



Agenda Item: 6

Date: October 9, 2009

Subject: MJD Engineering Back Charge Claim – Fire Hydrant Issue

Staff Contact: Dan York, Operations Manager

Recommended Board Action:

Reject back charge claim, in the amount of \$46,091.06, submitted by MJD Engineering (MJD) for lost construction time while in the process of installing 50' of sewer extension project due to an alleged leaking fire hydrant.

Discussion:

As an information item, the Directors were notified of this back charge claim during the September 21, 2009, Board of Directors Meeting. Mario J. DeSouza, owner of MJD, attended the subject meeting and introduced himself to the Directors.

On September 10, 2009 MJD filed a back charge claim (see Exhibit 1) for damages resulting from lost construction time on a sewer project on Watt Avenue (see Exhibit 2). The lost time was due to the surrounding soils at their project site being over saturated. This prompted the County Inspector to require the wrapping of the pipe zone with a fabric barrier and drying out the unstable soils by spreading and aerating prior to backfilling. MJD claims the saturated soil was due to a broken and leaking fire hydrant. The following is a preliminary report outlining the circumstances leading to this back charge claim by MJD.

On May 12, 2009, District staff responded to a customer call regarding a fire hydrant being hit by a vehicle at 6849 Watt Avenue. Staff determined the fire hydrant was damaged beyond repair and was in need of replacement. Even though the fire hydrant (dry-barrel) was damaged beyond repair, the break-a-way feature functioned properly and no water was discharged.

During the fire hydrant investigation process, staff assessed a leak coming from the center median strip of Watt Avenue. It was staff's finding that it was an in-tract leak on the County's irrigation system. Staff located the appropriate meter and discontinued water service to this irrigation system to prevent more water from flowing onto Watt Avenue. The total volume of water that was discharged from this leak was not determined. The area being impacted was approximately 50' wide, flowing across both lanes into MJD's project site. Staff recorded their findings in the notes section of the Service Request in CityWorks and forwarded to the Operations Coordinator for re-dispatching.

On May 13, 2009, staff coordinated with an outside contractor and scheduled a field visit to verify the hydrant replacement work to be performed. On May 18, 2009, the contractor provided a written proposal for the fire hydrant replacement via e-mail. On May 19, 2009, staff created an Expenditure Authorization (EA) and submitted for approval. On May 20, 2009, staff received issuance of the approved Purchase Order. On May 22, 2009, staff provided approval to the contractor. The fire hydrant was replaced on May 26, 2009. The contractor's staff was asked whether there was any noticeable infrastructure damage during the fire hydrant replacement. They stated that everything appeared normal and that there was no water flowing from the water main or attached appurtenances. Additionally, the contractor utilized a Ditch Witch FX60 Vacuum trailer to excavate and dewater the excavated area during the replacement of the fire hydrant. Therefore, there was no water discharge during this project.

MJD claims this fire hydrant had been seeping water for months. This fire hydrant had been operational with no defects prior to being struck by the vehicle, did not discharge water when it was hit by the vehicle, and no water discharged during the replacement phase of the fire hydrant.

On May 7, 2009, Alise Campos, Senior Construction Inspector for the County of Sacramento, contacted staff requesting assistance to determine if the District had a leak at 6920 Watt Avenue. Upon arrival, staff noticed a large volume of water flowing into an AT&T vault, which was overflowing. Staff reviewed District maps and GIS data base to determine if there was a service lateral or water main in the area that could have been creating this discharge. Staff determined that there was no District infrastructure in the vicinity of the discharging water. Staff and Ms. Campos extended their investigation to surrounding projects to determine if the water could be coming from another location. They met with the Jeff Wusteseld, Construction Building Inspector for the County of Sacramento. Mr. Wusteseld is the County Inspector overseeing the Corsair Park Apartments Project located at 6920 Watt Avenue. After a brief discussion, it was determined that a contractor working on this project had created a temporary dewatering basin to dewater their project site (see Exhibit 2). Under, or in close proximity to the dewatering basin, were conduits which ran west to the AT&T vault. The water was traveling in and along the trench line of the conduit, which caused the overflowing of the subject vault.

The information provided by staff, the District's contractor, and Sacramento County representatives clearly illustrates that there were other water related issues prior to MJD starting their project. The fire hydrant in question and all events leading up to the replacement does not support MJD's back charge claim that the fire hydrant had been leaking for months.

Based on staff's determinations during the claim investigation process, this claim has no merit. Staff has notified the District's insurance carrier, ACWA/JPIA, of the claim and will send a copy of the claim rejection letter should the Board concur with staff's recommended action on the reimbursement claim (see Exhibit 3).

Fiscal Impact:

MJD's back charge claim seeks \$46,091.06 in reimbursement.

Strategic Plan Alignment:

Customer Service – 3.A. Operate in an open and public manner.

Discussing District business at public meetings allows customers to participate and provide input.

Exhibit 1

Claim Form

(A claim shall be presented by the claimant or by a person acting on his behalf.)

NAME OF DISTRICT:	
1	Claimant name, address (mailing address if different), and phone number. Name: <u>MARIS De SOUZA dba MJD Engineering</u> Address(es): <u>P.O. Box 1078</u> <u>Rio Linda CA 95673</u> Phone Number: <u>(916) 925-7762 OFFICE 916 202-3793 cell</u>
2	List name, address, and phone number of any witnesses. Name: <u>Jim Hofgesang / County Inspector</u> Address: <u>3030 Explorer Dr #5 Sacto CA 95827</u> Phone Number: <u>(916) 539-1079</u>
3	List the date, time, place, and other circumstances of the occurrence or transaction, which gave rise to the claim asserted. Date: <u>6-15-6-25-09</u> Time: <u>PM-9</u> Place: <u>WATT AVE / ELKHORN BLVD</u> Tell What Happened (give complete information): <p style="text-align: center;"><u>SEE ATTACHED</u></p> <p style="text-align: center;"><small>NOTE: Attach any photographs you may have regarding this claim.</small></p>
4	Give a general description of the indebtedness, obligation, injury, damage, or loss incurred so far as it may be known at the time of presentation of the claim. <p style="text-align: center;"><u>SEE ATTACHED DAILY REPORTS</u></p>
5	Give the name or names of the public employee or employees causing the injury, damage, or loss, if known. <u>SACRAMENTO SUBURBAN WATER DISTRICT / JIM ARNEZ</u>
6	The amount claimed if it totals less than ten thousand dollars (\$10,000) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds ten thousand dollars (\$10,000), no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case. <p style="text-align: center;"><u>SEE ATTACHED</u> <u>BACK CHARGE INVOICE</u></p>
Date: <u>9/9/09</u> Time: <u>3:21</u> Signature: <u>MJD Souza</u> ANSWER ALL QUESTIONS. OMITTING INFORMATION COULD MAKE YOUR CLAIM LEGALLY INSUFFICIENT!	

MJD ENGINEERING

P.O. BOX 1078

RIO LINDA, CA. 95673

September 8, 2009

Suburban Water District
3701 Marconi Ave. #100
Sacramento, CA. 95821-5303

RE:ARD-3 Watt Ave, Sewer Extension/ Corner of Watt Ave & Elkhorn Blvd./
Notice of Back Charge

Suburban Water District;

Attached is a Back Charge to Suburban Water District resulting into problems MJD Engineering had encountered while installing the first 50feet+- of the new Sewer line at the project stated above. This Back Charge is due to a pre-existing broken Fire Hydrant that had been seeping for several months and was repaired by you (Suburban Water District) prior to our job starting date. To support our Back Charge we've submitted the following;

Pictures showing:

- Broken Fire Hydrant
- Exposed prepared trench with existing conduits in trench line with standing water showing seepage from broken hydrant-point of water entry to existing utility trench that ran parallel to our sewer trench line.
- Water trail illustrated green grass that had been growing due to seepage from broken hydrant – green vegetation extended over 200ft.
- Picture of fire hydrant repaired and indicating markings provided by the utility company showing the location of existing conduits which ran parallel to our trench line.
- Nightly reports filed by Jim Hofgesang, Construction Inspector with County of Sacramento

Video showing: (upon request)

- New trench line water seeping due to over saturation from Conduit line which is within 5feet of new trench line.

- MJD Engineering's Daily Reports detailing problems with the water seeping into trench line.
- Damaged fire hydrant showing water draining through vacant lot to canal.
- Trench collapsing due to water seeping from the west side of trench.
- Showing extra time and cost to install filter fabric and pipe.
- Showing extra time it took to dry out the soil.

Also Soil Report tests showing 19% to 29% moistness which is very wet. Because of the moisture County Inspector instructed MJD to wrap the pipe zone with fabric and dry out the unstable soil by spreading and aerating prior to backfilling. We have now passed the seepage and getting a 95% to 98% compaction test.

If you have any questions please feel free to contact me at 916 202-3793 cell or 916 925-7762 office.

Thank you,

Mario J. DeSouza

* 916 925-7762 office

* 916 920-1706 fax

MJD Engineering

P.O. Box 1078
Rio Linda Ca. 95673
A General Engineer # 408402
Issued 1981

Office: 916 926 7762
Fax: 916 920 1706

Date: 9/2/2009

BACK CHARGE

Work with:		Job Name:	Contract Section:	Work Performed:	through	through
Sacramento Suburban Water District 3701 Marconi Ave #100 Sacramento, CA 95821-5303		972 7171 889 7350 Jin Arenz	ARD-3 TRUNK SEWER EXTENSION RELIEF-WATT AVE	WATT AVENUE IMPROVEMENTS LLC	6/7/5/2009	6/26/2009
DESCRIPTION		Code used for Class	F. Potential	OP-Operator	Hourly Rate	Hourly Rate
WATER ENCOUNTERED RESULTING IN TRENCH TO COLLAPSE		PL- Pipe Layer	PL	Hourly Rate	Hourly Rate	Hourly Rate
		T- Truck Driver	TR	Hourly Rate	Hourly Rate	Hourly Rate
		Employee Name	Class	OP-Operator	Hourly Rate	Hourly Rate
		Mario De Souza Sr	OP/PL	48.6	\$ 88.40	\$ 88.40
		Mario De Souza Jr	SP	0	\$ 69.40	\$ 69.40
		Kevin Darding	F/OP	35.5	\$ 43.20	\$ 43.20
		Mike Salzer	OP/PL	11	\$ 64.84	\$ 64.84
		Miguel De Souza	OP/PL	29	\$ 54.94	\$ 54.94
		Justin Lee	L-PL	30	\$ 42.00	\$ 42.00
		Billy Richie	PL/T	34	\$ 39.60	\$ 39.60
		Matt DeSouza	PL	4	\$ 39.60	\$ 39.60
		Art Scrobas	PL/T	34	\$ 39.60	\$ 39.60
		Vinice Daugherty	PL	30	\$ 39.60	\$ 39.60
		Edgar Lopez	L-G	22	\$ 39.60	\$ 39.60
SUPPLY DESCRIPTION		Unit Costs	Subtotal	Equipment Description	Hourly Rate	Hourly Rate
1 \$ 678.00		\$ 678.00	\$ 678.00	JD890 EXCAVATOR	\$ 95.00	\$ 95.00
				VOLVO EXCAVATOR	\$ 125.00	\$ 125.00
				400 KOBELCO EXCAVATOR	\$ 175.00	\$ 175.00
				4YD Loader	\$ 95.00	\$ 95.00
				JD310 BH	\$ 55.00	\$ 55.00
				JD710 BH	\$ 75.00	\$ 75.00
				Foreman Truck	\$ 10.00	\$ 10.00
				Foreman Truck #2	\$ 10.00	\$ 10.00
				14yd Dump Truck	\$ 30.00	\$ 30.00
				14yd Dump Truck Transfer	\$ 30.00	\$ 30.00
OUT SIDE EQUIPMENT RENTAL DESCRIPTION DAILY COST		Unit Costs	Subtotal	Equipment Description	Hourly Rate	Hourly Rate
33 \$ 44.00		\$ 44.00	\$ 44.00	JD890	\$ 95.00	\$ 95.00
				VO240	\$ 125.00	\$ 125.00
				KO400	\$ 175.00	\$ 175.00
				4YD	\$ 95.00	\$ 95.00
				JD310	\$ 55.00	\$ 55.00
				JD710	\$ 75.00	\$ 75.00
				Foreman Truck	\$ 10.00	\$ 10.00
				Foreman Truck #2	\$ 10.00	\$ 10.00
				14yd Dump Truck	\$ 30.00	\$ 30.00
				14yd Dump Truck Transfer	\$ 30.00	\$ 30.00
CHANGE ORDER NOTES		Unit Costs	Subtotal	Equipment Description	Hourly Rate	Hourly Rate
33 \$ 3.54		\$ 3.54	\$ 3.54	Foreman Truck	\$ 10.00	\$ 10.00
				Foreman Truck #2	\$ 10.00	\$ 10.00
				14yd Dump Truck	\$ 30.00	\$ 30.00
				14yd Dump Truck Transfer	\$ 30.00	\$ 30.00
				Subtotal	\$ 15,911.49	\$ 15,911.49
				Equipment Subtotal	\$ 15,935.00	\$ 15,935.00
				Supplies Subtotal	\$ 876.00	\$ 876.00
				Overhead	\$ 8,082.76	\$ 8,082.76
				Subtotal	\$ 39,080.22	\$ 39,080.22
				Profit	\$ 3,908.02	\$ 3,908.02
				Overhead	\$ 3,124.82	\$ 3,124.82
				Total	\$ 48,081.06	\$ 48,081.06

See Attached Foreman's Daily Reports

Change Order Represents Day Worked & Only Billed to
Date that is Specified.

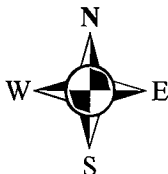
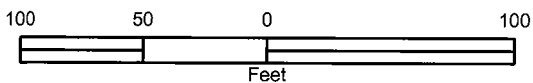
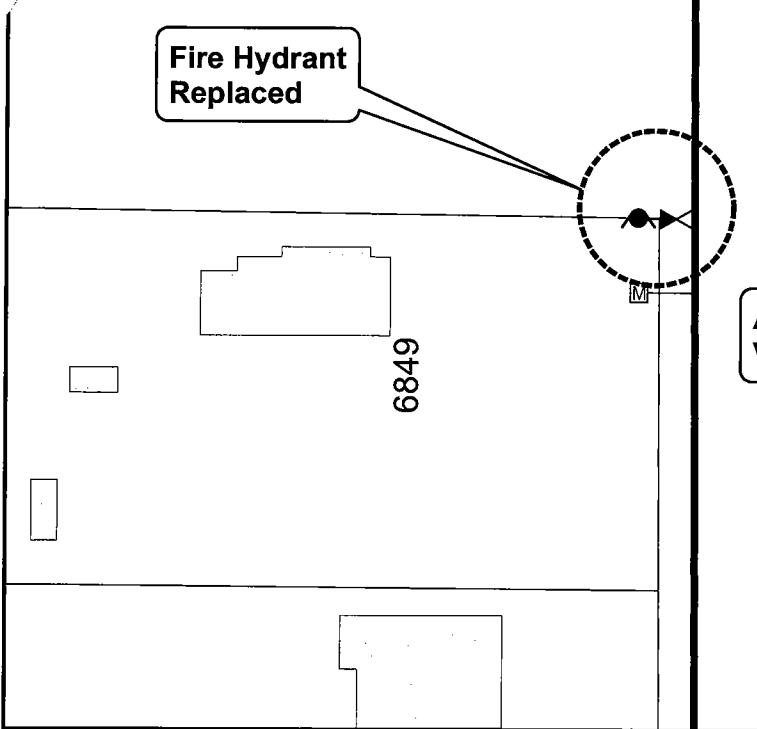
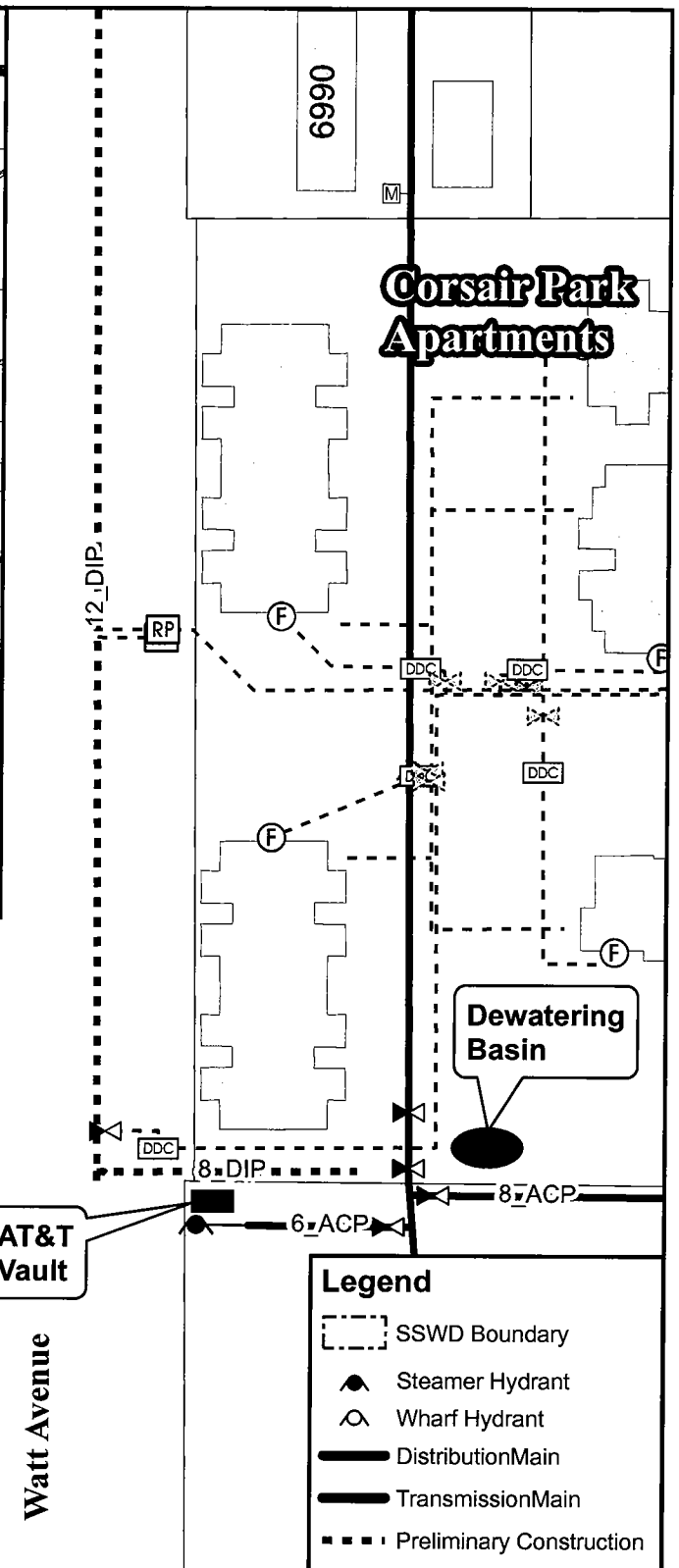
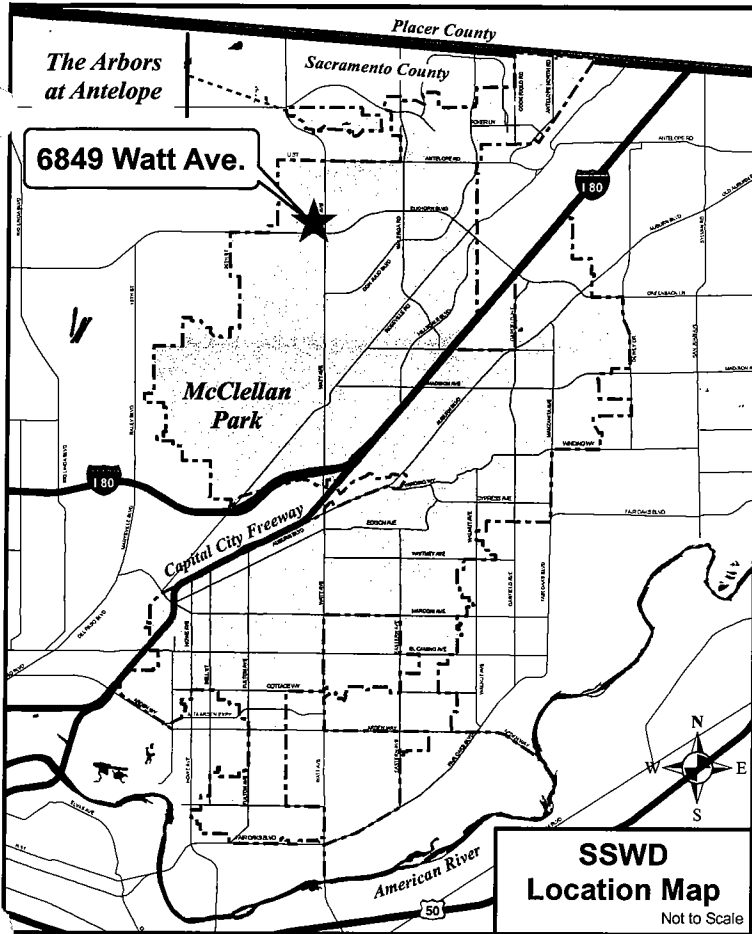


Exhibit 2

**MJD Engineering Back Charge Claim
Fire Hydrant**



Base Data: Sacramento County GIS Base Map
 Projection: CA State Plane, Zone II, NAD83
 Scale: Not to scale
 Prepared by: JWS - SSWD
 Date: October 8, 2009
 6849_Watt_Avenue.mxd

Exhibit 3

October 20, 2009

MJD Engineering
Attn: Mario J. DeSouza
P.O. Box 1078
Rio Linda, CA 95673

Re: Back Charge Claim – Fire Hydrant Issue, Received September 10, 2009

Dear Mr. DeSouza:

This letter responds to the back charge claim that you presented to the Sacramento Suburban Water District, which was received on September 10, 2009. The District's Board of Directors directed me to advise you of the action it took on your claim.

In accordance with the applicable provisions of the Government Claims Act, Government Code sections 810 through 935.8, your claim appears timely filed based on the date of the alleged incident. Notice is hereby given that the claim you presented to the District on September 10, 2009, was rejected by the District's Board of Directors on October 19, 2009.

WARNING!

Subject to certain exceptions, you have only six months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

This notice applies only to claims under the Government Claims Act, and it does not apply to or extend any other statutes of limitations or time limits as may be imposed upon the claim for pursuit of rights under other laws. By providing this notice, the Sacramento Suburban Water District does not intend to relinquish or waive any of its legal claims requirements or any rights or defenses potentially available to the District or its directors, officers, employees or agents.

Please contact me at the address or telephone number in the letterhead if you have any questions regarding this letter.

Very truly yours,

Dan York
Operations Manager

cc: Josh Horowitz