

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

September 1, 1992

To: Board of Directors (Engineering and Operations Committee--Action)  
Board of Directors (Finance and Insurance Committee--Action)

From: General Manager

Subject: Revision No. 7 to Appropriation No. 536 from \$26.6 Million to \$26.9 Million to Settle Construction Claims Relating to the Oxidation Demonstration Project and Authorization to Issue an Extra Work Order to the Contractor in the Amount of \$300,000

### Report

In May 1992, your Board authorized Revision No. 6 to Appropriation No. 536, to increase funding to \$26.6 million to finance completion of the construction phase and continued operation of the Oxidation Demonstration Plant. This revision specifically excluded any funds for construction delay claims, which had not been submitted by the prime contractor, Merco Construction Engineers, Inc., (Merco) at that time.

Merco subsequently submitted a claim in the amount of \$2.17 million, for delays and impacts to the project allegedly caused by changes directed by the District, and by actions by the District and its construction manager during the course of the contract. The project was completed approximately seven months behind schedule. The late completion was in part the result of late delivery of specialized equipment by the contractor's suppliers and in part the result of changes to the work directed by Metropolitan which resulted in the issuance of over 80 extra work orders to the contractor. Previous discussions with the contractor had been unsuccessful in determining the relative impact of District-ordered changes.

In an attempt to reach a settlement of the contractor's delay claim and to resolve all contract issues remaining in contention, negotiations were held August 17, 1992, between Metropolitan staff and contractor representatives. As a result, an agreement in the amount of \$300,000 was reached in settlement of all claims arising under or by virtue of the contract. The proposed settlement amount is believed to be reasonable considering the merit of a portion of the contractor's claim, Metropolitan's costs to prepare a defense against the claim, the costs of litigation, and the risk of a potentially adverse court decision.

This letter seeks your Board's authorization for the General Manager's issuance of an extra work order providing for payment in the amount of \$300,000 in settlement of all outstanding issues under or by virtue of the contract. Section 8115(d) of the Metropolitan Administrative Code requires the approval of your Board for issuance of an extra work order when the total cumulative amount expended on extra work exceeds five percent of the contract bid amount. The bid amount for the original contract was \$12,204,000. The net total amount of extra work issued to date is \$599,664 or approximately 4.9 percent of the bid amount. Issuance of this extra work will increase the total of all extra work on the project to \$899,664 or approximately 7.4 percent of the bid amount. An increase of \$300,000 in Appropriation No. 536 is now required to fund this extra work order.

This action is exempt from the provisions of the California Environmental Quality Act, as the settlement of claims will have no possible effect on the environment.

#### Board Committee Assignments

This letter is referred for action to:

The Engineering and Operations Committee because of its authority to study, advise, and make recommendations with regard to construction claims, pursuant to Administrative Code Section 2431(f); and

The Finance and Insurance Committee because of its authority to study, advise, and make recommendations with regard to authorization of appropriations pursuant to Administrative Code Section 2441(d).

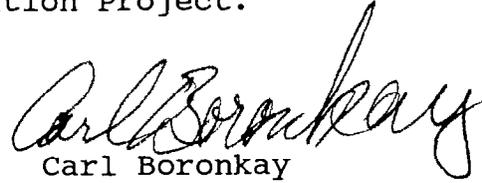
#### Recommendations

#### **ENGINEERING AND OPERATIONS COMMITTEE FOR ACTION.**

It is recommended that the General Manager be authorized to issue an extra work order, in the form approved by the General Counsel, to the contractor constructing the Oxidation Demonstration Project for payment of \$300,000, for settlement of all outstanding claims arising under or by virtue of the contract.

**FINANCE AND INSURANCE COMMITTEE FOR ACTION.**

It is recommended that the Board authorize an increase in Appropriation No. 536 from \$26.6 million to \$26.9 million from the 1991 Revenue Bond Construction Fund to finance all estimated costs for the settlement of outstanding claims by the contractor on the Oxidation Demonstration Project.

  
Carl Boronkay

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(apr536-8262)