



To: Volunteer Citizen-Based Charter Committee

From: Cathy Standiford, Partner

Subject: Preservation of Rights over Natural Resources

Date: December 1, 2015

The Charter Committee is considering elements that should be included in the charter “skeleton.” On November 10 the Committee began to discuss whether the charter should include reference to the City’s Water Department or Water Board of Commissioners. Some Committee members expressed concerns that the City be able to maintain control over water as a natural resource. This memorandum contains additional information about peer agency charter references about the preservation of rights or control over natural resources.

San Bernardino

San Bernardino Charter Article III, Section 40, “Powers of Mayor and Common Council”, subsection (t) states:

Public Utilities. Council shall have power to contract for supplying the City water for municipal purposes, or to acquire, construct, repair and manage pumps, aqueducts, reservoirs or other works necessary or proper for supplying water for the use of such City or its inhabitants, or for irrigation purposes therein, subject to the powers and supervision of the Board of Water Commissioners as in this Charter provided.

This language in the charter gives ultimate authority to the Mayor and Common Council to control the systems and infrastructure necessary for the provision of water and wastewater treatment. The powers of the Board of Water Commissioners and the operation of the Water Department are defined by Article IX of the Charter.

Article III, Section 40, subsection (p) gives the Mayor and Common Council similar authority over the sewer and storm water systems:

Council shall have power to acquire, establish, construct, reconstruct, maintain, operate, manage, repair, improve or finance any building, system, plan, works, facilities or undertaking used for or useful in the collection, treatment or disposal of sewage and the reclamation of effluent therefrom, or storm water, including drainage.

Peer Agency Charters

Management Partners reviewed the charters of 12 peer agencies that operate a water and/or wastewater utility. Of these, only two include specific references to water or public utilities departments (Riverside and Glendale). However, our research indicates it is common for charters to include general language establishing a city's rights over land and other natural resources.

For example, Anaheim Charter Article III, Section 300, entitled "Rights and Liabilities" states:

The City shall continue to own, possess and control all rights and property of every kind and nature owned, possessed and controlled by it on the effective date of this Charter and shall continue to be subject to all its lawfully enforceable debts, obligations, liabilities and contracts. (Amended November 7, 2000, filed by Secretary of State February 6, 2001.)

Stockton's Charter, Article 3, Section 301 ("Succession") states:

The City of Stockton shall continue to own, possess, and control all rights and property of every kind and nature, owned, possessed or controlled by it at the time this Charter takes effect and shall be subject to all its debts, obligations and liabilities.

Bakersfield's charter language is slightly more specific, as shown in the following excerpt from Charter Article III, Section 12 "Rights and Liabilities."

The City may use a corporate seal; may sue and be sued; may acquire property in fee simple or lessor interest, by estate, purchase, gift, appropriation, devise, lease, lease with privilege to purchase, for any municipal purpose; may sell, lease, hold, manage and control such property; may make any and all rules and regulations, to carry out all covenants or conditions of any conveyance, deed, gift, bequest or lease; may acquire, construct, own, lease, operate and regulate public utilities...(emphasis added).

Chula Vista, which does not operate a water or wastewater utility, also references rights and control over property and resources in its Charter. Section 101, "Succession, Rights and Liabilities" states:

The City of Chula Vista shall own, possess and control all rights and property of every kind and nature owned, possessed or controlled by it and shall be subject to all its debts, obligations and liabilities.

In summary, charter language that explicitly grants control over rights and property (including water rights) is a common practice. Such language typically appears early in the charter document under the heading of "Rights and Liabilities," "Powers and Succession," or some combination of the two, and is present whether the city operates a water or other public utility or not.

