STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
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Arnold Schwarzenegger, *Governor*

**To All Interested Parties:**

**Re: Public Works Case Nos. 2004-023 and 2003-046**
***Richmond-San Rafael Bridge/Benicia-Martinez Bridge/San Francisco-Oakland Bay Bridge - California Department of Transportation; West Mission Bay Drive Bridge Retrofit Project - City of San Diego***

By order of the Alameda County Superior Court in *International Organization of Masters, Mates, and Pilots v. Rea, et al.,* Case No. RG 06256337:

"Portions of Acting Director John M. Rea's January 23, 2006, determination re Public Works Case No. 2004-023, Prevailing Wage Rates Richmond-San Rafael Bridge/Benicia-Martinez Bridge/San Francisco-Oakland Bay Bridge, California Department of Transportation and July 31, 2006, Decision on Administrative Appeal re Public Works Case No. 2004-023, Richmond-San Rafael Bridge/Benicia-Martinez Bridge/San Francisco-Oakland Bay Bridge, have been ordered rescinded and declared invalid. The following revised Determination and/or Decision on Administrative Appeal comply with the Court's order and replace any and all prior versions of the Determination and/or Decision on Administrative Appeal."

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

DECISION ON ADMINISTRATIVE APPEAL

RE: PUBLIC WORKS CASE NO. 2004-023
RICHMOND-SAN RAFAEL BRIDGE/BENICIA-MARTINEZ BRIDGE/
SAN FRANCISCO-OAKLAND BAY BRIDGE

AND

PUBLIC WORKS CASE NO. 2003-046
WEST MISSION BAY DRIVE BRIDGE RETROFIT PROJECT,
CITY OF SAN DIEGO

## I. INTRODUCTION

The general issues presented for decision in this appeal are:

(1) The scope of public works coverage of material hauling by towboat operators specific to several California bridge projects; and,

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This Decision on Appeal ("Decision") affirms the Determination as to both of these issues. Only arguments not addressed in the Determination are discussed herein.



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## II. RELEVANT FACTS AND PROCEDURAL HISTORY

The lengthy factual statement in the Determination is incorporated herein by reference and supplemented with the following procedural history pertaining to this appeal.

On January 23, 2006, the Acting Director ("Director") of DIR, John M. Rea, issued the Determination, which held that on-haul towboat work on six Bay Area bridge projects bid by the California Department of Transportation ("CalTrans") and on the West Mission Bay Drive Bridge Retrofit Project bid by the City of San Diego ("City") is public work under the following circumstances:

(1) When the materials hauled by the towboat operators are from a facility dedicated to the public works project; and/or,

(2) When the towboat operators engage in the immediate incorporation of the hauled material into the public works project.

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Pursuant to California Code of Regulations, title 8 ("8 CCR § 16002.5"), section 16002.5, on February 22, 2006,

interested party Association of Engineering Construction Employers ("AECE") filed an administrative appeal of the Director's Determination and supplemented that appeal on May 17, 2006.[1] On March 3, 2006, and March 17, 2006, interested parties Engineering and Utility Contractors Association ("EUCA") and California Dump Truck Owners Association ("CDTOA"), respectively, filed additional administrative appeals. On March 3, 2006, interested party Teamsters Heavy Highway and Construction Committee for Northern California ("Teamsters") filed a notice stating that it would oppose the administrative appeals and filed such opposition on April 17, 2006, with a supplemental filing on May 19, 2006. The Construction Materials Association of California ("CMAC") and the Bay Counties Dump Truck Association ("BCDTA") filed responses in support of AECE's appeal on April 14, 2006. Lemore Transportation, Inc., dba Royal Trucking, filed an appeal April 17, 2006, with a supplemental filing on May 17, 2006. CalTrans and the International Organization of Masters, Mates and Pilots, Pacific Maritime Region ("MM&P") also filed appeals on April 17, 2006. The State Building and Construction Trades Council of California and the Joint Council of Teamsters, Local No. 42 and Local No. 87 filed responses on

[1]Each of the participants in this administrative appeal is considered an "interested party" as defined by 8 CCR section 16000.

April 24, 2006. Finally, the Associated General Contractors of California ("AGC") filed an appeal April 25, 2006.

The overwhelming bulk of these appeals concern the public works coverage holding in the Determination.

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## III. DISCUSSION

### A. PUBLIC WORKS COVERAGE OF TOWBOAT HAULING.

#### 1. Towboat Hauling Is Public Work When The Materials Are Hauled To The Public Works Site From An Adjacent Dedicated Site And/Or When The Haulers Incorporate The Materials Into The Public Works Site.

The gravamen of the appeals involves disagreement with the Director's interpretation of sections 1771, 1772, 1774 and the *O.G. Sansone v. Dept. of Transportation* (1976) 55 Cal.App.3d 434 ("*Sansone*")[3] decision, upon which the Determination is based, as well as the applicability of the federal Davis-Bacon Act ("DBA"), regulations and decisions pertaining to public works coverage of hauling.

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[3]*Sansone* is the only published California opinion applying the CPWL to hauling work performed in connection with a public works project.

On one side of the dispute is the argument urging the Director to read *Sansone* as requiring that prevailing wages be paid for all hauling of materials onto a public works site and without regard to the hauler's activity on the site. For the reasons already set forth in detail in the Determination, the position that the California Prevailing Wage Law ("CPWL") and *Sansone* require the payment of prevailing wages for any hauling work onto a public works project is rejected. As the Determination makes clear, *Sansone* stands for the proposition that prevailing wages are to be paid for hauling to a public works site based on the individual worker's "function" (whether the hauling is from a dedicated site or the hauler is involved in the immediate incorporation into the site of the materials hauled) and not based on "status" (by whom the hauler is employed).

On the other side of the dispute are the arguments that the Director should interpret the *Sansone* opinion narrowly and conclude there is no requirement to pay prevailing wages for immediate incorporation work performed by haulers on the site of a public work. The Director is urged to adopt the standards claimed to be derived from the current federal interpretation of the DBA, which are claimed to limit the application of the CPWL only to

haulers transporting material from a dedicated facility or site set up to serve the public works project exclusively, or nearly exclusively. Subject to certain questions, the parties agree that *Sansone*, DBA requirements (29 CFR § 5.2(j)(1)(iv)),[4] and past DIR public works coverage determinations require the payment of prevailing wages to workers hauling materials between a site dedicated to the primary public works site and the primary public works site.

There are two principal issues posed. The first is whether "immediate incorporators" are entitled to prevailing wages and what "immediate incorporation" means in this context. The second issue is whether the dedicated site must be adjacent to the primary public works site and, if so, what "adjacent" means for purposes of the CPWL.

With regard to the entitlement of "immediate incorporators" to prevailing wages, several parties argue that *Sansone* does not require the payment of prevailing wages to truckers who deliver materials to a public works site and then engage in their immediate incorporation into a public works project. They argue that the basis in *Sansone* referenced in the Director's holding is mere dicta

[4] 29 CFR § 5.2(j)(1)(iv)) states: "Transportation between the site of the work within the meaning of paragraph (1)(i) of this section and a facility which is dedicated to the construction of the building or work and deemed a part of the site of the work within the meaning of paragraph (1)(2) of this section . . ."

because the two haulers, Wright and Heck, did no immediate incorporation themselves; therefore, the court's discussion of *Green v. Johns* (1964) 23 Wis.2d 551, 128 N.W.2d 1 ("*Green*") and its statements regarding immediate incorporation in *Sansone* are unnecessary to the holding in *Sansone* and should not be followed.

This position, however, ignores the facts that *Sansone* said it was addressing. The plaintiffs in the case, O.G. Sansone Company and Robert E. Fulton Company, were joint venturers who subcontracted thirty-three percent (33%) of "pay item 18" to L.D. Folsom, Inc. This portion of pay item 18 required the "incorporation" of 126,000 cubic yards of class 3 aggregate into the project by "loading, placing and compacting of the material." Two other subcontractors, Wright and Heck, were hired to perform forty-one percent (41%) of the subcontracted work, which included hauling only. *Sansone* looked to *Green*, and incorporated it into the CPWL (as it did the federal case, H.B. Zachry Company v. *United States* (1965) 344 F.2d 352("*Zachry*")) because it was necessary to explain that not only were Wright and Heck subject to prevailing wage requirements, but so were Folsom's workers who loaded at the dedicated borrow pit and placed and compacted the material onto the road bed at the public works site. The excavation, loading, hauling,

placement and compaction work was part of the integrated flow of construction on the public works project. What the *Sansone* Court thought was relevant to the facts before it is determinative. It held relevant to its determination the following extensive description, which suggests that it did not think it was making a passing reference to facts not before it:

> The Wisconsin court decided that Jones' employees were covered because under the facts of that case the materials hauled were dumped or spread directly on the roadbed and were immediately used in the construction of the project. Thus, the court stated (128 N.W.2d at p. 7): "In the instant case, although the drivers hauled materials from both commercial and 'ad hoc' pits, such materials were immediately distributed over the surface of the roadway. The drivers' tasks were functionally related to the process of construction. The crushed base for the first layer of the highway above the ground was dumped or spread by the drivers and immediately leveled by graders under the supervision of the general contractor. The crushed base and granulated sub base for shoulder material was dumped on the highway and immediately pushed onto the shoulder and leveled by the general contractor's graders. The aggregate, utilized as filler in the concrete, was dumped adjacent to a ready-mix concrete set up. The aggregate was immediately mixed with cement, and the concrete was then immediately laid upon the highway strip. Clearly, the materials were applied to the process of highway improvement, almost immediately after the drivers arrived at the site. The delivery of materials was an integrated aspect of the 'flow' process of construction. The materials were 'distributed over the surface of the roadway' with no 'rehandling' out of the flow of construction. The drivers were 'executing such highway improvement' and hence performing 'work under the contract.'"

Thus, the Director's holding that requires payment of prevailing wages to towboat operators who incorporate into the public works site materials they haul to the site is squarely supported by the holding in *Sansone* that deems such work to be within the process of construction, rather than what the court, quoting the federal case, *Zachry*, referred to, as "the delivery of standard materials to the site, a function that is performed independently of the contract construction activities." (*Id.* at 442.)

An analysis whether "immediate incorporation" has been performed by haulers will generally be determined in the context of prevailing wage enforcement, either by the DIR's Division of Labor Standards Enforcement ("DLSE") or by a valid Labor Compliance Program ("LCP").[5] That determination would be guided by the application of the relevant precedents to the particular facts of a case. Some general parameters of "immediate incorporation" have been set forth in prior DIR precedential determinations, including PW 1999-037, *Alameda Corridor Project, A&A Ready Mix Concrete and Robertson's Ready Mix Concrete* (April 10, 2000) ("*Alameda Corridor*") and PW 2000-075, *CalTrans I-5,*

[5]Here, were prevailing wages enforceable under the Determination, CalTrans, the applicable LCP, would review any complaints filed with it by the towboat workers on the bridge projects to determine whether their work falls within the parameters of the Director's coverage holdings and, if so, the amount of prevailing wages due them by the contractors who employed them.

*Redmond's Concrete and Materials* (August 15, 2001) ("*Redmond's Concrete*").[6]

In *Alameda Corridor*, material haulers employed by material suppliers transported ready-mix concrete to the project site and placed more than ninety-nine percent (99%) of the concrete into pumps; less than one-percent (1%) was placed directly by the hauler into forms on the site. The Director found that the haulers were not entitled to prevailing wages because their primary function was the delivery to the public works site of a product that was re-handled by on-site employees. That they participated in the placement of less than one-percent (1%) of the concrete into the project did not cause them to be considered an integrated aspect of and functionally related to the construction work on the project. In *Redmond's Concrete* driver of the Zim Mixer, a self-contained concrete mix truck which prepares rapid hardening concrete on-site; hauled concrete from a general use cement plant onto the public works highway site. The drivers also worked on the site with a contractor's employees to place the concrete directly onto the highway while other workers spread and level it.[7] As the Zim Mixer ran out of material the truckers

[6]Available at http://www.dir.ca.gov/DLSR/PrecedentialAlpha.htm.

[7]This is similar to the work of the truckers in *Sansone*, who spread aggregate the highway in that case.

drove to an on-site staging area where contractor employees reloaded the truck with material. Unlike in *Alameda Corridor*, the Director found that because the material hauled by Redmond's drivers was immediately incorporated into the project with no rehandling out of the flow of construction the drivers were performing an integral part of the construction and therefore the hauler is entitled to prevailing wages for the period in that distinct capacity performing on-site work.

These authorities indicate that immediate incorporation by the hauler is clearly covered work for the time on-site. On the other hand, the mere delivery to a public works of material that is rehandled or incorporated by other on-site workers, or the haulers' incidental placement on the public works site of the materials hauled is not covered work. The on-site incorporation work must therefore be direct, immediate, or virtually so, more than de minimis, and involve construction related activity.[8] In other words, when the hauler leaves the pure hauling role and participates in the on-site construction activity of incorporation of the material hauled, the worker is entitled to prevailing wages.

[8]References to DLSE's "on-haul" policy can be found in a number of older determinations. To the extent those determinations interpret *Sansone* to mean that material delivery alone (whether by a material supplier or contractor's employee) is sufficient to create prevailing wage obligations, they are no longer to be considered valid.

In response to the appeals that propose the adoption of the DBA standards for on-hauling, while 29 CFR 5.2(j)(2)[9] does not require prevailing wages be paid transportation of material to or from a public works site by contractor employees, DBA does appear to enforce prevailing wage obligations for the time spent on site by truckers who engage in mere delivery of materials to a public works site so long as the time spent on site is more than de minimis. This decision declines to adopt that standard[10] and as concerns on-site work, requires prevailing wages only when haulers engage in, on-site, the incorporation of the materials they haul.[11]

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[9]29 CFR 5.2(j)(2) states in relevant part: "[T]he transportation of materials or supplies to or from the site of the work by employees of the construction contractor or a construction subcontractor is not 'construction, prosecution, completion, or repair.'"

[10]At least one party has urged that the Director read the CPWL to be the same or similar to the DBA. This position is rejected because it would require the Director to ignore binding California judicial precedent.

[11]As noted by the United States Department of Labor ("DOL"):

> Giving the Act a literal reading, as the courts have done in Midway, Ball, and Cavett, all laborers and mechanics, including material delivery truck drivers, are entitled to prevailing wages for any time spent "directly upon the site of the work ... ." However, as a practical matter, since generally the great bulk of the time spent by material truck drivers is off-site beyond the scope of Davis-Bacon coverage, while the time spent on-site is relatively brief, the Department chooses to use a rule of reason and will not apply the Act's prevailing wage requirements with respect to the amount of time spent on-site, unless it is more than de minimis pursuant to this policy, the Department does not assert coverage for material delivery truck drivers who

Another issue raised on appeal is whether, in order for there to be public works coverage, the second, dedicated site must be adjacent to the site of the public works and, if so, what is the definition of "adjacent" under the CPWL. Neither of these questions was squarely addressed in the Determination. Several parties suggest that the Director follow the standard that the dedicated site be considered adjacent, as they interpret *Sansone* and 29 CFR 5.2(I)(2) to require.[12] These parties reason that if a dedicated site is not adjacent, or virtually adjacent, to the public works site, there should be no prevailing wage obligation because the distance between the two sites vitiates any claim that the two sites constitute a single project. The parties point out that in *Sansone*, the Court repeatedly emphasized the fact that the borrow pits were adjacent to the construction project and that adjacency is a requirement under the DBA.

*Sansone* supports the proposition that the dedicated site must be adjacent to the public works construction site for hauling of materials from the dedicated site to be

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come onto the site of the work for only a few minutes at a time merely to drop off construction materials ... ." (65 Federal Register ("Fed Reg") 80276 (December 20, 2000)).

[12] 29 CFR 5.2 (l)(2) states in relevant part: "[J]ob headquarters, tool yards, batch plants, borrow pits, etc., are part of the site of the work, provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and provided they are adjacent or virtually adjacent to the site of the work."

deemed part of the construction. A strict definition of the term, "adjacent," which provides a specific distance limitation is, however, impractical and inadvisable on the record that the parties chose to present in their various appeals, and the unique aspects of marine hauling.

This issue was presented to the DOL when it revised its regulations regarding the hauling of material to a public works site.[13] DOL ultimately determined that setting a specific distance for determining prevailing wage obligations for hauling from a dedicated site without regard to the facts of each case would be arbitrary and might encourage contractors to move the dedicated site just beyond that distance to avoid prevailing wage obligations. As discussed in 65 Fed Reg 80268 et seq., (December 20, 2000) (at pp. 80271 to 80873), public works projects vary greatly from long, ribbon-like highways to vast construction projects such as dams.

We similarly decline to define "adjacent" as a specific distance in the context of these projects, especially without further information concerning how and what sites or facilities are used during the construction process and their distances from the respective bridge

[13]These revisions were necessary after earlier DOL regulations that covered off-site hauling were overturned in *Building and Construction Trades Dept., AFL-CIO v. United States Dept. of Labor Wage Appeals Bd. ("Midway Excavators")* 932 F.2d 985, 989-92 (D.C.Cir.1991).

projects. As noted by DOL, "a practical analysis" as performed by the Administrative Review Board ("ARB") within the DOL should govern each case. In *Bechtel Contractors Corporation, Rogers Construction Company, Ball, Ball, and Brosamer, Inc., and the Tanner Companies (Bechtel II)*, ARB Case No. 97-149 (98 WL 168939) (March 25, 1998), the ARB found that batch plants situated within one-half mile of pumping stations that were part of the Central Arizona Project, a 330 mile-long aqueduct and series pumping stations, were "virtually adjacent," even though drivers would travel up to 15 miles along the aqueduct to deliver concrete to where it was incorporated into the project. ARB reasoned that there was no "principled basis" to exclude the workers because aerial photographs clearly showed that the batch plants were virtually adjacent to the aqueduct.

In sum, in determining the adjacency of a dedicated site, the best approach is to analyze the facts of each case and apply a practical common-sense approach to the question of proximity based on the nature of the particular project. Here again, were prevailing wages enforceable on the bridge projects the fact that the bridge projects take place over expansive bodies of water would certainly have to be considered in determining adjacency of any dedicated site.

2. Labor Code Section 1720.3[14] Does Not Prohibit Coverage Of On-Site Hauling Work.

Section 1720.3 states:

> [F]or the limited purposes of Article 2 (commencing with section 1770), "public works" *also* means the hauling *of refuse from* a public works site to an outside disposal location, with respect to contracts involving any state agency, including, the California State University and the University of California, or any political subdivision of the state.

Several parties to the appeal argue that the only hauling work covered by the CPWL is that done under the conditions set forth in section 1720.3. Under the theory that expression of something in a statute necessarily means the exclusion of things not expressed, the parties contend that the Legislature in enacting section 1720.3 did not intend any other hauling work to be covered by the CPWL. As highlighted above, the statute says public works "also" means hauling "from" a public works site. Several parties argue that despite the word "also," section 1720.3 is the "only" statute applicable to hauling. The statute also references hauling "refuse" "from" a public work site. For the reasons below, and starting with the literal meaning of "also,"[15] it is difficult to credit this position after

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[14]Unless otherwise indicated, all subsequent section references are to the California Labor Code.

[15]"Also" is defined as "in addition, likewise, or too." (Webster's New World Dict. (3d College Ed. (1991) p. 40.)

examining the doctrine, the legislative history, and the timing of section 1720.3's enactment relative to *Sansone*.

First, the bill that became section 1720.3 was enrolled on August 31, 1976, and was signed by then Governor Brown on September 20, 1976. This was several months after the seminal case on public works coverage of hauling, *Sansone*, was decided on February 19, 1976.

The Legislature is presumed to be aware of judicial precedent when enacting new legislation. *People v. Overstreet* (1986) 42 Cal.3d 891, 897. It can therefore be presumed that the Legislature's failure to overturn the public works coverage of the on-hauling in *Sansone*, not only when it enacted section 1720.3 in 1976 (well after *Sansone* was decided), but also in subsequent amendments to section 1720.3 in 1983 and 1999, indicates that the Legislature did not intend the conditions contained in section 1720.3 be the exclusive circumstances under which hauling constitutes public work.

Several parties also contend that the failure of legislative amendments in 1999 that would have included certain on-haul activity in section 1720.3 (AB 302) indicates a legislative intent not to cover such work. An unpassed legislative proposal, however, is not a useful indicator of legislative intent (*Grupe Development Company*

*v. Superior Court* (1993) 4 Cal.4th 911.) In addition, even if unpassed legislation reflected legislative intent, the failed amendment would have modified section 1720, not section 1720.3, to add a new subsection requiring the payment of prevailing wages for the "hauling of sand, gravel, crushed rock, concrete mix, asphalt, or other similar materials for the use or incorporation in a public works project." The failed amendment did not specifically, as here, deal with haulers who immediately incorporate material they haul but rather all haulers of material to a public works site even if the material is incorporated into the site by others.

Finally, it cannot be presumed that section 1720.3, excludes from public works coverage all other types of hauling because this section involves only off-hauling from a public works site to an outside disposal location with respect to contracts with the state or its political subdivisions. The work at issue here is on-hauling from any location to a public works site.

In sum, when section 1720.3 says another form of hauling is "also" a public work that does not mean that the Legislature meant it set forth the only circumstances under which hauling work is public work.

3. The *City Of Long Beach* Does Not Preclude A Finding Of Public Works Coverage For Hauling.

Some of the parties contend that the decision in *City of Long Beach v. Department of Industrial Relations* (2004) 34 Cal.4th 942 ("*Long Beach*"), requires the Director to interpret section 1720(a)(1) as excluding all hauling work. They argue that the California Supreme Court found in that case that section 1720 applies only to construction work, and that just as DIR could not extend coverage of the CPWL to pre-construction activity, the Director cannot now cover hauling as construction under section 1720.[16]

The Determination and this Decision on Appeal follow *Sansone*, which finds that when haulers step out of the role of delivering standard materials, into either of the "functions" that were the subject of *Sansone*, they are entitled to prevailing wages. *Sansone* treated the sections it cited, 1771, 1772 and 1774, as defining what was covered as "public work" referenced in those sections. That was not an expansion of the CPWL by the *Sansone* Court, it is not by the Director in this matter, and it is not a retroactive application of a later statute.

Appellants misapply the holding in *Long Beach*, which simply holds that expenditures of public funds for pre-

[16]Section 1720 defines "public works," in relevant part, as "[c]onstruction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds."

construction activities did not make the Long Beach project a public work because the controlling version of section 1720(a) does not enumerate pre-construction activity as a type of public work. Thus, *Long Beach* turned on the retroactive application of section 1720, a statute not at issue here. In that case, the California Supreme Court did not address or strike down the Director's authority, and duty, to follow existing precedent (here, *Sansone*) defining which types of work are covered[17] and thus, "in execution" of "a contract for public work" under sections 1771, 1772 and 1774.

4. A Director Decision On Appeal That Addresses Both Marine And Land-Based Hauling Under The CPWL Is Not An Underground Regulation Or Otherwise Improper.

Several parties contend that a decision by the Director in response to the public works hauling issues raised in this appeal would be improper on two bases. Both concern the fact that while the Determination involves marine on-hauling, many of the appeals pertain to land-based hauling.

The first basis alleged is that the Director cannot entertain arguments not raised or addressed in the Determination. This claim, however, misapprehends the nature of the Director's mandate in a quasi-legislative

[17] 8 CCR § 16001(a).

proceeding concerning public works coverage. Unlike administrative adjudications, this quasi-legislative process allows the Director to consider the views of any interested parties, not just those that were a party to the Determination. Here, although the facts of this Determination involve marine hauling, reliance on *Samsone* (a land-based hauling decision also referenced in the Director's earlier Point Loma determination is necessary as this Determination certainly impacts land-based hauling.[18] As such, the issues raised on appeal regarding land-based trucking, which are relevant to the coverage of the Determination and, therefore, may be considered by the Decision. Further, to the extent this basis implies any party may not have had the opportunity to submit its views, in fact, all parties have been given more than ample time to submit responses to all the arguments raised by all interested parties in the appeal process.

The second basis argues that addressing what is inaccurately perceived as trucking issues on appeal is a violation of the Administrative Procedure Act ("APA") because the Director would allegedly be engaged in rulemaking.

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[18]In PW 97-011; *Towboat Operators, Point Loma Reballasting Outfall Project, South Bay Ocean Outfall Contract No. 3, City of San Diego* (January 23, 1998) ("Point Loma").

The Director's coverage determinations are case specific, addressed to specific persons, and, when designated precedential, serve as guidance for cases that may have similar facts. As discussed in section B, subsection 4, the Director is authorized to issue public works coverage determinations in order to effectuate the purposes of the CPWL. Public works coverage determinations are quasi-legislative administrative opinions that interpret statutes the Director is responsible for enforcing. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 10-11). The Director's coverage determinations are case-by-case resolutions, not regulations (*Tidewater Western Marine, Inc. v. Bradshaw* (1996) 14 Cal.4th. 557, 568-572, ("*Tidewater*")).

As has already been explained, the principles set forth in both the Determination and this Decision are common to both marine and land-based hauling. The Determination and Decision interpret the CPWL in the context of specific cases and are addressed to specific parties. Designated precedential, the Determination acts as guidance to the regulated public for those cases with similar facts and are binding on the Director, the Labor Commissioner, and CalTrans (as an LCP under 8 CCR section

16434)[19] as precedent. In this case, involving six bridge projects CalTrans, as an LCP, has a special claim to have a decision issue addressing its concerns so that it may properly undertake its enforcement responsibilities.

In this case, *Sansone* is the only applicable California decision concerning on-hauling and therefore must guide the Director's interpretation of the CPWL concerning on-hauling either in the water or on land.[20] As such, his application of *Sansone* to towboat hauling is appropriate and reasonably and necessarily extends to land-based hauling, which accounts for the participation of several parties on appeal concerned with land-based trucking issues. Thus, the Director's reliance on *Sansone* to decide issues involving marine transportation is appropriate under the facts of this case.

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[19]8 CCR section 16434 states: "[a] LCP shall have a duty to the Director to enforce the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code and these regulations in accordance with the Precedential prevailing wage decisions issued by the Director and in a manner consistent with the practice of the Labor Commissioner."

[20]For this reason, the Director declines to follow out-of-state authorities regarding on-haul to a public works site, as urged by a party to this appeal.

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## IV. CONCLUSION

For the above reasons, the Determination is affirmed.

Date: 31 July 04

John M. Rea, Acting Director