

DEPARTMENT OF INDUSTRIAL RELATIONS

**Katrina S. Hagen, Director**

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February 6, 2023

Keith A. Goodwin  
Sheppard, Mullin, Richter & Hampton LLP  
501 West Broadway, 19th Floor  
San Diego, California 92101-3598

Re: Public Works Case No. 2020-020  
Redwoods Rising Project  
Save the Redwoods League

Dear Mr. Goodwin:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws, and is made pursuant to California Labor Code section 1773.5<sup>1</sup> and California Code of Regulations, title 8, section 16001, subdivision (a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the road removal and reoccupation work, as well as riparian habitat restoration work and tree removal performed in the execution of road removal and reoccupation work, that the Save the Redwoods League (League) is undertaking in Redwood National Park, Del Norte Coast Redwoods State Park, and Prairie Creek Redwoods State Park (Redwoods Rising Project or Project) is public work and therefore subject to the requirements related to the payment of prevailing wages.

### **Facts**

The Redwoods Rising Project is a partnership between the League, the National Park Service, and the California Department of Parks and Recreation that seeks to restore approximately 80,000 acres of redwood ecosystems at various sites located within Humboldt and Del Norte Counties.<sup>2</sup> As a result of historical commercial logging operations within these sites, large swaths of unnaturally dense young forests have grown up in areas surrounding primeval redwood stands. In addition, deteriorating logging

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<sup>1</sup> Unless otherwise indicated, all further statutory references are to the California Labor Code and all subdivision references are to the subdivisions of section 1720.

<sup>2</sup> The Project is anticipated to be carried out over many years in Redwood National Park, Jedediah Smith Redwoods State Park, Del Norte Coast Redwoods State Park, and Prairie Creek Redwoods State Park, collectively home to 45 percent of the remaining protected old-growth redwoods.

roads thread through these areas, increasing the spread of invasive species and causing soil erosion that sends sediment into nearby streams, threatening the health of riparian environments. Culverts and stream crossings originally constructed by logging companies have not been maintained and have become vulnerable to failure.

The Project is a habitat restoration project which seeks to accelerate the development of late-seral forest conditions in previously logged forests, remove legacy logging roads, protect streams from sedimentation, and enhance aquatic habitats. The Project is expected to span decades. However, the initial stage of this work, referred to as “Phase 1,” began in 2019 and is focused on the Greater Mill Creek and Greater Prairie Creek watersheds; and restoring 3,266 acres and removing 13 miles of roads by spring 2022. (Save the Redwoods League, Grant Application to the California Coastal Conservancy, September 5, 2019 (Cal. Coastal Conservancy Grant App.).)

The Project is funded in part from public sources comprised of state and federal grants, including a \$7 million grant from the California Department of Forestry and Fire Protection, a \$3 million grant from the California State Coastal Conservancy, and \$4.3 million from the National Park Service. The Project has an anticipated budgeted cost of \$36.2 million. (Cal. Coastal Conservancy Grant App.)

The League has specified two issues upon which it seeks a coverage determination: (1) whether the Redwoods Rising Project is to be considered a single project or multiple projects; and (2) whether the categories of work the League will perform qualify as public work under California’s prevailing wage laws. The League has summarized the work to be performed into three general categories: road removal and reoccupation, tree thinning and biomass removal, and riparian restoration.

### **Discussion**

All workers employed on public works projects must be paid at least the prevailing wage rates applicable to their work. (§ 1771.) Section 1720, subdivision (a)(1) (hereafter section 1720(a)(1)) defines “public works” to mean: construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds. “There are three basic elements to a ‘public work’ under section 1720(a)(1): (1) ‘construction, alteration, demolition, installation, or repair work’; (2) that is done under contract; and (3) is paid for in whole or in part out of public funds.” (*Busker v. Wabtec Corporation* (2021) 11 Cal.5th 1147, 1157 (*Busker*).

The fact that the Project will be paid for out of public funds and done under contract is not in dispute. Thus, the issue in this instance is whether the work to be performed is covered under the prevailing wage law.

#### **A. The Redwoods Rising Project is a Single Project.**

The League seeks to have the Project allocated as six discrete projects: (1) road removal and reoccupation at the Greater Mill Creek watershed; (2) tree thinning and biomass removal at the Greater Mill Creek watershed; (3) riparian habitat restoration at the Greater Mill Creek watershed; (4) road removal and reoccupation at the Greater

Prairie Creek watershed; (5) tree thinning and biomass removal at the Greater Prairie Creek watershed; and (6) riparian habitat restoration at the Greater Prairie Creek watershed. In general, where there are multiple potential projects proceeding in conjunction with one another, and it is claimed that public funding subsidizes only some components, while other components are privately funded, the scope of the project or projects in question must be determined before considering the question of public works coverage. To determine the appropriate scope of a project, the “totality of the underlying facts” must be examined to determine the “complete integrated object.” (*Oxbow Carbon & Mineral, LLC v. Department of Industrial Relations* (2011) 194 Cal.App.4th 538, 549-550; *Cinema West, LLC v. Baker* (2017) 13 Cal.App.5th 194, 212-214.)

In this instance, however, the League is not arguing that any one of the aforementioned components of the Project, if properly characterized as six discrete projects, is completely privately funded. Each component will receive public funding. As such, it appears that the “complete integrated object” analysis is unnecessary under these facts. (See *Busker, supra*, 11 Cal.5th at p. 1170.) It makes no difference for the coverage analysis whether the Project is one project or split into six.

Nonetheless, it is apparent that given the interrelated purpose, goals, and funding of the work the League is undertaking, Phase 1 of the Redwoods Rising Project should be considered a single project. The various work at the two sites, which are physically linked, is identical in nature. The fact that the work involved in realizing the goals of the Project can be considered in discrete categories does not alter the goal of the Project as a whole. It is a habitat restoration project to be performed under Phase 1 of the Project, with no priority given to the work at either of the two sites. Each of the discrete categories of work - road removal and reoccupation, tree thinning and biomass removal, and riparian restoration - is intended to achieve the goal of habitat restoration in the areas in which the Project is to be performed.

And finally, in addition to having identical purposes and goals, all of the work undertaken by the League on the Project is funded from the same sources. As such, Phase 1 of the Redwoods Rising Project is considered a single project for the purpose of determining the applicability of California prevailing wage law.

## **B. The Redwoods Rising Project is a Public Works Project.**

The League’s request seeks clarification as to which specific work undertaken in the course of the Project is subject to the requirements related to the payment of prevailing wages. “The prevailing wage law describes with particularity the kind of ‘public works’ that fall within its scope.” (*Mendoza v. Fonseca McElroy Grinding Co., Inc.* (2021) 11 Cal.5th 1118, 1124.) This determination cannot expand the law’s scope beyond public work as defined by the Labor Code, and other relevant sources. (See e.g., *id.* at p. 1139.)

Determining which work constitutes public work subject to prevailing wage requirements requires an analysis of the actual work at issue. The League’s own analysis as to which specific work is subject to prevailing wage requirements, absent the parsing of the Project into six discrete projects, is largely consistent with the Department’s interpretation of applicable law.

1. Road Removal and Reoccupation is Public Work.

The League will decommission and reforest approximately 50 miles of inaccessible and non-functioning legacy logging roads. This work involves excavating road fill from stream channels, removing culverts and other drainage structures from stream crossings, pulling back side-cast road fill, de-compacting roads, retrieving and burying man-made debris, and restoring the natural configuration of the land, such as ridges, stream valleys, and swales. The goal of this work is to restore the habitat as it existed prior to commercial logging operations. In addition, the League intends to repair and reestablish approximately 50 miles of abandoned and long-unmaintained haul roads, skid trails, and landings. Among other activities, this work will include clearing vegetation and removing trees in order to provide road access and proper drainage.

The League concedes that all of the foregoing work is subject to the requirements related to the payment of prevailing wages pursuant to section 1720(a)(1). The work as described involves demolition and repair as those terms have been defined by California prevailing wage law.

Demolition has been defined as “tearing down that which has been constructed.” (*Priest, supra*, 275 Cal.App.2d at p. 756; see also PW 2008-015, *Land Clearing Project Selma-Kingsburg-Fowler County Sanitation District* (June 11, 2008).) Insofar as work on the Project involves the removal, retrieval, and burying of man-made structures or debris, such work constitutes demolition.

The term “repair” as it is employed in section 1720(a)(1), has been defined in various coverage determinations. (See, e.g., PW 2002-034, *Sacramento State Capitol Exterior Painting Project, Restoration and Hauling of Decorative Cast Iron Elements* (July 18, 2002); PW 2011-009 *Service Authority for Freeway Emergencies (SAFE) Installation, Repair and Maintenance of Freeway and Highway Emergency Call Boxes* (Mar. 27, 2012); and PW 2018-030, *Salinas Fairways – Tree Removal, City of Salinas* (July 29, 2021).) Additionally, dictionary definitions can aid in determining the usual and ordinary meaning of a statutory term. (*McIntosh v. Aubry* (1993) 14 Cal.App.4th 1576, 1588, superseded by statute on another ground as stated in *State Building & Construction Trades Council of California v. Duncan* (2008) 162 Cal.App.4th 289, 307.) According to Webster’s New World Dictionary, the verb “repair” is defined as “to put back in good condition after damage, decay, etc.; mend; fix.” (Webster’s New World Dict. (college ed. 1957) p. 1233.) The California Supreme Court has stated that the “word ‘repair’ in its ordinary sense relates to the preservation of property in its original condition, and does not carry the connotation that a new thing should be made or a distinct entity created.” (*Whalen v. Ruiz* (1953) 40 Cal.2d 294, 300.) Where the League engages in the repair and reestablishment of disused roads in the course of the Project, such work constitutes public work.

The League does not specify any new construction anticipated in the execution of the Project, but to the extent such work involves new road construction in relation to the aforementioned work, such work is similarly covered under section 1720(a)(1).

In addition, section 1720, subdivision (a)(8), defines public work as tree removal done in the execution of a project covered under section 1720(a)(1). Thus, the tree removal performed in conjunction with the construction, demolition, and repair in the execution of the road removal and reoccupation work is public work and subject to the requirements related to the payment of prevailing wages.

2. Riparian Habitat Restoration Work Not Performed in Conjunction with Road Removal and Reoccupation Work is Not Public Work.

The League intends to perform riparian habitat restoration in the course of the Project. This restoration will include planting conifer trees along riparian corridors, removal of invasive plants, and placing into tributaries those trees that were felled during thinning operations.

The riparian habitat restoration to be performed in the course of the Project is intended to reestablish natural stream morphology, hydrology, stream function, and improve the habitat for fish. This is essentially planting trees in a forest, of the same species as currently exist there, as well as the removal of invasive plant species, and the placement of felled trees. This work does not rise to the level of modification of the land to such an extent that it constitutes alteration under section 1720(a)(1), as that term has been defined in prior coverage determinations.

While on-site planting and the removal of invasive species have at times previously been found to be covered work, the work here is distinguishable. (See PW 2002-096, *Request for Proposals: Planting, Operation, Maintenance and Monitoring of Owens Lake Southern Zones Managed Vegetation Project – Los Angeles Department of Water and Power* (Dec. 16, 2005/June 1, 2005) (*Owens Lake*); PW 2009-055, *Ecosystem Restoration and Flood Attenuation Project, San Joaquin River* (Oct. 5, 2010) (*San Joaquin River*); PW 2020-018, *Bryant Habert/Wait Ecological Restoration Project, Phase II - Resource Conservation District of Santa Cruz* (Dec. 6, 2021) (*Bryant Habert*); and PW 2022-003, *Removal of Dominant Invasive Plant Species - Sonoma Resource Conservation District* (Nov. 1, 2022) (*Sonoma Invasive Species Removal*)). In *Owens Lake*, the planting of native salt grass plugs onto a flooded, previously dry lakebed, involved significant modification of the land, as the planting created vegetation where previously there was none. In *San Joaquin River*, the planting of native plants for habitat restoration was done in conjunction with an intentional levee breach, and the tilling and disking of a floodplain. In *Bryant Habert*, the project involved the conversion of fallow agricultural land to enhance ecosystem health and resiliency in the Watsonville Slough system, by means of earthmoving, grading, and the creation of topographic islands. And in *Sonoma Invasive Species Removal*, the work was related to remediation and habitat restoration after a devastating wildfire which drastically altered the landscape for years and required the implementation of specific post-fire management practices. In each of these instances, there was significant change to the characteristics of the land on which the work was performed. By contrast, the restoration work involves only planting the same species of trees that already exist on the land, the placement of previously felled trees in tributaries, and removal of some invasive plants.

The riparian habitat restoration work, to the extent it does not intersect with the road removal and reoccupation work, is not public work. To the extent that such riparian habitat restoration work does intersect with the road removal and reoccupation work, it is public work.<sup>3</sup>

3. Tree Removal in the Execution of Road Removal and Reoccupation Work is Public Work.

Tree removal work done in the execution of a public works contract involving construction, alteration, demolition, installation, or repair work is public work and subject to the requirements related to the payment of prevailing wages. (§ 1720, subds. (a)(1) & (a)(8).)

The League concedes that tree removal work performed in connection with the work of road removal and reoccupation is public work requiring the payment of prevailing wages. For purposes of this coverage determination, tree removal performed in relation to the riparian restoration which takes place adjacent to roads is also covered work subject to prevailing wage requirements. (See fn. 3, *infra*.)

4. Biomass Removal is Not Public Work.

The League recognizes that tree thinning and biomass removal work is tree removal work. The League will be thinning portions of the redwood forest in the Greater Mill Creek and Greater Prairie Creek watershed area by removing trees where tree density has prevented Redwoods from receiving the light and space needed for them to grow. However, where such tree removal is not done in the execution of construction, alteration, demolition, installation, or repair work, it is not public work.<sup>4</sup>

Thus, tree removal work done in relation to road removal and reoccupation work and tree removal done in conjunction with riparian habitat restoration work that intersects with road removal and reoccupation work are subject to the requirements related to the payment of prevailing wages. All other tree removal performed on the Project is not subject to prevailing wage requirements.

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<sup>3</sup> The League concedes that “. . . where roads cross streams, road work may incidentally have aquatic restoration benefits, such as improving the road to reduce erosion and sediment drift, removing earthen bridges that disrupt streams, or replacing undersized or damaged culverts. In these instances, the League considers the aquatic restoration work to be ‘road work.’” (League’s Request for Coverage Determination, p. 8, fn. 4.)

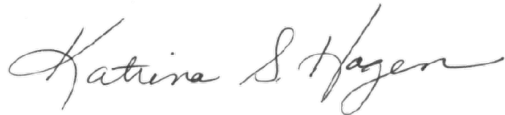
<sup>4</sup> There is no indication that any maintenance is anticipated to be performed on the Project. Tree removal that meets the definition of maintenance work has been determined to be covered work subject to prevailing wage requirements. (§ 1771; Cal. Code Regs., tit. 8, § 16000; see, e.g., *Reliable Tree Experts v. Baker* (2011) 200 Cal.App.4th 785, 788; PW 2020-008, *Camp Fire Tree Removal Work – California Department of Resources Recycling and Recovery* (Apr. 29, 2020); and PW 2018-030, *Salinas Fairways – Tree Removal, City of Salinas* (July 29, 2021).)

**Conclusion**

For the foregoing reasons, the road removal and reoccupation work, as well as riparian habitat restoration work and tree removal performed in the execution of the road removal and reoccupation work, that the Save the Redwoods League is undertaking in Redwood National Park, Del Norte Coast Redwoods State Park, and Prairie Creek Redwoods State Park is public work and therefore subject to the requirements related to the payment of prevailing wages.

I hope this determination satisfactorily responds to your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Katrina S. Hagen".

Katrina S. Hagen  
Director of Industrial Relations