STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

DECISION ON ADMINISTRATIVE APPEAL

RE: PUBLIC WORKS CASE NO. 2005-025

CANYON LAKE DREDGING PROJECT

LAKE ELSINORE AND SAN JACINTO WATERSHEDS AUTHORITY

I. INTRODUCTION

On June 26, 2007, the Acting Director of the Department of Industrial Relations ("Department") issued a public works coverage determination ("Determination") finding that the Canyon Lake Dredging Project ("Project") constitutes a public work subject to prevailing wage requirements, except for certain off-hauling work.

On July 25, 2007, the Canyon Lake Property Owners Association ("POA") filed an administrative appeal contesting that portion of the Determination finding the Project to be a public work. Also on July 25, 2007, the Southern California Labor/Management Operating Engineers Contract Compliance Committee ("Compliance Committee") filed an administrative appeal contesting that portion of the Determination concerning the off-hauling work.

In its appeal, POA requests a hearing. California Code of Regulations, title 8, section 16002.5(b) provides that the decision to hold a hearing is within the Director's sole discretion. While the parties have raised some additional facts in their appeals, the material facts are undisputed. Because the issues raised in the appeal are predominantly legal ones, no hearing is necessary. This appeal, therefore, is decided on the basis of the administrative record, and the request for hearing is denied.

All of the submissions have been considered carefully. Except as noted below, they raise no new issues not already addressed in the Determination. For the reasons set forth in the Determination, which is incorporated herein except for the discussion of off-hauling, and for the additional reasons stated below, the appeal of POA is denied. The

Determination is affirmed as to all issues except coverage of off-haul. With respect to off-haul, the appeal of the Compliance Committee is granted. The off-haul portion of the Determination is reversed.

II. FACTS

The facts as set forth in the Determination are incorporated herein by reference. Some additional facts were obtained on appeal, which are summarized as follows.

Canyon Lake is a man-made reservoir owned and operated by the Elsinore Valley Municipal Water District ("EVMWD"). EVMWD leases Canyon Lake to POA. POA is a homeowner's association - a non-profit mutual benefit corporation comprised of Canyon Lake homeowners.[1] As a homeowner's association, POA's purpose is "to preserve, protect and police the commonly owned facilities and covenants, conditions and restrictions and agreements" governing its members.[2] The lease gives POA the right to use the surface of the lake for recreational and boating purposes. EVMWD retains the right to use the lake as a storage reservoir for agricultural and domestic water.

In 2000, EVMWD and other governmental entities[3] entered into a joint powers agreement creating the Lake Elsinore and San Jacinto Watersheds Authority ("LESJWA") in order to manage funds granted by the state pursuant to Proposition 13, which was passed by the voters in 2000.[4] In 2003, LESJWA contracted with the State Water Resources Control Board to use Proposition 13 funds to rehabilitate and improve the Lake Elsinore Watershed and the San Jacinto Watershed, and the water quality of Lake Elsinore. Task Orders No. 8 and No. 8.1, which were issued pursuant to this contract, specified that the scope of work to be done by LESJWA included the dredging of the bottom of Canyon Lake and the removal, dewatering and disposal of the dredged

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1 POA is governed by Articles of Incorporation dated May 3, 1968, and by accompanying bylaws, rules and regulations.

2 POA Articles of Incorporation, Art. II. The commonly owned facilities include a golf course, a clubhouse and a restaurant/bar.

3 These entities were City of Canyon Lake, City of Lake Elsinore, County of Riverside, Riverside County Flood Control and Water Conservation District, and Santa Ana Watershed Project Authority.

4 Proposition 13 is the Safe Drinking Water, Clean Water, Watershed Protection and Flood Protection Bond Act of 2000.

sediment. In 2004, LESJWA, as program manager for $15 million in Proposition 13 funds, contracted with POA to carry out the work specified in those task orders - work which would otherwise have been the responsibility of LESJWA to perform. Of the estimated $26 million cost of the Project, LESJWA is contributing approximately $1.2 million, which POA has used to buy the necessary dredging equipment.

The purpose of the Project is twofold. POA is performing the work in order to improve the navigability of the lake. Only the perimeter of the lake is being dredged. The dredging will deepen the water in the shoreline areas surrounding docks. At present, the buildup of silt has made some areas too shallow to launch boats. In addition, the purpose for which LESJWA wanted the work performed – and the reason Proposition 13 funds are being used – is that the work will improve water quality. A declaration provided by LESJWA states that the sediment is contaminated by phosphorus from fertilizers. The contract between LESJWA and POA specifies that the water quality in neighboring Lake Elsinore will be improved by dredging the sediment in Canyon Lake.[5] The dual purpose of the Project is confirmed by Task Order No. 8, which states that Canyon Lake was an "impaired water body for nutrients, pathogens and sedimentation/siltation. The reduction of sediments is anticipated to improve water quality and increase recreational use."[6]

Based on the "Canyon Lake East Bay Sediment Removal Project Description," the Determination stated that the dredging was done with a self-propelled floating platform equipped with a diesel engine-powered centrifugal pump to remove the sediment from the lakebed. The dredged sediment was conveyed from the dredge to the dewatering site via a temporary 8-inch pipeline. The dredged sediment was dewatered by means of a solids concentrator and 33 gravity dewatering bins. The solids concentrator had three chambers with hopper bottoms, from which the thickened sediment is discharged through a piping manifold to the dewatering bins. The dewatering process increased the concentration of

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[5] This contract specifies that "After study, the Board of Directors of LESJWA found and determined that the water quality in Lake Elsinore would be improved if the bottom of Canyon Lake was dredged of silt that has accumulated as the result of stormwater inflows to the Lake."

[6] As illustrated above, POA's statement that the sole purpose of the Project is to benefit private individuals for a private purpose is not supported by the administrative record. If true, that might raise the issue whether the use of Proposition 13 monies to fund the Project constitutes an unlawful gift of public funds. See, e.g., Cal. Const., Art. 16, § 6.

the dredged solids from approximately 15 percent solids by volume when dredged to over 90 percent solids by volume inside the gravity dewatering bins. The dewatering equipment was located at the eastern-most reach of the lake, near the boat launch facility, covering an area of approximately 1.4 acres. The equipment was laid out so that roll-off container trucks can be easily loaded for sediment hauling. The dewatered sediment was loaded onto the trucks. Pursuant to Task Orders No.8 and No. 8.1: "The dewatered sediment [was to] be hauled to the Audie Murphy Ranch development for disposal."

POA now states, however, that:

> The dredging process did not proceed as planned. There were many false starts and delays. The initial dredging plan was described in the Sediment Removal Plan referenced in the ... Determination. The actual dredging work was not performed in accordance with that plan. The initial plan called for using belt presses to dry out the dredged material and depositing the material directly into a truck bed. But after months of trying and the purchase of additional equipment (paid for by the Association), it was determined that method would not work. So, the Association abandoned the belt press method, purchased ten dewatering bins ... and pumped the dredged material through a solids concentrator and from there to the dewatering bins. The dredged material was then taken from the dewatering bins and stored on site.
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> In the meantime, Audie Murphy Ranch had been very hesitant about accepting any fill. Then the issue of the need for a stockpile permit arose. As a result, the Association ended up keeping the vast majority of the dredged material on site. The Association applied for the stockpile permit for the Audie Murphy project, but before it was issued the Association suspended the dredging project given the initial determination that the project was a public work.
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> All together, the Association estimates it hauled no more than 100 truckloads of dredged material to Audie Murphy Ranch, or about 500 yards. The truckloads were delivered to different locations throughout the Audie Murphy Project, as directed by Audie Murphy employees. The remainder of the dredged material remains on site at the Association. ... The Association ... currently plans to use some of the dredged material for various Association owned private parks within the community. The Association is also exploring grading the majority of the material on site for use in connection with the existing private boat launch and related facilities.[7]

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[7] Fiore, Racobs & Powers letter of December 28, 2007, at pp. 2-3.

III. DISCUSSION

A. The Dredging Work Constitutes Alteration.

As stated in the Determination, Labor Code section 1771[8] generally requires the payment of prevailing wages to workers employed on public works. Section 1720(a)(1) defines public works to include: "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds ... ." In its appeal, POA contends for the first time that the dredging operation is not alteration because it is not routine and does not permanently change or alter any characteristics of the lake.[9] Rather, POA argues, the dredging work is analogous to sweeping up dirt that has accumulated on a floor for 20 or 30 years.

POA's purpose for the Project is to enhance the recreational use of the lake. Dredging and removing silt at the perimeter of the lake will make the docks deeper so that it is easier for residents to dock and launch their boats. In addition, the stated purpose of the public funding source for this Project – Proposition 13 – is to improve water quality. POA concedes that the Project will have some benefit to regional water quality, although POA insists that is not the reason it agreed to do the Project.

POA's intent does not determine whether the work is alteration. Alteration, within the meaning of *Priest v. Housing Authority* (1969) 275 Cal.App.2d 751, 756,

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[8] Subsequent statutory references are to the Labor Code unless otherwise indicated.

[9] While this matter was pending, the Department decided it would no longer designate public works coverage determinations as "precedential" under Government Code section 11420.60. Consequently, PW 2005-026, *San Bernardino Fire Department Tree Removal Project*, Decision on Appeal (July 28, 2007), which was cited to and argued by POA, no longer has precedential effect. While *San Bernardino Fire Department Tree Removal* provided a useful analytical tool to assist in ascertaining whether a type of work constitutes alteration under section 1720(a)(1), the factual analysis set forth here accomplishes the same purpose. Public notice of the Department's decision to discontinue the use of precedent decisions can be found at www.dir.ca.gov/DLSF/09-06-2007(pwcd).pdf. Notwithstanding the discontinuation of precedent decisions, *San Bernardino Fire Department Tree Removal* is factually distinguishable. The work involved the removal of selected diseased or dying pine trees from a forest, leaving healthy pines and other species of trees intact. The work did not change the character of the forest. As such, the Acting Director correctly found that the tree felling and removal work did not constitute alteration within the meaning of section 1720(a)(1) as interpreted by *Priest v. Housing Authority, supra,* 275 Cal.App.2d 751. Here, the dredging work will change the character of the lake in two ways. It will improve navigability. Boats that could not be launched will now be able to. Water quality of both Canyon Lake and Lake Elsinore will be improved as well. The Department has consistently found dredging work such as the kind performed here to constitute alteration within the meaning of section 1720(a)(1). See *Dredging work for Sacramento Area Reclamation District* (July 23, 1987); see also PW 94-019, *Port of Los Angeles Spec. No. 2457 Pier 400 Dredging and Landfill Project* (June 28, 1994).

means to modify a particular characteristic of the land.[10] Contrary to POA's argument, it is not necessary that a change in a characteristic of the land be permanent in order for the work involved to constitute alteration under the *Priest* definition. Also contrary to its argument, section 1720(a) does not require alteration to be routine in nature.[11] Clearly this Project modifies a particular characteristic of the land, in that it improves both the navigability and the water quality of the lake. Accordingly, the work is alteration within the meaning of *Priest v. Housing Authority* (1969) 275 Cal.App.2d 751, 756.

B. The Dredging Work Is Being Done Under Contract And Paid For In Part Out Of Public Funds.

POA quotes the following statement in *Greystone v. Cake* (2005) 135 Cal.App.4th in arguing against coverage of the Project: "if the 'public funds' are not contracted for or used to pay for actual 'construction,' as that term is defined by statute, the project is not a public work." Based on this statement, POA makes two arguments: first, that the dredging work was not done under contract; second, that the work was not paid for out of public funds. POA conflates two issues. *Greystone* did not hold that the construction work in question was not done "under contract" within the meaning of former section 1720(a); it held that that the construction was not paid for out of public funds.

POA has cited no evidence in support of its assertion that the work in question was not done under contract. As discussed above, LESJWA contracted with the State Water Resources Control Board to dredge the lake, and subsequently entered into a contract with POA, under which the latter was obligated to perform the work. The fact that some of the work ultimately entailed different methods than those originally contemplated does not change the fact that it was done under contract. The "under contract" element of section 1720 plainly is satisfied. See *Bishop v. City of San Jose*

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[10] This definition is set forth in detail in the Determination.

[11] POA cites PW 2005-026, *San Bernardino Fire Department Tree Removal Project*, Decision on Appeal, (July 28, 2007) in support of its argument that the dredging work must be "routine" for it to be alteration. POA is confusing alteration with maintenance. Maintenance is defined by regulation as work of a "routine, recurring and usual" nature. Cal. Code Regs., tit. 8, § 16000. In the instant case, although the Compliance Committee raised the issue of maintenance as an alternative theory in its request for determination, the Determination did not did not decide that issue, and it is unnecessary to decide it here. Decision on Administrative Appeal, however, does not raise the issue of maintenance work.

(1969) 1 Cal.3d 56, 63-64 ("under contract" language in § 1771, the section imposing prevailing wage obligations on public works projects over $1,000, refers to work done under contract as opposed to work carried out by a public agency with its own forces).

As for POA's argument that under *Greystone* the construction was not paid for out of public funds, POA contends that because it used the public funding it received only to purchase the dredge and related equipment, the funds were not ultimately "used for construction" within the meaning of section 1720(a)(1). *Greystone* is inapposite, however. In *Greystone,* the court characterized the "dispositive question" after *City of Long Beach v. Department of Industrial Relations* (2004) 34 Cal.4th 942,[12] to be "whether *actual construction* ... was paid for in whole or in part out of public funds." *Greystone Homes, Inc., supra,* 135 Cal.App.4th at p. 10 (emphasis in original). The court held that public funds used to pay for land acquisition costs of the project did not constitute payment for construction. Accordingly, the project was not a public work. *Id.* at p. 13. In *City of Long Beach*, however, a fact central to the outcome was that the contract with the public entity required that public funds be placed in a segregated account and used only for expenses related to project development, such as permit fees and "design and related preconstruction costs." *City of Long Beach, supra,* 34 Cal.4th at p. 946. The court held that payment for such "preconstruction" activities did not constitute payment for construction under the former language of section 1720(a). *Id.* at pp. 953-954.

Here the contract did not earmark the public funds for non-construction activities, nor did it earmark them for purchase of the dredge. That contract simply required that POA perform the dredging in return for the public funds it received. The

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[12] In *City of Long Beach, supra,* the project was a private animal shelter. The City contributed funds to the project that were earmarked for project development, design and related *preconstruction* costs, including architectural design costs and surveying fees. When the City entered into the contract in 1998 to contribute money to assist in the development and preconstruction phases of the shelter, "construction" was not defined in the statute. The Court held that payment of public funds for *pre-construction activities* did not constitute payment for "construction." (After the contract was entered into in *City of Long Beach*, the Legislature passed Senate Bill 1999 in 2000, effective January 1, 2001, amending section 1720(a) to specifically include design and preconstruction phases of construction, including inspection and surveying, in the definition of construction. The Court determined that this amendment changed existing law and operated prospectively only. *City of Long Beach, supra,* 34 Cal.App.4th at p. 951.)

fact that a public works contractor chooses to purchase equipment with the public funds it receives does not mean that the payment is not for construction.

Moreover, *City of Long Beach* and *Greystone* addressed the language of *former* section 1720(a), rather than the present statutory language. A determination whether the Project is "paid for in whole or in part out of public funds" requires an analysis of section 1720(a) as amended in 2001 by Senate Bill 975 ("SB 975"), which is the law applicable to the Project.[13]

SB 975 went into effect on January 1, 2002. Prior to 2002, section 1720(a) provided only that construction was a "public works" if "paid for in whole or in part out of public funds." In SB 975, the Legislature added subsection (b), which defines "paid for in whole or in part out of public funds," and subsection (c), which exempts certain development projects from the coverage of the prevailing wage laws even though there may be public subsidies involved that would otherwise render such projects public works.

Section 1720(a)(1) still provides in relevant part that "construction ... paid for in whole or in part out of public funds" is "public works." By defining "paid for in whole or in part out of public funds" to mean the public subsidies listed in 1720(b) subparts (1) – (6), the Legislature has determined that construction is paid for out of public funds where a public entity contributes one or more such subsidies to a project.

Among the enumerated forms of public subsidies to a project in section 1720(b) are subsidies that cannot be used to directly pay for the cost *of* construction, and yet the Legislature nevertheless has determined these subsidies to be payment *for* construction. These subsidies include: a public entity's performance of construction work - 1720(b)(2); a public entity's transfer of an asset, such as real property, for below fair market price - 1720(b)(3); a public entity's waiver or payment of fees, costs, rents, insurance or bond premiums - 1720(b)(4); and a public entity's allowance of credits against repayment obligations - 1720(b)(6). Thus, under the current provisions of section 1720, construction is a public work subject to prevailing wage requirements where there is a public subsidy to a project even though the public subsidy does not pay for actual construction. Thus,

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[13] The applicable statutory law is the law in effect on the date on which the parties entered into the operative Agreement for the Canyon Lake Dredging Project, July 15, 2004.

POA's reliance on *Greystone,* which arose under the pre-SB 975 version of section 1720, is misplaced.

Turning to the facts of this case, dredging of the lake, as mentioned above, qualifies as alteration done under contract. The question presented here is whether the alteration is "paid for in whole or in part out of public funds." The answer turns on whether there is a public subsidy to the Project within the meaning of section 1720(b). Here there is a "payment of money ... by the state or political subdivision directly to ... the public works contractor, subcontractor, or developer" within the meaning of section 1720(b). Therefore, the Project is a public work subject to prevailing wage requirements.

C. The Project Is Not Excepted From Coverage As A Public Work Under Section 1720(c)(3).

POA argues that the Project is excepted from coverage as a public work under section 1720(c)(3), which provides:

> If the state or a political subdivision reimburses a private developer for costs that would normally be borne by the public, or provides directly or indirectly a public subsidy to a private development project that is *de minimis* in the context of the project, an otherwise private development project shall not thereby become subject to the requirements of this chapter.

Exceptions to a statute are to be strictly construed. *City of Lafayette v. East Bay Mun. Utility Dist.* (1993) 16 Cal.App.4th 1005, 1017.

POA contends that it is a private developer engaged in an otherwise private development project within the meaning of section 1720(c)(3). Statutes must be interpreted "according to the usual, ordinary import of the language employed in framing them." *Dubois v. WCAB* (1993) 5 Cal.4th 382. The California Court of Appeal has defined "develop," in the context of real estate improvements, as "to convert from a tract of raw land into an area suitable for residential or business uses... A developer has the overall control over the development of a 'tract of raw land' and the myriad of improvements to the land which eventually complete the development." *Liptak v. Diane Apartments, Inc.* (1980) 109 Cal.App.3d 762, 770-771. *Liptak* further contrasts development with the lesser work of improvement: "[a] person contributing to 'an

improvement' carries out only one of many steps towards completion of the development." *Id.* at 771.

POA is a homeowners association, not a developer. The purpose of the POA is to maintain the common areas of the community and to enforce the covenants, conditions and restrictions governing its member homeowners. Unlike a developer, it is not building a new community on a tract of empty land. Rather, POA collects dues from its constituent homeowners and uses the money to alter, maintain and improve the amenities and common areas of the community, such as a clubhouse, a golf course and the lake. POA is not "developing" the lake in that it is not creating a new lake as part of a larger scheme of construction. Rather, it is, at most, improving an existing lake, which is owned by a public entity, in order to benefit its members. Moreover, POA did not undertake this Project as a private entity acting on its own behalf, but rather as a contractor for a political subdivision of the state. Accordingly, the exception for private developers afforded by section 1720(c)(3) does not apply.

The legislative comment to SB 975, which enacted the relevant portion of section 1720(c)(3), states "This bill would provide that certain private residential housing projects and development projects built on private property are not subject to the prevailing wage, hour, and discrimination laws that govern employment on public works projects." 2001 Ch. 938, SB 975. This language reinforces the notion that the Legislature intended the section 1720(c)(3) exemption to apply to traditional development projects where new homes or structures are being built on undeveloped land. That is not the case here.

Moreover, in light of the fact that POA is carrying out a public purpose on public property, pursuant to a contract with public entities, POA's contention that the Project is an "otherwise private development project" within the meaning of section 1720(c)(3) must be rejected.

Because POA is not a private developer and the Project is not an otherwise private development project, the exception in section 1720(c)(3) does not apply. Therefore, the issue of whether public funding for the project was *de minimis* need not be addressed.

D. The Off-Hauling Was Done In The Execution Of The Public Works Contract And Is Therefore Subject To Prevailing Wage Requirements.

The Determination found that the off-hauling of the dredged material is not done in the execution of the public works contract and therefore is not subject to prevailing wage requirements. Citing the analysis in *O.G. Sansone Co. v. Dept. of Transportation*, *supra,* 55 Cal.App.3d 434, the Determination stated that off-hauling work is generally not subject to those requirements, and that prevailing wages must be paid only under the following limited exceptions:

> Hauling within a single public works site is subject to prevailing wages, whether it is for the purpose of hauling materials, personnel, tools or equipment, because such work is closely tied to the construction process by virtue of the fact that it is performed on-site. Hauling from a public works site to a temporary, adjacent site set up for and dedicated to the public works site is subject to prevailing wages for the same reason that on-hauling from a temporary, adjacent dedicated site such as a batch plant or borrow pit was found to be subject to prevailing wages under *Sansone.* Hauling from one public works site to a second public works site is subject to prevailing wages because the first site is similar in function to the temporary, adjacent dedicated site under *Sansone.* Finally, prevailing wages are required for any work done by haulers participating in the construction process on the public works site, but not for hauling time off the site.

Because the off-hauling in this case does not fall within any of the above exceptions, the Determination concluded that it is not subject to prevailing wage requirements.

At the time the Determination was issued, there were no California judicial decisions addressing the issue of prevailing wage requirements for off-hauling; *Sansone* involved only on-hauling of materials to a public works site. That situation changed significantly when the First District Court of Appeal issued its decision in *Williams v. SnSands Corporation* (2007) 156 Cal.App.4th 742. *Williams* began its analysis by interpreting the statutory term "execution":

> In determining legislative intent, courts are required to give effect to statutes according to the usual, ordinary import of the language employed in framing them. [Citations and quotation marks omitted.] The familiar meaning of "execution" is "the action of carrying into effect (a plan, design, purpose, command, decree, task, etc.); accomplishment" (5 Oxford English Dict. (2d ed.1989) p. 521); "the act of carrying out or putting into

> effect," (Black's Law Dict. (8th ed.2004) p. 405, col. 1); "the act of carrying out fully or putting completely into effect, doing what is provided or required." (Webster's 10th New Collegiate Dict. (2001) p. 405.) Therefore, the use of "execution" in the phrase "in the execution of any contract for public work," plainly means the carrying out and completion of all provisions of the contract.
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> The analysis in *O.G. Sansone Co. v. Department of Transportation, supra,* 55 Cal.App.3d 434, 127 Cal.Rptr. 799 (*Sansone*) of who is, and who is not, a subcontractor obligated to comply with the state's prevailing wage law also informs our assessment of the intended reach of the prevailing wage law to "[w]orkers employed ... in the execution of any contract for public work." (§ 1772.)

Id. at pp. 749-750.

Sansone, as interpreted by *Williams,* 156 Cal.App.4th at p.752, recognized a "delivery exemption" from prevailing wages for bona fide material suppliers. This exemption does not apply to employees of the construction contractors. Under *Williams*, employees of construction contractors who are carrying out and completing the provisions of the public works contract are entitled to payment of prevailing wages under section 1772. Such work is deemed performed "in the execution of" the contract.

In relying on *Sansone,* and without the benefit of *Williams*, the Determination analyzed coverage of the off-haul work as though it were being performed by employees of a material supplier, rather than employees of a construction contractor. For this reason, the coverage analysis, below, as to off-haul can no longer be relied upon.

Here, the off-hauling was performed by an employee of POA, which was acting in the capacity of a public works contractor. The contract specified that POA was responsible for off-hauling the dredged material; moreover, the contract specified the location to which it was to be transported, the Audie Murphy Ranch development.[14] Thus, the off-hauling was necessary to the carrying out and completion of all provisions

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[14] Task Orders No. 8 and No. 8.1 provided in part that: "The dewatered sediment will be hauled to the Audie Murphy Ranch development property for disposal. Other land development sites may be used for disposal of dewatered sediment."

of the contract, and was done in the execution of the public works contract within the meaning of section 1772.[15]

The facts and analysis herein are consistent with the determination in PW 1999-081, *Granite Construction Company*, in which the public works contract obligated the contractor to remove the excavated material and a portion of the off-haul work was performed by contractor himself, and with *Rosewood Avenue/Willoughby Avenue Sewer Interceptor, City of Los Angeles* (August 6, 2001), in which the off-haul was functionally related to the construction activity. Both determinations were endorsed by the *Williams* Court as correctly reasoned.

POA nonetheless argues that the off-hauling was not done in the execution of the contract, apparently on the basis that most of the dredged material ultimately was not hauled to the Audie Murphy Ranch. However, the changed circumstances do not negate the fact that the task orders incorporated into POA's contract did, in fact, specify that the material was to be transported there. Thus, under the *Williams* analysis, the off-hauling is a necessary part of the carrying out and completion of all provisions of the contract. Such off-hauling as actually occurred, therefore, was done in the execution of the contract, and is subject to prevailing wage requirements.

IV. CONCLUSION

In summary, for the reasons set forth in the Determination, as augmented and modified by this Decision on Administrative Appeal, the POA appeal is denied and the Compliance Committee appeal is granted. This Decision constitutes the final administrative action in this matter.

Dated: 3/28/08

John C. Duncan, Director

[15] The circumstances under which off-haul work performed by employees of independent trucking companies, rather than employees of the construction contractor, would be covered under *Williams* will be addressed in a different case where those facts are present. Relevant factors include: whether the transport was required to carry out a term of the public works contract; whether the work was performed on the project site or another site integrally connected to the project site; whether work that was performed off the actual construction site was nevertheless necessary to accomplish or fulfill the contract. *Id.* at p. 752.