



- **March 31, 2006 Quarterly Report**

Summary

This is the quarterly report to the Legal & Claims Committee on the exercise of powers delegated to the General Manager and the General Counsel by Administrative Code Sections 6431, 6433 and 6434. In addition, the General Counsel reports to the Executive Committee on the exercise of power delegated to her by Section 6431.

Attachments

ATTACHMENT A – Workers’ Compensation Matters Resolved During the Period of January 1, 2006 – March 31, 2006

ATTACHMENT B – Claims Against Metropolitan During the Period of January 1, 2006 – March 31, 2006

ATTACHMENT C – Invoices Written Off as Uncollectible During the Period of January 1, 2006 – March 31, 2006

ATTACHMENT D – Costs Collected During the Period of January 1, 2006 – March 31, 2006

Detailed Report

Contracts

Within the past quarter, the General Counsel entered into the following contracts pursuant to his/her authority under Administrative Code Section 6431:



Atkinson, Andelson, Loya, Ruud & Romo

This consultant was retained to provide legal advice and representation with respect to legal issues dealing with labor law and employee relations matters, including Grievance No. 0410G149, Grievance No. 0501G003 and unfair practices engaged in by AFSCME Local 1902.

Bell, Orrock & Watase

Metropolitan retained this consultant to provide legal advice and representation in connection with the litigation of *Granados Partners, LLC v. Metropolitan Water District of Southern California, et al.*

Bingham McCutchen, LLP

This consultant was retained to provide legal advice and representation on Hearing Officer Appeals regarding *AFSCME Local 1902 v. Metropolitan Water District*.

Burke, Williams & Sorensen, LLP

Metropolitan retained this consultant to provide legal advice and representation in the matter of *AFSCME Local 1902 v. Metropolitan Water District* pertaining to Grievance Nos. 0602G008, 0602G009 and 0505G061. The consultant was also retained to provide advice and representation in the matter of *Cargill, et al. v. Metropolitan Water District*.

Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP

This consultant was retained to provide legal advice and potential representation with respect to the litigation of *Cadiz, Inc. v. Metropolitan Water District, et al.*, Los Angeles Superior Court Case No. BC 34232.

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Gallagher Consulting, Inc.

Metropolitan retained this consultant to provide risk management professional services in connection with Project Labor Agreement and Workers' Compensation ADR program dedicated to DVL, Inland Feeder and San Diego 6 projects.

Geomatrix Consultants, Inc.

This consultant was retained to provide technical expertise in the investigation of the causes of a breach discovered in August 2004 in Metropolitan's West Valley Feeder #1. This agreement was amended during the quarter.

Horvitz & Levy, LLP

Metropolitan retained this consultant to provide legal services with respect to appeal, cross-appeal, review or related proceedings relating to the rulings and judgment in the matter of *Bay-Delta Programmatic Environmental Impact Report Coordinated cases*, Third Appellate Court Case Nos. C044267 and C044577. This service agreement was amended during the quarter.

Katherine Stone

This consultant was retained to provide legal services during the appeal process with respect to *Metropolitan Water District of Southern California v. Campus Crusade for Christ*.

Lewis Brisbois Bisgaard & Smith, LLP

Metropolitan retained this consultant to provide representation in the litigation matter of *P&D Consultants, Inc. v. Metropolitan Water District*, LASC Case No. BC341479.

Lindborg & Drill, LLP

This consultant was retained to provide consultation and representation with respect to construction contracts and potential claims arising from the retrofit of Metropolitan's water treatment plants and facilities.

O'Melveny & Myers

Metropolitan retained this consultant to provide legal advice with respect to financial matters, including water revenue bonds, interest rate swaps and other financing instruments and structures.

Peter Dowden

This consultant was retained to provide professional services, including claim analysis and litigation support, relative to the construction of Metropolitan's Inland Feeder Project. This agreement was amended during the quarter.

Sheppard, Mullin, Richter & Hampton, LLP

Metropolitan retained this consultant to provide advice and representation to Metropolitan staff named as defendants in the litigation matter of *King v. Metropolitan, et al.*

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Claims

1. Between January 1, 2006 and March 31, 2006, Metropolitan initiated, compromised, settled, or otherwise disposed of the following claims:

- a. Litigated Claims By and Against Third Parties

During the past quarter, Metropolitan initiated, compromised, settled, or otherwise disposed of the following litigated claims by and against third parties:

State Farm v. Metropolitan

On December 27, 2000, a Metropolitan employee caused a three-car, chain-reaction accident by rear-ending a vehicle insured by State Farm. State Farm filed its claim on April 12, 2001. Since Metropolitan did not formally reject the claim, State Farm had two years to file its lawsuit (Gov. Code § 945.6). In the meantime, Metropolitan had settled all personal injury and property damage claims. On October 16, 2003, State Farm filed its complaint in subrogation to recover monies paid to repair the vehicle. Considering the admitted liability by Metropolitan, potential viable waiver argument by State Farm, the costs of litigating and the relatively low claim amount, Risk Management and Legal determined that settlement of the claim for the amount of \$5,596.60 is in the best interest of Metropolitan. This case was settled by agreeing to pay the claim amount in exchange for a waiver of State Farm's costs and fees.

Dusty Ankerstar v. Henry Nunez Real Estate Co. & Metropolitan Water District

In connection with the recent sale of surplus residential property near Diamond Valley Lake, Metropolitan was served with a complaint. The plaintiff, Dusty Clover Ankerstar, alleged that he was the highest bidder on one parcel in the area and that Metropolitan's real estate agent handling the sale, Henry Nunez (broker), improperly took a lower bid from a buyer whom he represented so that he could obtain commissions from both Metropolitan and the buyer. Metropolitan filed a demurrer for dismissal arguing that plaintiff's case had no merit. We simultaneously tendered our legal defense to our broker's professional insurance carrier. In late February 2006, plaintiff agreed to dismiss Metropolitan without prejudice in exchange for waiver of our costs. Metropolitan accepted this settlement offer. Separately, our broker's insurance company accepted the tender of our defense and agreed to reimburse Metropolitan for its legal costs back to November 17, 2005, when we tendered the claim to them.

Ruthie Benson v. Metropolitan Water District [EEOC Charge No. 340-2005-03981]

On or about November 17, 2005, plaintiff lodged a complaint with the California Department of Fair Employment and Housing alleging age/race/disability discrimination and retaliation. The federal Equal Employment Opportunity Commission processed this complaint. On November 22, 2005, the Commission issued a Notice of Charge of Discrimination against Metropolitan and the parties agreed to mediation. As a result of the mediation, the parties settled the complaint effective February 1, 2006. Pursuant to the settlement, Ms. Benson ended her employment with Metropolitan after signing a general release concerning her discrimination and retaliation claims. In exchange, Metropolitan issued a warrant in the amount of \$30,000 made payable to Ms. Benson and her attorneys.

RM Broadcasting v. Metropolitan Water District

RM Broadcasting LLC, a radio station and radio tower operator in the Palm Springs area, brought an action in February 2005 asserting that it was entitled to a permanent easement to use West Pushwalla Road, north of Dillon Road, east of Indio in Riverside County. This road and the limited fee properties it passes through are used to support the Colorado River Aqueduct. Apparently, RM

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Broadcasting has been utilizing the road, without authorization, to access its radio towers on an adjacent property for several years. Metropolitan successfully demurred to the complaint. However, the court granted plaintiff leave to amend and suggested that parties explore reasonable settlement. After lengthy negotiations, RM Broadcasting and Metropolitan agreed to settle the case after the parties entered into a Master Road License Agreement allowing RM Broadcasting to use the road for a term of fifty (50) years, terminable upon notice under stated circumstances after fifteen (15) years for an annual fee of \$4000, escalated for future inflation. The superior court action was dismissed accordingly.

Notice to Abate (Citation) from the Riverside County Fire Department

On or about February 20, 2006, The Metropolitan Water District of Southern California (Metropolitan) received a Notice to Abate (NTA) from the Riverside County Fire Department (County) regarding Metropolitan property located in the City of Corona, within Riverside County (Property). Via the NTA, the County is requiring Metropolitan to remove a dry orange orchard on the Property and to clear fire breaks around and through the Property. The Property, west of Lake Mathews, is approximately 1,100 acres of land of which nearly 330 acres consists of dry orange orchard. The land was purchased in 1993 as the site for the proposed Eagle Valley water treatment plant that is part of the Central Pool Augmentation Project. Metropolitan is working with the County to prepare a plan for phased removal of the orchards. In 2004, Metropolitan cleared approximately 20 percent of the approximate 45,500 citrus trees on site at a cost of roughly \$145,000. This work took approximately six months to complete. Metropolitan estimates that complete removal of the remaining trees will cost approximately \$750,000 over a two year time period.

b. Workers' Compensation Matters

The workers' compensation claims settled by the General Manager and the General Counsel within the past quarter are reported in Attachment A.

c. Other Claims By and Against Third Parties

Non-litigated third party claims settled by the General Manager and the General Counsel within the past quarter are reported in Attachment B.

d. SB 90 Claims

During the past quarter, Metropolitan did not submit any SB 90 claims for reimbursement for state-mandated costs.

e. Separation Agreements

Metropolitan did not execute any separation agreements during this period.

2. Claims declared uncollectible by the General Manager within the past quarter are reported in Attachment C.

3. Costs collected for claims during the past quarter are reported in Attachment D.

BLA #4446

ATTACHMENT A
 Workers' Compensation Matters Resolved During the Period of
January 1, 2006 – March 31, 2006

Classification	Control No.	Date of Injury	Amount of Settlement	Nature of Injury	Basis for Settlement
Maintenance Mechanic	1995-0725-0032	7/13/95	\$65,788.58	Left upper extremity, wrist, hand, elbow, reflex sympathetic dystrophy (RSD), and rheumatologic condition.	Compromise and Release, negotiated settlement.
Utility Worker	2003-0205-0487	2/4/93	\$ 0.00	Neck, low back, knees, right hand, abrasions.	Third Party Compromise and Release, negotiated settlement.
Maintenance Mechanic	2002-0808-0080	7/12/02 CT*	\$19,337.50	Neck, low back, hands and leg.	Stipulated settlement based on treating physician's report.
Laboratory Assistant	92-1028-0180 95-0525-0458 98-0112-0301 2000-0412-0464 2002-0924-0190	10/28/92 5/23/95 10/23/97 3/22/00 12/6/01	\$10,000.00	Right upper extremity, neck, back, shoulders, wrists, hands, gastrointestinal, headaches and lower extremities.	Compromise and Release, negotiated settlement of outstanding entitlement to vocational rehabilitation services.
Maintenance Mechanic	2004-1122-0247	11/22/04	\$1,600.00	Left hand.	Stipulated settlement based on treating physician's report.
Maintenance Mechanic	2003-1229-0363 2004-0608-0651	12/23/03 5/24/04 CT*	\$26,100.00	Chest, low back and left inguinal hernia.	Stipulated settlement, negotiated settlement.
Operator	2003-0717-0037	7/17/03	\$90,000.00	Hypertension, right thumb, right ankle, right upper extremity, right lower extremity.	Compromise and Release, negotiated settlement.
Maintenance Mechanic	2000-0420-0477	1/8/90	\$47,982.50	Back, neck.	Stipulated settlement based on treating physician's report.

* CT= Continuing Trauma

ATTACHMENT B
 Claims Against Metropolitan During the Period of
January 1, 2006 – March 31, 2006

Claimant	Control No.	Amount of Settlement	Incident Description	Basis for Resolution
Todd Stowe	2005-0622-0634 CW 302080	\$4,200	On 6/22/05, District discharged water at Lake Skinner and caused flooding.	The third party's property damage claim was settled based on evaluation of damages and repair estimate.
John Petchel	2005-0634-0634 CW 302080	\$25,180	On 6/22/05, District discharged water at Lake Skinner and caused flooding.	The third party's property damage claim was settled based on evaluation of damages and repair estimate.
Armen Melkonyan	2005-0808-0064 CW 1391088	\$602.65	On 8/3/05, District gate struck third party vehicle.	The third party's property damage claim was settled based on evaluation of damages and repair estimate.
Myron Mackie	2005-0620-0628 CW 303305	\$1,792.00	On 6/19/05, third party drove over metal grid while entering DVL and damaged vehicle.	The third party's property damage claim was settled based on evaluation of damages and repair estimate.
David Ballard	2005-0826-0113 CW 1391389	\$1,693.42	On 8/26/05, District gate malfunctioned, struck and damaged third party vehicle.	The third party's property damage claim was settled based on evaluation of damages and repair estimate.

ATTACHMENT C
 Invoices Written Off as Uncollectible During the Period of
January 1, 2006 – March 31, 2006

Third Party or Cause	Control No.	Project No.	Damage Amount	Incident Description	Basis for Write-Off	Date Written Off
Damage During Use	2005-1024-0206	761065	\$746.55	On 10/24/05, a District driver rear-ended a third party vehicle and damaged District vehicle.	The property damage costs were written off because the damage occurred during the course and scope of employment.	3/7/06
Act of Nature	2003-0114-0434 CW 205746	760710	\$18,894.38	On 1/9/03, District staff was notified that pipelines were exposed due to heavy rainfall.	The property damage costs were written off due to an act of nature.	3/7/06
Damage During Use	2005-0318-0450 CW 297642	760960	\$5,470.78	On 3/16/05, a District driver rear-ended a third party vehicle and damaged District vehicle.	The property damage costs were written off because the damage occurred during the course and scope of employment.	3/7/06
Damage During Use	2004-0701-0004 CW 207711	760854	\$2,603.17	On 7/1/04, a District driver hit and damaged a third party vehicle and a District vehicle.	The property damage costs were written off because the damage occurred during the course and scope of employment.	3/7/06
Damage During Use	2004-0921-0142 CW 207888	760881	\$974.20	On 9/21/04, a District contractor continued to fill tank, as instructed by District, caused hazardous spill.	The property damage costs were written off because the damage occurred during the course and scope of employment.	3/7/06
Unidentified Third Party	2004-1005-0170	761051	\$12,501.80	On 9/25/04, third party driver hit and damaged District meter cabinet and vent stack.	The property damage costs were written off because the third party could not be identified.	3/7/06
Damage During Use	2005-0225-0386 CW 291174	760944	\$775.11	On 2/24/05, a District driver hit and damaged a third party vehicle and a District vehicle.	The property damage costs were written off because the damage occurred during the course and scope of employment.	3/7/06
Damage During Use	2005-1117-0256 CW 1396604	761071	\$862.69	On 11/16/05, a District driver damaged vehicle tires and rim.	The property damage costs were written off because the damage occurred during the course and scope of employment.	3/7/06

ATTACHMENT C
 Invoices Written Off as Uncollectible During the Period of
January 1, 2006 – March 31, 2006

Third Party or Cause	Control No.	Project No.	Damage Amount	Incident Description	Basis for Write-Off	Date Written Off
Unidentified Third Party	2005-0831-0122 CW 1391564	761041	\$1,250	On 9/25/04, third party driver hit and damaged District gate.	The property damage costs were written off because the third party could not be identified.	3/7/06
Unidentified Third Party	2005-0621-0632 CW 302560	760999	\$2,107.89	On 6/19/05, third party driver hit and damaged District gate.	The property damage costs were written off because the third party could not be identified.	3/7/06
Damage During Use	2005-0817-0090	761032	\$1,074.72	On 8/3/05, a District driver backed vehicle and hit loading dock.	The property damage costs were written off because the damage occurred during the course and scope of employment.	3/7/06
Unidentified Third Party	2005-0829-0114 CW 1392436	761040	\$635.76	On 8/29/05, third party driver hit and damaged District parked and unoccupied vehicle.	The property damage costs were written off because the third party could not be identified.	3/7/06
Damage During Use	2005-0816-0084	761030	\$738.61	On 7/10/05, a District driver backed MWD vehicle and hit guard post.	The property damage costs were written off because the damage occurred during the course and scope of employment.	3/7/06
Damaged During Use	2005-0725-0034 CW 1389806	761013	\$3,564.18	On 7/21/05, a District driver rear-ended a third party vehicle and damaged District vehicle.	The property damage costs were written off because the damage occurred during the course and scope of employment.	3/7/06
Unidentified Third Party	2005-0908-0136	761051	\$3,300.44	On 9/8/05, suspect cut fence and stole MWD generator.	The property damage costs were written off because the third party could not be identified.	3/7/06

ATTACHMENT D
 Costs Collected During the Period of
January 1, 2006 – March 31, 2006

Third Party or Cause	Control No.	Damage Amount	Incident Description	Basis for Costs Collected
Nicole Naclerio	2003-1020-0255 CW 206826	\$1,716.42	On 10/16/03, third party driver struck and damaged District auto.	The claim for property damage was paid in full by the third party's insurance carrier.
American International Insurance Co. – Alfonso Gonzales	2005-0223-0384 CW 290674	\$1,171.61	On 2/22/05, third party driver rear-ended District auto.	The claim for property damage was paid in full by the third party's insurance carrier.
Wawanesa – Graciela Valencia	2005-1020-0204 CW 1394650	\$3,394.62	On 10/20/05, third party driver rear-ended District auto.	The claim for property damage was paid in full by the third party's insurance carrier.
Progressive County Mutual Insurance Company – Susan Weaver	2005-1219-0316 CW 1398174	\$6,689.09	On 12/18/05, third party driver hit and damaged parked and unoccupied District auto.	The claim for property damage was paid in full by the third party's insurance carrier.
Mc Kenna Construction Inc.	2005-0426-0513 CW 297275	\$450.00	On 4/26/05, third party contractor was digging on MWD right-of-way without authorization and struck a gas line.	MWD negotiated a partial recovery of \$450.00 from the third party, Mc Kenna Construction Inc., and collected the balance from their subcontractor, Pro Loaders.
Pro Loaders	2005-0426-0513 CW 297275	\$595.56	On 4/26/05, third party contractor was digging on MWD right-of-way without authorization and struck a gas line.	MWD negotiated a partial recovery of \$595.56 from the third party, Pro Loaders Inc., and collected the balance from the prime contractor, Mc Kenna Construction.