MEMORANDUM OF LAW

DATE: January 12, 1993

TO: Milon Mills, Director, Water Utilities

FROM: City Attorney

SUBJECT: Tijuana Valley County Water District

By letter of October 28, 1992, you were notified by the San Diego County Water Authority ("CWA") that the Tijuana Valley County Water District ("District") has applied for financial assistance for planning aspects related to groundwater development within The City of San Diego. Specifically, the District is interested in studying the feasibility of demineralizing brackish groundwater extracted from the Tijuana River Valley and selling the demineralized water.

Prior to approving the financial assistance, the CWA has asked you for The City of San Diego's input and review on the proposed project. As you are aware, the District's boundaries overlap the City's. (See, attached map.) You have asked our office to review the proposed groundwater development and the City's jurisdiction over the sale of any demineralized water by the District. More specifically, you have asked us to review whether the District must obtain the City's permission to sell water to city inhabitants.

ANALYSIS

Article XI, section 5 of the California Constitution declares that the powers of a charter city with respect to municipal affairs are subject only to the limitations and restrictions contained in its charter. Thus, with respect to municipal affairs, the city charter is paramount to any inconsistent state laws enacted by the legislature, subject to basic constitutional limitations. See, Wilson v. City of Los Angeles, 54 Cal. 2d 61, 65 (1960); Cramer v. City of San Diego, 164 Cal. App. 2d 168, 171 (1958); 5 B. Witkin, Summary of Cal. Law (8th ed. 1974) Sections 448-453, pp. 3746-3751.

The courts have recognized that the distribution of water by a city to its inhabitants is a municipal affair. City of Pasadena v. Charleville, 215 Cal. 384, 389 (1932); City of Pasadena v. Chamberlain, 204 Cal. 653, 659 (1928); City of Santa

Clara v. Von Raesfeld, 3 Cal. 3d 239, 246-247 (1970). As a municipal affair, the sale and distribution of water therefore comes within the proper domain and regulation of the laws of The City of San Diego. The question therefore is whether the City can establish regulations which require the District to obtain a franchise in order to sell water to city residents. This issue was addressed in City of San Diego v. Otay Municipal Water District, 200 Cal. App. 2d 672 (1962).

In Otay, the defendant water district was organized under the Municipal Water District Act of 1911. It had approximately 60,000 acres within its boundaries when The City of San Diego annexed 4,000 of those acres. Thereafter an improvement district was formed covering the 4,000 annexed acres plus another 8,000 of the water district's 60,000 acres, to construct a distribution system that would enable the water district to furnish water to the 12,000 acres for the first time. The City brought a declaratory relief action to prevent the water district from furnishing water to the annexed 4,000 acres on the ground this function was a municipal affair.

The court concluded there was nothing in the Municipal Water District Act of 1911, or in the statutes under which the City annexed the 4,000 acres, that was inconsistent with the ordinances of The City of San Diego. The court therefore reasoned that inasmuch as the sale and distribution of water is a municipal affair, the City has the power to require the District obtain a franchise as a condition precedent to providing such utility services to the City's inhabitants. Id. at 679.

The San Diego City Charter provides that "┌nσo person, firm, or corporation shall establish and operate works for supplying the inhabitants of The City of San Diego with . . . water" without the City's consent. San Diego City Charter Section 103.1. The District is empowered under the County Water District Act (Cal. Water Code Sections 30000 et seq.). As in Otay, the County Water District Act contains no provision foreclosing the application of the foregoing charter provision to the District. Charter Section 103.1 therefore is controlling.

The furnishing of water to inhabitants of The City of San Diego by the District constitutes the exercise of a franchise pursuant to Charter Section 103.1. Otay, 200 Cal. App. 2d at 678. Thus, in order for the District to sell water to city inhabitants, it must obtain a franchise within the territorial limits of the City, and the franchise is "'of a kind that is within ┌the City'sσ jurisdiction . . . to grant or withhold.'" Id.; see also, San Ysidro Irrigation District v. Superior Court, 56 Cal. 2d 708,717 (1961).

CONCLUSION

The sale and distribution of water within the territorial limits of The City of San Diego is a municipal affair. As a charter city, The City of San Diego may establish regulations controlling that sale and distribution.

Charter Section 103.1 requires that no person, firm, or corporation operate works for supplying water to city residents without the City's permission. Thus, if the District demineralizes the groundwater in the Tijuana River Valley and wishes to sell the water to city inhabitants, then it must obtain a franchise from the City.

We hope this information addresses any questions you may have regarding the City's jurisdiction. If you have any additional questions, however, please do not hesitate to contact us.

JOHN W. WITT, City Attorney
By
Kelly J. Salt
Deputy City Attorney

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Attachment
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