

APPROVED  
by the Board of Directors of  
The Metropolitan Water District  
of Southern California  
at its meeting held



**MWD**  
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

AUG 22 1995

*[Signature]*  
EXECUTIVE SECRETARY

7-11

July 31, 1995

To: Board of Directors (Land Committee—Action)  
(Legal and Claims Committee—Action)

From: General Manager

Subject: Authorization for Payment of Award of Relocation Assistance Appeals Committee to Pavlovich Family

RECOMMENDATION:

It is recommended that the Board of Directors authorize the payment to the Pavlovich family and their attorney the sum of \$384,876 awarded by the Relocation Assistance Appeals Committee.

John R. Wodraska  
General Manager

Submitted by:

*[Signature]*  
for Gary M. Snyder  
Chief Engineer

Concur:

*[Signature]*  
John R. Wodraska  
General Manager

josvan\board\pavlovic.raa

**EXECUTIVE SUMMARY:**

California law requires government agencies undertaking public works to pay certain costs related to relocating displacees from the project area. The Pavlovich family was relocated from the Eastside Reservoir Project area. The family disputed the amount of relocation benefits, and were provided an administrative appeal hearing as required by law. The Relocation Assistance Appeals Committee issued its decision on July 19, 1995 awarding benefits in the amount of \$384,876. Pursuant to Metropolitan's Relocation Assistance Rules and Regulations, all payments of claims over \$250,000 must be approved by the Board of Directors.

**DETAILED REPORT:**

California law requires government agencies to provide relocation benefits and assistance to persons displaced by public projects. The benefits include payment for moving expenses, assistance in locating a replacement home, monetary assistance if comparable dwellings are more expensive than the amount paid to the displacee, payment for loss of personal property due to the move. Businesses are also entitled to similar benefits. In the event that a dispute arises over relocation assistance, the displacee has the right to review by an appeals board. Metropolitan's Relocation Assistance Rules and Regulations provide for an Appeals Committee consisting of Metropolitan employees.

The Pavlovich family owned a 20-acre parcel required for the Eastside Reservoir Project. The family sold the property to Metropolitan in 1990, and continued to reside in a trailer on the property pursuant to a lease. The family raised a number of animals on the property, including racing pigeons, and also operated a horse training and breeding business. In December, 1992, Metropolitan notified the family that they would have to move from the property and that they were entitled to certain relocation assistance benefits. Disputes arose over the amount of the family's benefits, in particular their claim for loss of value of the racing pigeons and the amount of the benefit for purchase of a comparable dwelling. The Pavloviches were provided with an administrative appeal hearing and were still not satisfied with the decision of the appeal committee. The family filed a successful administrative mandamus action, and the Riverside Superior Court ordered that another administrative hearing be held.

After settlement negotiations were unsuccessful, a new appeals committee was convened to consider the original claims of the family as well as a number of additional claims. The family's claims totalling \$3,354,394.03 are described in the attached decision of the appeals committee. After hearing substantial evidence over a period of six months, the committee awarded \$384,876. Pursuant to Metropolitan's Relocation Assistance Rules and Regulations, the decision of the appeals committee constitutes the final administrative remedy for the displacees. However, because the amount of the award exceeds \$250,000 it is necessary for your Board of Directors to authorize payment of the award.

TO: Shalom Katz, Esq.  
THOMAS & ELLIOTT  
12400 Wilshire Boulevard, Suite 400  
Los Angeles, California 90025

Joseph Vanderhorst, Esq.  
The Metropolitan Water District of Southern California  
350 South Grand Avenue  
Los Angeles, California 90071

FROM: Mr. Gary Hazel  
Assistant Chief Engineer  
Mr. Mark T. Mendoza  
Principal Real Estate Representative  
The Metropolitan Water District of Southern California  
Relocation Assistance Appeals Committee  
350 South Grand Avenue  
Los Angeles, California 90071

SUBJECT: FINDINGS AND DECISION OF THE  
RELOCATION ASSISTANCE APPEALS  
COMMITTEE REGARDING BOGOLUB (LOU)  
PAVLOVICH AND HONI PAVLOVICH

The Relocation Assistance Appeals Committee

(Committee), having heard and considered all the testimony and  
evidence presented to it by both parties, hereby renders its  
decision as follows:

BACKGROUND

Claimants, BOGOLUB (LOU) PAVLOVICH and HONI PAVLOVICH  
(The Pavloviches), appealed the decision of THE METROPOLITAN WATER  
DISTRICT OF SOUTHERN CALIFORNIA (Metropolitan) regarding the  
determination of the amount of relocation assistance benefits  
which Metropolitan determined The Pavloviches qualified for, and

were entitled to, in connection with the voluntary acquisition of their real property and improvements thereon, located near the City of Hemet, California.

In the Fall of 1989, The Pavloviches listed the subject property for sale with a real estate brokerage firm. Shortly thereafter, they withdrew the property from the market and voluntarily offered to sell the subject property to Metropolitan for the Domenigoni Valley Reservoir Project. Effective as of July 31, 1990, The Pavloviches and Metropolitan entered into an "Agreement of Purchase and Sale and Escrow Instruction" (Agreement) for the sale and purchase of the subject property and certain improvements located on the subject property for the sum total of \$495,000. No personal property was to be covered by said Agreement. On or about October 31, 1990, the grant deed from the Pavloviches to Metropolitan was duly recorded in the records of the Riverside County Recorder's Office.

In connection with the sale and purchase of the subject property, Metropolitan agreed to lease the subject property back to The Pavloviches for the sum of \$200 per month, commencing October 31, 1990, with no rental charges for August, September,

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and October 1990. Less than half of the subject property was used partially for residential purposes, including the keeping of certain animals as pets; and partially for the raising of homing pigeons and breeding of horses. The remaining portion of the property was vacant.

The decision in The Pavloviches' initial Administrative Hearing was challenged by a Writ of Mandamus, resulting in this second Administrative Hearing to review Metropolitan's determination of the amount of relocation assistance benefits offered to the Pavloviches. During the course of The Pavloviches' second Relocation Appeal hearing, one of the three Committee members became seriously ill and, by mutual stipulation, the parties agreed to continue the hearing with the two remaining Committee members.

During the course of the Administrative Hearings regarding Metropolitan's basis for determining the amount of relocation assistance benefits for The Pavloviches, their claims were made as follows:

1. Claim for 117 trees (\$7,029.38)
2. Motel rental (\$793.65)
3. Loss of income from horse breeding (\$1,436,400)
4. Reimbursement for rent (\$13,050)
5. Claim for emotional distress (\$50,000)
6. Diminution in value of horses (\$1,125,000)
7. Loss of racing pigeons (\$374,000)
8. Attorney's fees for administrative mandamus action (\$89,015), and for the present administrative appeal hearing (\$84,106)
9. Purchase price differential for residential housing replacement (\$175,000)

The total amount of The Pavloviches' relocation assistance claims is \$3,354,394.03. After 27 days of testimony by witnesses, presentation of documentary evidence, and final arguments of counsel for both parties given on July 6, 1995, the matter was submitted to this Committee for its findings and conclusions.

In reviewing the claims made by The Pavloviches, the Committee has referred to Government Code Section 7260 et seq., which is known as the Relocation Assistance Act, the California Code of Regulations, Title 25, Section 6000 et seq., which are the Relocation Assistance Guidelines issued by the State Department of Housing and Community Development, the Relocation Assistance Rule and Regulations of Metropolitan Water District, as well as all the evidence and testimony presented at the hearing. The following are the findings and recommendations of the Committee, with respect to each of the above-noted claims.

#### FINDINGS AND RECOMMENDATIONS OF COMMITTEE

The Committee was presented with nine claims for reimbursement by The Pavloviches during the course of this Appeal.

The Committee has dealt with each of these claims separately and finds as follows:

##### A. Trees

The Pavloviches have requested the sum of \$7,029.38 as compensation for numerous trees on the subject real property. The Committee, after reviewing this claim, has determined that the request for compensation for trees is not one which can be granted

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under any of the Relocation Assistance guidelines or statutes. It is the Committee's determination that this request does not rest within the scope of relocation assistance or this administrative process. The trees are a component of the voluntary acquisition of the subject real property which was sold to Metropolitan in July 1990. Trees are appurtenant to the land and are not personal property which is within the scope of relocation assistance benefits. For these reasons, the Committee denies this claim in full.

B. Motel Rental

The Pavloviches have requested \$793.65 as reimbursement for the costs they incurred for renting a motel room after they were evicted from their property. Section 6042(a) of the Relocation Assistance Guidelines provides that "No eligible person shall be required to move from his dwelling unless within a reasonable period of time prior to displacement comparable replacement dwellings or, in the case of a temporary move, adequate replacement dwellings are available to such person."

The evidence and testimony presented at the hearing indicated that the Pavloviches were provided with approximately

18 replacement properties for their consideration prior to their eviction. The evidence and testimony further reflect that The Pavloviches were not satisfied with any of the properties to which they were referred, and chose to reject all these properties from consideration.

Section 6042(d) of the same Relocation Assistance Guidelines further states that "No eligible person occupying property shall be required to move from a dwelling, or to move a business or farm operation, without at least 90 days' written notice from the public entity requiring the displacements." (See also Section IX, Paragraphs 1, 2 and 3.A. of the Relocation Assistance Rules and Regulations of Metropolitan). After carefully reviewing the testimony and evidence presented at the hearing, as well as the Relocation Assistance guidelines and statutes, it is the Committee's finding that Metropolitan reasonably and fairly provided The Pavloviches with ample advance notification of the time frame which they would have to move from the subject real property.

The testimony and evidence presented reflected that The Pavloviches were given written notice on December 14, 1992, and

had approximately six months' prior knowledge, based on Metropolitan's notice, that they would have to leave their property. The testimony and evidence further show that The Pavloviches refused to believe that they would actually be required to move, and decided to take little or no advance action.

In view of these facts, the Committee believes that The Pavloviches had sufficient time in advance to prepare for the move, and their failure and refusal to do so were unreasonable and irrational. For these reasons, the Committee finds that Metropolitan complied with state law and denies this request for reimbursement.

C. Loss of Income From Horse Breeding

The Pavloviches have claimed the sum of \$1,436,400 as loss of income resulting from their inability to breed their horses during the years 1993-1995. While the Committee has not found any direct provision for the compensation of loss of income in the Relocation Assistance guidelines or statutes, Government Code Section 7262(c) of The Relocation Assistance Act provides that in addition to compensating a displaced person for his actual and reasonable moving expenses for his business, a displaced

person can also elect to receive an amount equal to his average annual net earnings, not less than \$1,000, nor more than \$20,000. (See also Section 6100 of the Relocation Assistance Guidelines). In addition, Section XIII(2)(B) of Metropolitan's Relocation Assistance Rules and Regulations provides for compensation of actual direct losses of tangible personal property attributable to moving or discontinuing such business. Based on the above, the Committee has reviewed The Pavloviches' tax return records pertaining to the operation of their horse business, which disclosed a net operating loss, at an increasing rate, each year prior to Metropolitan's involvement. In addition, there was no testimony nor evidence presented which conclusively show that the history of business losses was directly attributable to the relocation, but rather to The Pavloviches' own decision not to breed their horses.

It appears, from the evidence, that The Pavloviches ceased breeding horses in 1989 and 1990, prior to voluntarily selling their property to Metropolitan, and did not cease breeding because of any anticipated relocation, which occurred in 1993.

For all of the reasons set forth above, the Committee is denying this claim for loss of income.

D. Housing Rental

The Pavloviches have requested reimbursement for the sum of \$13,050, which is the amount of money they have expended in order to temporarily rent a house. The Committee's findings in Section B above are applicable as they relate to our analysis of the claim that housing rental funds were expended because Metropolitan did not provide the The Pavloviches with sufficient replacement property referrals, or with sufficient notice that they would have to move. After carefully reviewing the testimony and evidence presented at the hearing, as well as the Relocation Assistance guidelines and statutes referred to in Section B above, it is the Committee's finding that Metropolitan reasonably and fairly provided the The Pavloviches with ample advance notification of the time frame within which they would have to move from their property. The testimony and evidence presented disclosed that The Pavloviches had at least six months' prior notification and knowledge that they would have to leave the

subject property; and that The Pavloviches refused to prepare to move, despite the termination clauses in their lease agreement and Metropolitan's 90-Day Notice. Metropolitan was forced to seek possession of the subject property through an Unlawful Detainer action.

The Committee has further determined that The Pavloviches do not qualify for relocation benefits under the Relocation Assistance guidelines or statutes relating to payments to tenants, or replacement housing payments. (See Metropolitan's Relocation Assistance Rules and Regulations, Sections XI(3) and (4)).

In view of this, the Committee believes that The Pavloviches had sufficient time in advance to prepare for the move; and their failure and refusal to do so were unreasonable and irrational. For these reasons, this request is denied.

E. Emotional Distress

The Pavloviches have requested the sum of \$50,000 for emotional distress caused by the relocation assistance process. The Committee has reviewed the Relocation Assistance guidelines and statutes and can find no statutory or administrative basis on

which to approve a claim for emotional distress. While the Committee is very sympathetic to the The Pavloviches' claim, this item is not compensable under the Relocation Assistance Guidelines and is denied.

F. Value of Horses

The Pavloviches have requested the sum of \$1,125,000 as compensation for the loss in value to their horses. The testimony and evidence presented by the experts for both sides in this hearing appear to agree that the current value of the horses is approximately \$1,000 each. After reviewing the testimony and evidence presented during this appeal process, we can find no evidence that any action or inaction by Metropolitan resulted in the diminution in value of The Pavloviches' horses.

However, in an effort to render an equitable resolution of this claim, and in an attempt to avoid undue hardship to The Pavloviches, the Committee has determined that The Pavloviches may be compensated in the sum of \$7,000 per horse. The Pavloviches have 18 horses; and, therefore, it is recommended that they receive the sum of \$126,000. The Committee believes that this compensation may be awarded under the circumstances without an

admission of any diminution in value that the horses may have suffered during the course of any relocation, or any other activity attributable to Metropolitan in this matter.

Further, the Committee finds that the 18 horses remain the property of The Pavloviches and should be claimed by them as soon as possible. The Committee has also determined that Metropolitan has paid the sum of \$120,943, as of July 13, 1995, in boarding and caring for said horses since the horses were removed from the subject property. The Pavloviches are not being requested to reimburse Metropolitan for this sum in connection with this Administrative Hearing regarding Metropolitan's determination of the relocation assistance benefits to be awarded to The Pavloviches.

G. Value of Pigeons

The Pavloviches have requested the sum of \$374,000 as payment for the loss of their pigeons. After reviewing the testimony and the evidence presented during this hearing, the Committee believes that The Pavloviches should be compensated for the loss of their pigeons. This decision is based upon Section 6092 of the Relocation Assistance Act, and

Section XIII(2)(B) of Metropolitan's Relocation Assistance Rules and Regulations, and in lieu of Metropolitan's right to request to sell the pigeons due to The Pavloviches' unilateral elimination of the pigeons.

The Committee has determined that the 56 breeder pigeons held the highest value of the pigeons in The Pavloviches' loft. Based on the testimony, the Committee has determined that these 56 pigeons should be valued between \$500 and \$1,000 per bird. The Committee will award The Pavloviches the sum of \$1,000 per bird for the 56 breeder pigeons, for a total of \$56,000.

In addition, based on the testimony and evidence presented, the Committee believes the remaining stock, including the High Flyers, Tumblers, Racers, and others to be worth between \$75 and \$150 per bird. The Committee recommends an award to The Pavloviches in the amount of \$150 per bird for the remaining 403 birds, for a total of \$60,450.

Based on the above explanation, the total compensation to be paid to The Pavloviches for their pigeons is the sum of \$116,450.

H. Purchase Price Differential

The Pavloviches claimed the sum of \$175,000 as the housing differential payment to which they believe they are entitled. Section 6102 of the Relocation Assistance Guidelines, Section 7263 of the Relocation Assistance Act, and Section XI(2) of Metropolitan's Relocation Assistance Rules and regulations provide that the purchase price differential is a calculation based on the difference between the amount paid for the displacee's property and a comparable replacement dwelling. These provisions further state that this benefit cannot exceed \$22,500, unless it is necessary for the displaced person to obtain comparable replacement property. Based on the above Relocation Assistance guidelines and statutes, the Committee finds that the purchase price differential calculation used by Wildan Associates on behalf of Metropolitan, and used in the determination of entitlement for The Pavloviches, was appropriate in this matter. However, it was disclosed that the differential computation compared net versus gross area. For this reason, the Committee has determined that the computation should have assigned gross acreage values for both the subject and the comparable property,

or net acreage values for both the subject and comparable property. In order to compensate for this inconsistency, the Committee has determined that an additional \$13,000 shall be added to the previous purchase price differential, and the total sum of \$45,000 shall be used as the purchase price differential.

I. Attorney's Fees

The Pavloviches have requested the sum of \$173,121 in attorney's fees. Section 6016(c) of the Relocation Assistance Guidelines provides that "...a public entity may pay a complainant's attorney's fees and costs and is encouraged to consider doing so when a complainant institutes a successful administrative appeal or judicial action." The Committee has determined that it will award The Pavloviches payment of all "reasonable" attorney's fees, which are deemed to be \$89,015, which were incurred to the date of the administrative mandamus hearing, and ten percent of the "reasonable" attorney's fees, which are deemed to be \$8,411 incurred in connection with the subsequent Administrative Appeal.

CONCLUSION

For all of the reasons set forth above, the Committee has determined that Metropolitan complied with state law and its own Relocation Rules and Regulations in denying The Pavloviches' claims for trees, motel rental, loss of income from horse breeding, housing rental, and emotional distress. As to said items, the Committee denies The Pavloviches' claims.

However, as to The Pavloviches' remaining claims, the Committee has determined that, in the interest of fairness and equity, and in an attempt to avoid undue hardship to the Pavloviches, it will award them \$126,000 for their horses, \$116,450 for their pigeons, and a housing differential of \$45,000, for a total award of \$287,450. In addition, the Committee will award The Pavloviches payment of all "reasonable" attorney's fees, amounting to \$89,015, incurred to the date of the administrative mandamus hearing, and ten percent of the "reasonable" attorneys fees, amounting to \$8,411, incurred in connection with the subsequent Administrative Appeal.

The Committee further wishes to advise The Pavloviches that pursuant to Section XVI(3)(C) of Metropolitan's Relocation

Assistance Rules and Regulations, determination of the Relocation Assistance Appeals Committee shall provide an appellant's final administrative remedy. Further, pursuant to Section XVI(11) of Metropolitan's Relocation Assistance Rules and Regulations, as well as Section 6176 of the Relocation Assistance Guidelines, The Pavloviches are hereby advised that they are not precluded nor limited from seeking judicial review of their claims if they are not satisfied with the outcome of their administrative remedies.

Having completed the written preparation of its findings and conclusions, as set forth in this document, the Relocation Assistance Appeals Committee concludes this matter and directs that these findings and conclusions be presented to both parties as soon as reasonably possible.

## RELOCATION ASSISTANCE APPEALS COMMITTEE

## METROPOLITAN WATER DISTRICT

## CLAIM OF BOGOLUB &amp; HONI PAVLOVICH

## SUMMARY OF SETTLEMENT

<u>ITEM</u>	<u>DETERMINATION</u>
1. Trees	Denied
2. Motel	Denied
3. Loss of Income	Denied
4. House Rental	Denied
5. Emotional Distress	Denied
6. Horses = 18 X \$7K/Horse	\$126,000
7. Pigeons = 46 Breeders @ \$1K/Bird	\$ 56,000
= 403 Racers, Tumblers	
High Flyers @ \$150/Bird	\$ 60,450
8. Housing Differential	<u>\$ 45,000</u>
Sub Total	\$287,450
9. Attorney's Fees	<u>\$ 97,426</u>
<b>TOTAL</b>	<b>\$384,876</b>

Relocation Assistance Appeals Committee

  
\_\_\_\_\_  
GARY HAZEL  
Assistant Chief Engineer

  
\_\_\_\_\_  
MARK T. MENDOZA  
Principal Real Estate Representative

M.I. 41537

Re: Attachment to Item 7-11

Subject: Authorization for Payment of Award of Relocation  
Assistance Appeals Committee to Pavlovich Family

(There is a typo in numbering the pages. There is no page 19--it is not missing.)

(Also, disregard the number on the signature page.)