



San Diego County Water Authority

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November 5, 2015

Marcia Scully, General Counsel
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

MEMBER AGENCIES

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- City of Escondido
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- City of Oceanside
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- City of San Diego
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Municipal Water District
- Camp Pendleton
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- Rainbow
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- San Dieguito Water District
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- South Bay Irrigation District
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- Valley Center
Municipal Water District
- Vista Irrigation District
- Yuima
Municipal Water District
- OTHER REPRESENTATIVE**
County of San Diego

Re: Board Item 8-1 – Adopt Twenty-First Supplemental Resolution to the Master Revenue Bond Resolution authorizing the sale of up to \$250 million of Water Revenue Bonds, 2015 Authorization; and approve expenditures to fund the cost of issuance of the Bonds

Dear Ms. Scully:

The purpose of this letter is to inquire regarding the procedures followed by MWD in authorizing the sale of water revenue bonds under Board Item 8-1, but more broadly to inquire regarding procedures the district has followed since at least 1991 to authorize its water revenue bonds. Under our analysis, as discussed below, it appears that MWD has been issuing water revenue bonds since at least 1991, for a total of over \$4 billion, without statutory authority.

According to the Board Memorandum, The Twenty-First Supplemental Resolution authorizes the sale of up to \$250 million of bonds pursuant to MWD Ordinance No. 149, which determined that the interests of MWD require the use of revenue bonds up to an aggregate amount of \$500 million. Such an ordinance, adopted by a two-thirds vote, is required by MWD Act Section 237 before water revenue bonds can be issued. The Twenty-First Supplemental Resolution also references MWD Resolution 8329, adopted in 1991, which is the “Master Resolution” upon which subsequent supplemental resolutions and individual bond issues are based.

The procedures followed by MWD in authorizing this water revenue bond prompted us to review the procedures followed by MWD for previous bond issues, particularly water revenue bonds issued since the 1991 Master Resolution was adopted. Our concern was that we could not recall that previous bonds had been preceded by an ordinance as required by Section 237 of the MWD Act. The Master Resolution does not cite any ordinance that might comply with Section 237, or for that matter any ordinance at all. Likewise, none of the twenty subsequent supplemental resolutions cite any ordinance. In fact, our research shows that Ordinance No. 148 was issued in 1981 regarding the sale of \$150 million in revenue bonds, and assuming ordinances are numbered in sequence, no ordinances were enacted by MWD for the next 34 years, until Ordinance No. 149 was adopted last month.

A public agency providing a safe and reliable water supply to the San Diego region

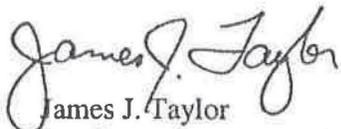
It appears then, that at least since 1991, MWD had not issued any new revenue bonds pursuant to the ordinance required by statute. While Section 62 of the MWD Act provides that any act to be done by resolution may be done by ordinance, there is no mirror provision that any act to be done by ordinance may be done by resolution. We simply do not see any exception to the ordinance requirement.

The Water Authority is concerned that MWD's apparent failure to follow statutory requirements in issuing new water revenue bonds for at least the last 24 years places a cloud on the validity of all of those bonds. To apprise the district, its directors, and member agencies of possible consequences of this situation, we request answers to the following questions:

- Do you disagree with the analysis contained in this letter indicating that MWD has failed to follow statutory requirements in issuing revenue bonds, as described? If so, please let me know the basis of your analysis and conclusion.
- Has MWD obtained or will MWD obtain an opinion from its bond counsel on the implications of failure to follow statutory requirements since at least 1991?
- Does MWD now have a disclosure obligation to its current and future bond holders of the failure to issue debt in conformance with statutory requirements?
- Does MWD now have any continuing obligation to disclose this deficiency in its annual financial statements?

I would appreciate a response to this letter by email by Friday afternoon so that I can advise the Water Authority's MWD delegates on the issue. My email address is jtaylor@sdewa.org. The Water Authority's MWD board representatives may have other comments on Board Item 8-1; this letter is solely to address the legal questions as described. Thank you.

Sincerely,


James J. Taylor
Interim Deputy General Counsel

cc: Water Authority's MWD Delegates