

DATE: November 30, 1995

TO: Charles E. Mueller, Jr., Financing Services Manager

FROM: City Attorney

SUBJECT: Use of AB 1600 Funds for Construction of the Reclaimed  
Water Distribution System

Question Presented

At its meeting of October 6, 1995, the Executive Committee requested our opinion on the legality of using AB 1600 water expansion balances to pay for the construction of the reclaimed water distribution system.

Conclusion

AB 1600 funds collected through capacity fees may be used for the construction of the reclaimed water distribution system to the extent that it is determined that the reclaimed water constitutes a new water source which is beneficial to the development project for which the capacity fee was paid.

Analysis

The primary source of local authority to require the payment of fees as a condition of land development is the general police power authority contained in Article XI, Section 7, of the California Constitution. In 1987, the state legislature enacted statutes which imposed procedural and substantive requirements relating to the calculation, adoption, administration, and enforcement of local agency impact development fee systems.

Under the provisions of the development fee law (Cal. Gov't Code Sections 66000-66024; commonly referred to as "AB 1600"), whenever a local agency imposes a fee or other monetary exaction as a condition to the approval of a development project for payment of the costs of public facilities related to the project, the agency must identify the purpose of the fee and the public facilities to be financed. Additionally, there must be a reasonable relationship between the use of the fee and the development project, and the need for the facilities and the project. The agency also must establish a reasonable relationship between the amount of the fee and the costs of the facilities, or the portion of the facilities attributable to the development. Cal. Gov't Code Section 66001.

The statutory restrictions established by AB 1600 codified many of

the constitutional tests which previously had been applied to development exactions by the California courts. For example, Government Code section 66005 expressly states that it was the "intent of the Legislature in adding this section to codify existing constitutional and decisional law with respect to the imposition of development fees and monetary exactions on developments by local agencies."

Although not included in the definition of a development project, capacity charges also must not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed, and must bear a reasonable relationship to the public needs created by the proposed development project.

Section 66013 defines capacity charges as "charges for facilities in existence at the time the charge is imposed or charges for new facilities to be constructed in the future which are a benefit to the person or property being charged." Cal. Gov't Code ' 66013.

Cal. Gov't Code Section 66013.

Construing AB 1600 as a whole, and Section 66013 in particular, it is evident that the statutory purpose of those Sections intended by the state legislature was to restrict designated development and capacity fees to be used to construct public facilities which benefit the project for which the fee was paid.

In the City of San Diego, capacity fees are established from time to time, taking into account the capital improvement projects necessary for the system to meet the demands of all users of the system. Each property connecting to the system receives the direct benefit of those improvement projects. Thus, in order for capacity fees to be used to pay for the reclaimed water distribution system, there must be a benefit conferred by the reclaimed water distribution system on those projects for which the capacity fees were collected.

Pursuant to a memorandum by Milon Mills, Director of the Water Utilities Department, and David Schlessinger, Director of the Metropolitan Wastewater Department (a copy is attached for your reference), it is clear that the reclaimed water distribution system will provide a new source of water for the City of San Diego. Inasmuch as this new source of water will expand the City's existing water supply, it does confer a benefit on the region and those who have or will pay capacity fees. Additionally, the reclaimed water provides a reliable source of water during times of drought to those who normally may find their water supply curtailed. Such reliability is also beneficial.

#### Conclusion

From the foregoing, we conclude that reclaimed water confers a benefit on projects for which capacity fees have been or will be collected. Since reclaimed water constitutes a new and reliable water source which is beneficial to the region, each project for which

capacity fees are paid receives a direct benefit from it. Because there is a benefit conferred on projects which have or will pay capacity fees, AB 1600 funds collected through capacity fees may be used for the construction of the reclaimed water distribution system.

JOHN W. WITT, City Attorney

By

Kelly J. Salt

Deputy City Attorney

KJS:pev:400(x043.2)

Attachment

ML-95-85