



COUNTY OF LOS ANGELES  
OFFICE OF THE COUNTY COUNSEL

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August 6, 2008

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TO: SACHI A. HAMAI  
Executive Officer  
Board of Supervisors

Attention: Robin Guerrero  
Deputy Executive Officer  
Board Operations

FROM: JOHN F. KRATTLI   
Senior Assistant County Counsel

RE: **Pierce v. County of Los Angeles**  
**Los Angeles Superior Court Case No. PC 038 126; and**  
**Pierce v. County of Los Angeles**  
**Los Angeles Superior Court Case No. PC 040 902**

Attached is the Agenda entry for the Los Angeles County Claims Board's recommendation in the above-referenced matter. Also attached are the Case Summary, the Summary Corrective Action Plan, and the Corrective Action Plan.

It is requested that this recommendation, the Case Summary, the Summary Corrective Action Plan, and the Corrective Action Plan be placed on the Board of Supervisors' agenda for August 19, 2008.

JFK:rfm

Attachments

HOA.542785.1

Board Agenda

MISCELLANEOUS COMMUNICATIONS

Los Angeles County Claims Board's recommendation: Authorize settlement of the lawsuits entitled Pierce v. County of Los Angeles, Los Angeles Superior Court Case No. PC 038 126; and Pierce v. County of Los Angeles, Los Angeles Superior Court Case No. PC 040 902, in the amount of \$175,000, and instruct the Auditor-Controller to draw a warrant to implement this settlement from the Department of Public Works' budget.

These lawsuits concern allegations that drainage facilities maintained by the Department of Public Works contributed to flooding which damaged a plant nursery.

## CASE SUMMARY

### INFORMATION ON PROPOSED SETTLEMENT OF LITIGATION

CASE NAME	Pierce v. County of Los Angeles and Pierce v. State of California
CASE NUMBER	PC 038 126 and PC 040 902
COURT	Los Angeles County Superior Court
DATES FILED	January 18, 2006 and June 22, 2007
COUNTY DEPARTMENTS	Department of Public Works and Flood Control District
PROPOSED SETTLEMENT AMOUNT	\$175,000
ATTORNEY FOR PLAINTIFF	John Howard Law Offices of John Howard (805) 644-5894
COUNTY COUNSEL ATTORNEY	Rosa Linda Cruz Deputy County Counsel (213) 974-7680
NATURE OF CASE	<p>These are dangerous condition of public property and inverse condemnation lawsuits arising out of the flooding of the plaintiffs' plant nursery on January 9, 2005, in Castaic, California. Plaintiffs allege that County and District drains became clogged and caused flooding of the plant nursery and millions of dollars in lost profits, lost inventory, lost sales and property damage.</p> <p>Due to the risks and uncertainties of litigation and the substantial costs of proceeding to trial, the parties have agreed to the proposed settlement.</p>
PAID ATTORNEY FEES, TO DATE	\$367,760.21 in in-house legal fees
PAID COSTS, TO DATE	\$121,000.00 in costs and expert fees



## Summary Corrective Action Plan

### County of Los Angeles Department of Public Works



The intent of this form is to assist departments in writing a corrective action plan summary for attachment to the settlement documents developed for the Board of Supervisors and/or the County of Los Angeles Claims Board. The summary should be a specific overview of the claims/lawsuits' identified root causes and corrective actions (status, time frame, and responsible party). This summary does not replace the Corrective Action Plan form. If there is a question related to confidentiality, please consult County Counsel.

Lawsuit:	Pierce/Plant Warehouse
Date of incident/event:	January 9, 2005
Briefly provide a description of the incident/event:	<p>On January 9, 2005 a heavy rainfall occurred following several other heavy rainfalls from late December 2004 to early January 2005. The event washed out, flooded or closed roads and was declared a State and Federal Disaster.</p> <p>The heavy rainfall on January 9, 2005 caused a berm failure on private property resulting in a large mudflow onto The Old Road. The flow combined with debris that included plants and landscaping material from "Plant Warehouse" plugged the catch basin across from the Pierces property along The Old Road. The mud and debris then flowed onto The Old Road and damaged the Pierces property and other property downstream on along The Old Road.</p>

1. Briefly describe the root cause of the claim/lawsuit:

The cause of the lawsuit was an exceptional storm event that overwelled the system. There was no reasonable way to prevent the flooding. The culvert was designed to carry flow only and was a self cleaning system. It was not designed to transport debris resulting from the failed berm and other material collected in the flow.

The I-5 freeway is adjacent and parallel to The Old Road. Maintenance for portions of the culverts under the I-5 freeway has always been understood to be Caltrans responsibility. The remaining upstream portions under The Old Road are the responsibility of the Department of Public Works. There was some confusion within Public Works as to precise limits of responsibility between the Flood Control District (Flood Maintenance Division) and the Road Maintenance Division. This confusion arose as a result of the initial Caltrans relinquishment of The Old Road, which included most of the associated drainage structures and the subsequent modifications.

Road Maintenance Division carries out annual inspections of all road drain inlets prior to the storm season and follows up with maintenance if sedimentation at the drain exceeds 20% of the opening. The inlet across from the Pierces property was inspected in October 2004 by Public Works. For 25 years the road drains in front of the plant nursery were maintained in this fashion and never failed. Although the facilities were inspected by Road Maintenance Division there were no recorded records of the inspections which weakened our position in the lawsuit.

County of Los Angeles Department of Public Works  
Summary Corrective Action Plan

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2. Briefly describe recommended corrective actions:  
(Include each corrective action, due date, responsible party, and any disciplinary actions if appropriate)

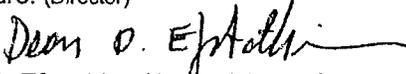
No corrective actions are required, the flooding was solely the result of an exceptional storm event. Public Works is undertaking the following actions to strengthen its record keeping for similar lawsuit defense.

On October 15, 2007, Road and Flood Maintenance Divisions completed a joint review of all drainage facilities along The Old Road, from Weldon Canyon Road on the south to Victoria Road on the north. They identified the appropriate entity for maintenance responsibility for each section of culvert and storm drain and have recorded into their respective facility records.

For the annual inspection of road drain inlets prior to the storm season Road Maintenance Division will record and retain in their facility records the dates when the facilities are inspected. The recording of dates will begin with the 2008 storm season in selected Maintenance Districts and be fully implemented throughout all Maintenance Districts for the 2009 storm season.

3. State if the corrective actions are applicable to only your department or other County departments:  
(If unsure, please contact the Chief Executive Office Risk Management Branch for assistance)

- Potentially has County-wide implications.
- Potentially has implications to other departments (i.e., all human services, all safety departments, or one or more other departments).
- Does not appear to have County-wide or other department implications.

Signature: (Risk Management Coordinator)  Pat Proano	Date: 7/28/08
Signature: (Director)  Dean D. Efstathiou (Acting Director)	Date: 7/28/08

## **DEPARTMENT OF PUBLIC WORKS CORRECTIVE ACTION PLAN**

**LAWSUIT OF:** Pierce, James & Janet (Plant Warehouse)

**INCIDENT DATE:** January 9, 2005

**INCIDENT LOCATION:** 30811-30817 The Old Road, Castaic

**RISK ISSUE:**

The County is liable for the dangerous condition of its property due to negligent maintenance and inverse condemnation when a public works project operating as designed and constructed causes damage to private property. A public entity found liable in inverse condemnation is responsible for the plaintiff's attorney's fees and litigation costs.

**INVESTIGATIVE REVIEW:**

On January 9, 2005 a heavy rainfall occurred following several other heavy rainfalls from late December 2004 to early January 2005 that had already saturated the soil. Several roads were washed out, flooded, or closed and the rainstorm was declared a State and Federal Disaster. The heavy rainfall on January 9, 2005 caused a large mudflow from adjacent private property onto The Old Road. The flow originated from the private property within Romero Canyon when a berm failed due to the saturated condition of the soil. This flow combined with debris that included plants and landscaping material from "Plant Warehouse" plugged the catch basin across from the Pierces property along The Old Road. The mud and debris then flowed onto The Old Road and damaged the Pierce's property and other property downstream along The Old Road.

Maintenance for portions of the culverts under the I-5 freeway has always been understood to be the responsibility of Caltrans. The remaining upstream portions under The Old Road are the responsibility of the Department of Public Works. Through investigation, the Department became aware that there was some confusion as to precise limits of responsibility between the Flood Control District (Flood Maintenance Division) and the Road Maintenance Division. This confusion arose as a result of the initial Caltrans relinquishment of The Old Road, which included most of the associated drainage structures and the subsequent modifications.

Road Maintenance Division carries out annual inspections of all road drain inlets prior to the storm season and follows up with maintenance if sedimentation at the drain exceeds 20% of the opening. The inlet across from the Pierces property was inspected in October 2004 by Public Works. No individual facility records of when these inspections took place were maintained. For 25 years the road drains in front of the plant nursery were maintained in this fashion and never failed.

PIERCE CORRECTIVE ACTION PLAN

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**POLICY ISSUES:**

Road Maintenance Division has a practice of visually inspecting all road culvert entrances each fall and schedules necessary corrective work. Flood Maintenance Division has an annual Catch Basin Cleanout contract and schedules underground inspections of larger storm drain facilities prior to each storm season.

**CORRECTIVE ACTION:**

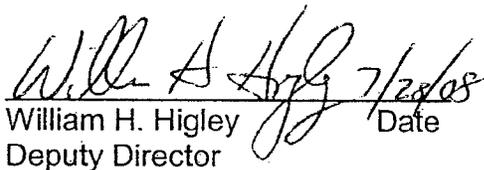
Public Works believes no corrective actions are required because the flooding was solely the result of an exceptional storm event. Public Works is undertaking the following actions to strengthen its record keeping for similar lawsuit defense.

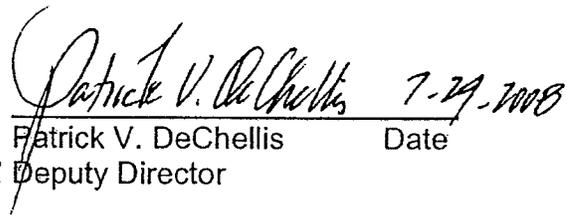
On October 15, 2007, Road and Flood Maintenance Divisions completed a joint review of all drainage facilities along The Old Road, from Weldon Canyon Road on the south to Victoria Road on the north. They identified the appropriate entity for maintenance responsibility for each section of culvert and storm drain and have recorded into their respective facility records.

For the annual inspection of road drain inlets prior to the storm season Road Maintenance Division will record and retain in their facility records the dates when the facilities are inspected. The recording of dates will begin with the 2008 storm season in selected Maintenance Districts and be fully implemented throughout all Maintenance Districts for the 2009 storm season.

Reviewed & Recommended

Approved

  
William H. Higley  
Deputy Director

  
Patrick V. DeChellis  
Deputy Director