

DEPARTMENT OF INDUSTRIAL RELATIONS

Katrina S. Hagen, Director

Office of the Director

1515 Clay Street, Suite 2208

Oakland, CA 94612

Tel: (510) 286-7087 Fax: (510) 622-3265



March 16, 2023

Duane Kenagy, P.E.
Capital Programs Executive
Port of Long Beach
415 W. Ocean Boulevard
Long Beach, California 90802-6194

Re: Public Works Case No. 2021-011
Pier B On-Dock Rail Support Facility Program Oil Field Relocation Project
Port of Long Beach

Dear Mr. Kenagy:

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 1773.5¹ 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 Pier B On-Dock Rail Support Facility Program Oil Field Relocation Project for the Port of Long Beach, including the well abandonment and relocation work, is public work subject to prevailing wage requirements.

Facts

A. The Port of Long Beach and the Tidelands.

The City of Long Beach Harbor Department is an independent City department established to promote and develop the Port of Long Beach (the Port). (Long Beach City Charter, art. XII, § 1200.) The Harbor Department is governed by a five-member Board of Harbor Commissioners.² The Port is "owned and operated by the City of Long Beach, and management is vested in the Board of Harbor Commissioners of the City." (*American Trucking Associations, Inc. v. City of Los Angeles* (9th Cir. 2009) 559 F.3d 1046, 1048, fn. 2.) The Board of Harbor Commissioners has the exclusive power to "plan, promote,

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

² For simplicity, the Harbor Department, the Board of Harbor Commissioners, and the Port will collectively be referred to as the Port, unless otherwise indicated.

develop, construct, re-construct, alter, repair, maintain, equip, and operate all properties including, but not limited to, the piers, wharves, seawalls, docks, basins, channels, slips, landings, warehouses, floating and other plants or works, and all other publicly owned facilities or appliances incident to the operation of the Harbor District,” of which the Port is a part. (Long Beach City Charter, art. XII, §§ 1202-1203.)

The City of Long Beach (the City) and the Port manage the Wilmington Oil Field. A large portion of the Wilmington Oil Field is located beneath the Long Beach tidelands,³ which were conveyed by the California Legislature to the City in 1911 “to be held in trust and used to establish a harbor and to construct anything necessary or convenient for the promotion of commerce and navigation.” (*State of California ex rel. California State Lands Com. v. City of Long Beach* (2005) 125 Cal.App.4th 767, 771; see Stats. 1911, ch. 676, § 1.) “The lands granted included the minerals therein, which are also subject to the trust. [citation.]” (*Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, 205.)

According to the Port, in 1964, the City entered into a contract with a consortium of oil companies known as the Long Beach Oil Development Company (LBODC) to operate and maintain the oilfields for 35 years (approximately until 1989). Under a 1979 agreement, known as the Nineteenth Accessory Agreement, the Port agreed to pay LBODC for the well abandonment and relocation work if the Port required the work to be done to accommodate a Port project. In 1989, the City entered into another contract to “develop and operate the Long Beach Harbor Tidelands Parcel and Parcel ‘A’ in the West Wilmington oil field.” The current oilfield operator and contractor is a general partnership of oil companies known as Tidelands Oil Production Company (Tidelands). The most recent amendment to the 1989 oil contract extends its terms until the oil is depleted.

B. The Pier B On-Dock Rail Support Facility Program and the Associated Oil Field Relocation Project.

The Pier B rail facility is a storage and staging area for trains that are part of the Port’s rail network. The Pier B On-Dock Rail Support Facility Program (Pier B Program), an \$819 million rail support project, will reconfigure and expand the existing Pier B rail facility to allow Port terminals to move cargo faster and more efficiently. The Pier B Program will include a new locomotive support facility, new tracks, existing track realignment, street realignment, and other improvements.

Existing oilfield facilities, pipelines, onshore wells, and other associated infrastructure will need to be removed and relocated to carry out the Pier B Program. This oilfield facility and infrastructure relocation project, which includes well abandonment and relocation work, is known as the Oil Field Relocation Project. The Port will pay Tidelands

³ According to the Port, tidelands are defined “as those lands and water areas along the coast of the Pacific Ocean seaward of the ordinary high tide line to three miles offshore. The California Supreme Court has defined tidelands as “properly those lands lying between the lines of mean high and low tide [citation] covered and uncovered successively by the ebb and flow thereof [citation].” (*Marks v. Whitney* (1971) 6 Cal.3d 251, 257–258.)

to perform the work on the Oil Field Relocation Project, pursuant to the terms of the Nineteenth Accessory Agreement.

The Port states that when a well is no longer used, the well must be permanently sealed and closed to prevent hydrocarbons or other contaminants from migrating between underground rock layers into drinking water or to the surface. In industry parlance, this is also known as plugging and abandonment of wells. The Oil Field Relocation Project will require the abandonment of three oil production wells and two Class II water injection wells.⁴ The two abandoned Class II water injection wells will be replaced with two new Class II wells that will be newly drilled.

C. Abandoning Wells and Drilling New Oilfield Wells.

The Port describes the well abandonment process as follows. A notice of intention to abandon must be filed with the California Geologic Energy Management Division (CalGEM) in the Department of Conservation. (Pub. Res. Code, §§ 3229, 3004, 690.) The notice of intention must include the total depth of the well to be abandoned, the complete casing record of the well, including plugs, and other information as CalGEM may require on CalGEM forms. (Pub. Res. Code, § 3230.) A permit may be issued after the notice of intention is submitted. The wells in the West Wilmington Oil Field are more than 3,000 feet deep. Each well must be individually assessed to document depth, pressure, surface and sub-surface structure, and the condition of the wellbore. This assessment is done to develop a plug and abandon plan, which includes specific calculations for the depth and length of every cement plug, as well as the exact chemical composition of cement at each depth, and detailed directions for accommodating slurry.

Before the well can be plugged, tubulars and well casing (surface casing, conductor pipe, and well pipe) must be removed. The well is then permanently sealed by placing cement in the wellbore or casing at certain intervals as specified by law. During this plugging process, the hole is filled with drilling fluid or mud to help prevent the migration of fluids. Cement plugs are required to be placed across the oil or gas reservoir, across the base-of-fresh-water, and at the surface, or anywhere else where a cement plug may be needed. After placement, pressure testing is performed to ensure that the plugs are tight. Among the workers and equipment needed for the abandonment work is a workover rig and crew, cement truck, vacuum truck, tubing and casing handling equipment, casing laydown equipment and crew, and a welder.

Certain plugging and abandonment operations must be witnessed by a CalGEM engineer as specified in the abandonment permit. (Cal. Code Regs., tit. 14, § 1723.7.) Final written approval of the abandonment must be obtained from CalGEM. (Pub. Res. Code, § 3232).

To begin drilling a well at a new location to replace the wells that will be plugged and abandoned, the well operator must file a “written notice of intention to commence drilling” with CalGEM and must receive a permit before commencing operations. (Pub.

⁴ Class II water injection wells are used to safely inject the salt water produced with oil and gas to provide pressure support in the reservoirs and prevent surface subsidence.

Res. Code, § 3203). Before a permit is issued, the project is reviewed by the appropriate regional water quality control board and CalGEM engineers evaluate the geologic and engineering information. Injection project permits include many conditions, such as approved injection zones, allowable injection pressures, and testing requirements. Tidelands has already obtained permits for the drilling of the two new Class II wells.

As with plugging and abandoning plans, a detailed drill and complete plan is prepared for the drilling of new wells. When a well is being drilled, a specially designed drilling fluid is pumped through the drill pipe, circulated out through the wellbore, and back to the surface. (See Cal. Code Regs., tit. 14, § 1722.6.) Drilling fluid serves to lift rock cuttings out of the wellbore, to cool the drill bit, and to counteract downhole formation pressure keeping reservoir fluids and groundwater from entering the wellbore and preventing them from mixing.

After a well is drilled, steel pipe called casing is placed in the wellbore and cement is pumped down the casing. The cement pushes out around the bottom of the casing, and flows up the space between the wellbore and casing, back to the surface. When the cement hardens, it forms a bond between the walls of the wellbore and the outside of the casing. (Cal. Code Regs., tit. 14, §§ 1722.2-1722.4.) The casing and cement prevent fluids in different zones from mixing with each other or with injected fluids. To provide an extra layer of protection, tubing is placed in the well and a packer is used near the bottom of the tubing to seal it against the casing. The packer prevents water from entering the space between the tubing and casing when water is injected down the tubing. Several tests are run to make sure the well is operating properly, and the injected fluids are confined to the intended injection zone. A CalGEM engineer must witness and review the drilling tests and results as required in the CalGEM drilling permit. The drilling work requires a drilling rig and crew, and like the abandonment work, requires a cement truck, vacuum truck, and tubing and casing handling equipment among other associated equipment and workers.

Contentions Advanced by Interested Parties

The Port asks whether the Oil Field Relocation Project is a public works project, and if so, whether the oil abandonment and relocation work is subject to prevailing wage requirements. The Port does not appear to advance any particular position with respect to the questions it asks.

The State Building and Construction Trades Council of California (SBCTC)⁵ argues that the Oil Field Relocation Project meets the definition of a public works project under Labor Code section 1720, subdivisions (a)(1), (a)(2), and (a)(3) (hereafter section 1720(a)(1), section 1720(a)(2), and section 1720(a)(3)).

⁵ The SBCTC is “a labor federation founded in 1901 and comprises local unions, district councils, and local building trades councils that collectively represent more than 450,000 construction workers in California, including about 63,000 registered apprentices in 14 building trades crafts.”

The SBCTC insists that the Oil Field Relocation Project qualifies as a public works project under section 1720(a)(1) because work on the project is being done under contract, is paid for out of public funds, and involves, among other things, a number of different tasks that constitute construction, alteration, demolition, installation and repair work. In addition, the work on the Oil Field Relocation Project is public work because the work is being “done for” the Port, which the SBCTC argues is a covered district under section 1720(a)(2). The SBCTC further contends that the work on the Oil Field Relocation Project is public works under section 1720(a)(3) because the work constitutes “other improvement work” that is being done on public property under the direction and supervision of the Port and by the authority of the Port, since the Port is directing Tidelands to perform this work.

Twenty-seven workers⁶ who performed oil well abandonment work for the Port also jointly submitted a position statement in which they argue that the work on the Oil Field Relocation Project is subject to prevailing wage requirements. They provided decisions by nine arbitrators, all of whom found that similar work at the Port is public works subject to prevailing wage requirements.

Discussion

All workers employed on public works projects must be paid at least the applicable prevailing wage rates applicable to their work. (§ 1771.) Section 1720, subdivision (a)(1) (hereafter section 1720(a)(1)) generally 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*).

A. The Oil Field Relocation Project is a Public Works Project.

The Port asks whether the Oil Field Relocation Project is a public works project and describes the project as involving the removal and relocation of “existing oilfield facilities, pipelines, and onshore wells.” A scope of work included with the request provides a more complete description of the work contemplated in the project, which includes, as SBCTC points out: installation of “new interconnecting pipe and conduit,” “installation of piping manifolds, gas separation equipment, storm water handling equipment, electrical systems, and area drainage improvements,” “site paving,” “relocation and removal of existing 3d Party Utilities (water, gas and electrical),” “reconfiguring of Tidelands overhead electrical system,” “removal of more than 100,000 feet of existing pipe,” and “well abandonment and replacement work.” Installation of pipe,

⁶ Brandyn Ridgeway, Tim Smith, Frank Ronquillo, David Gutierrez, Ruben Preciado, Todd Gibson, Salvador Arias, Juan Medrano, Quellen Andrews, Michael Reasner, Juan Cisneros, Amado Garcia, Kenneth LeMasters, Fermin Vela, Raymond Ramos, Mathew Negrete, Julian Hollins, Jesus Rosales, Fred Michelotti, Allen LeCain, Jose Murguia, Eduardo Figueroa, Duane Brown, Antonio Lopez, Jimmy Hudson, Devaughn Ware, and Ramiro Ortiz.

conduit, storm water handling equipment, electrical systems, and drainage improvements involves construction and installation work. (*Priest v. Housing Authority of City of Oxnard* (1969) 275 Cal.App.2d 751, 756 (*Priest*) [the entire process of construction includes “construction of basements, foundations, utility connections and the like.”]) Removal of existing pipe is demolition work. (*Id.* a pp. 755-756 [demolition not limited to structures; “involves tearing down that which has been constructed.”]) Site paving is construction or alteration. (*Id.* at p. 756 [alteration not limited to structures]; § 1720, subd. (a)(1) [construction includes work done during preconstruction phases].) Relocation and removal of third party utilities involve construction, demolition, and alteration. Furthermore, the work on the Oil Field Relocation Project will be performed by Tidelands and its contractors under agreements with the Port. Under the Nineteenth Accessory Agreement, the work will be paid for out of the Port’s funds.⁷ As can be seen, the Oil Field Relocation Project satisfies all three elements of a public work under section 1720(a)(1).

If the Oil Field Relocation Project is a public works project, the Port asks more specifically whether the well abandonment and relocation work is subject to prevailing wage requirements. As the well plugging and abandoning work and the work to drill new wells will also be funded by the Port and done by Tidelands and its contractors, the second and third elements of section 1720(a)(1) are easily satisfied. The only element at issue in the Port’s second question is whether the work at issue constitutes “construction, alteration, demolition, installation, or repair work” for the purposes of section 1720(a)(1).

B. The Well Abandonment and Relocation Work is Public Work.

While the Port does not expressly make any argument regarding the well abandonment and relocation work, in asking the question, the Port appears to allude to the California Supreme Court’s analysis in *Busker*, which concluded that installation of system components on locomotives and rail cars was not considered public work under section 1720(a)(1) and therefore not subject to prevailing wage requirements, even if the installation was integrally related to work that was “indisputably” public work. (*Busker, supra*, 11 Cal.5th at pp. 1168, 1172.) *Busker* held that if a type of work “does not qualify as a defined “public work,” it is not subject to prevailing wage requirements.” (*Id.* at p. 1169.) The *Busker* court disapproved the approach that “work that would not otherwise qualify may be covered so long as *other* associated labor would constitute public work.” (*Ibid.*, original italics.)

⁷ SBCTC argues that the Port’s oil contract with Tidelands requires the Port to pay Tidelands for *all* work it performs on the public tidelands “with a portion of the revenues from selling the oil extracted from the public lands.” SBCTC further contends that the “allocation to the contractor of a portion of the revenue from selling the public’s oil is a payment by a public entity of ‘money or the equivalent of money’ to the contractor” under Labor Code section 1720, subdivision (b)(1). While this may be true, the Nineteenth Accessory Agreement simply obligates the Port to pay Tidelands for the work. It does not appear to dictate where the funds must come from. The Port would likely be obligated to pay Tidelands for the work even if oil revenues have been depleted.

Under the circumstances here, the well abandonment and relocation work, though it is undoubtedly integrally related to the other work on the Oil Field Relocation Project, independently constitutes public work under section 1720(a)(1).

The Port describes the well plugging and abandonment work as involving the removal of well casing and pipe, then sealing by placing cement plugs into the wellbore, and testing that the work has been performed correctly, along with other associated work. Among the workers and equipment needed for the abandonment work is a workover rig and crew, cement truck, vacuum truck, tubing and casing handling equipment, casing laydown equipment and crew, and a welder. The required workers appear to be workers who typically perform construction work. The equipment is similar to equipment typically used by construction workers. Turning to the work itself, the plugging and abandonment work constitutes demolition and alteration under section 1720(a)(1), as it requires Tidelands to “tear up and remove things previously constructed” regardless of whether they were on the surface or below ground, and modify the land as to its condition on “the surface or the below-surface.” (*Priest, supra*, 275 Cal.App.2d at p. 756.)

Like plugging and abandonment work, well relocation work also requires workers and equipment typically associated with construction, as the relocation will require a drilling rig and crew, a cement truck, vacuum truck, and tubing and casing handling equipment. According to the Port, the well relocation work consists of drilling the wellbore, placement of a steel pipe called casing into the wellbore, pumping of cement down the casing, placing of tubing and a packer into the well, and testing to ensure the work has been properly performed. Well relocation work for the Oil Field Relocation Project constitutes construction, installation, or alteration under section 1720(a)(1). Drilling the wellbore is alteration as it modifies a particular characteristic of the land below the surface. The placement of the casing, pumping of cement, placement of the tubing and packer into the well, and post-completion testing are all part of the construction and installation process.

Because the well abandonment and well relocation work for the Oil Field Relocation Project constitute public work within the meaning of section 1720(a)(1),⁸ it is unnecessary to address SBCTC’s arguments that the work also falls within the definitions of public work in section 1720(a)(2) and section 1720(a)(3).

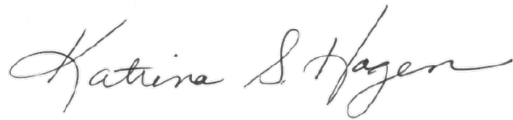
⁸ During the pendency of this request, the Legislature passed Senate Bill (S.B.) No. 1295 (2022), which added section 3125 to the Public Resources Code to provide: “All work to plug and abandon wells, decommission production facilities, or otherwise remediate well sites that is undertaken, funded, or financed by the division [i.e., CalGEM] pursuant to Section 3226 or 3255 and performed by outside contractors is public work for which prevailing wages shall be paid for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.” (Pub. Resources Code, § 3125, as added by Stats. 2022, ch. 844, § 2 (S.B. 1295).) S.B. 1295 is inapplicable to the well abandonment and relocation work here because there is no indication that the work is being undertaken, funded, or financed by CalGEM, nor is there any indication that S.B. 1295’s amendments operate retroactively. (See *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 840 [“Generally, statutes operate prospectively only.”])

Conclusion

For the foregoing reasons, the Pier B On-Dock Rail Support Facility Program Oil Field Relocation Project for the Port of Long Beach, including the well abandonment and relocation work, is public work subject to prevailing wage requirements.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

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

Katrina S. Hagen
Director of Industrial Relations