

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
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October 12, 2007

Patrick Wirsing
Compliance Officer
Northern California Electrical Construction Industry
1301 Ygnacio Valley Blvd., Suite 201
Walnut Creek, CA 94598

Re: Public Works Case No. 2007-001
Storm Drain Pump Station High Water Cutoffs
City of Merced

Dear Mr. Wirsing:

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 Code of Regulations, title 8, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the installation of automated storm drain pump station high water cutoff mechanisms ("Project") is a public work; however, City of Merced's ("City") chartered city status exempts it from the requirement to pay prevailing wages.

Factual Summary

City's storm drains collect water, which empties into detention basins. Six pump stations discharge water collected by the detention basins into four area streams. If the water level of the streams gets too high, City workers manually shut off the pump stations to prevent the streams from flooding. When the stream water levels go down, City workers manually turn the pump stations back on.

In January 2007, City contracted with Lockwood General Engineering to automate City's storm drain pump stations. The work was completed in April 2007. The scope of work was to insert a water level sensor probe in the ground near each stream. A concrete base and a series of steel and PVC pipes were used to support the probe. The probe transmits an electronic signal to the motor control panel of the adjacent pump station, thus allowing the water level to be monitored electronically. The pump stations now shut off and turn back on automatically. The purpose of the Project was to eliminate the need for individual monitoring of each pump station by City workers and to make the system more efficient.

All of the pump stations are located within City limits, and all the work for the Project was performed within City limits. The Project was paid for out of City's Storm Drain Maintenance

Account, which is entirely funded by City residents.¹ City conceived and planned the Project, put it out for bid, awarded the contract and supervised construction.

Of the four streams involved in the Project, one, Black Rascal Creek, lies entirely within City limits. Two, Cottonwood Creek and Fahrens Creek, lie mostly within City limits although Fahrens starts just outside City and a short portion of Cottonwood flows in unincorporated areas. These three streams dump into the fourth, Bear Creek, which flows out of City through sparsely populated farmland and eventually drains into an irrigation canal.² During periods of excessive rain, the water from Bear Creek might reach the San Joaquin River, but this is rare.

City is a chartered city. Its charter, effective in 1949, contains a “home rule” provision (at section 200) stating that City retains control over its municipal affairs.

Analysis

A “public work” is defined by Labor Code section 1720(a)(1).³ In pertinent part, that statute provides, “‘public works’ means: ... Construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds”

The scope of work for the Project entails construction and installation within the meaning of section 1720(a)(1) because the high water cutoff mechanisms are affixed to the ground with a concrete base and steel and PVC pipes. The work was performed under the 2007 construction contract between City and Lockwood General Engineering and was paid for with public funds from City’s Storm Drain Maintenance Account. Therefore, the Project is a public work in that it is construction and installation work, done under contract and paid for with public funds.

City asserts that its chartered city status exempts it from the payment of prevailing wages. Where a public works project is completely within the realm of the chartered city’s “municipal affairs,” it is exempt from California’s prevailing wage laws. *City of Pasadena v. Charleville* (1932) 215 Cal. 384 [disapproved on other grounds by *Purdy and Fitzpatrick. v. State* (1969) 71 Cal.2d 566]. “Municipal affairs are matters which affect the local citizens rather than the people of the State generally.” 66 Ops.Cal.Atty.Gen. 266, 271-272.

Three factors are considered in determining whether a public works project is a municipal affair of a chartered city: (1) the extent of extra-municipal control over the project; (2) the source and

¹This account is funded by rates paid by City residents for refuse services. City provides refuse services only within City limits.

²City obtained two permits (for Black Rascal and Bear Creeks) from the Department of Fish and Game, which certified that no fish or wildlife resources would be adversely affected by the Project. City also obtained three encroachment permits (for Black Rascal, Bear and Fahrens Creeks) from the Department of Water Resources. No permits relating to water quality were required.

³All statutory references herein are to the Labor Code, unless otherwise specified.

control of the funds used to finance the project; and (3) the nature and purpose of the project. *Southern California Roads Co. v. McGuire* (1934) 2 Cal.2d 115. Related to the nature and purpose of the project are its geographical scope (*Young v. Superior Court of Kern County* (1932) 216 Cal. 512, 516-517) and its extra-territorial effects (*Pacific Telephone and Telegraph Co. v. City and County of San Francisco* (1959) 51 Cal.2d 766, 771-774).

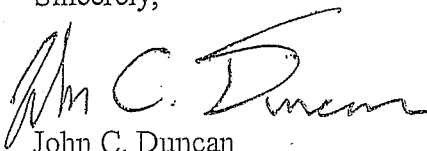
Regarding the first factor, City conceived, planned and executed the Project, and the Project was not subject to extra-municipal control. Regarding the second factor, only municipal funds from City's Storm Drain Maintenance Account were used to finance the Project. Funds from the Storm Drain Maintenance Account consist of fees for refuse services, paid exclusively by City residents, and only City controls how these funds are spent. Regarding the third factor, the Project's purpose is to continue to prevent flooding of City land owned by City residents and to ensure that City's detention basins and pump stations are operated efficiently and are able to handle large storms and sudden increases in water volume. The work was performed on stream banks adjacent to pump stations located entirely within City limits, and the Project has no extra-territorial effects. As such, the nature and purpose of the Project is municipal. Accordingly, the Project is a municipal affair under the home rule provision of City's charter.

Requesting party, the Northern California Electrical Construction Industry Labor-Management Cooperative Trust ("Cooperative Trust") contends that the Project has extra-territorial effects in that water from the streams flows beyond the boundaries of City. Cooperative Trust surmises that this water benefits citizens elsewhere in the State, and concludes that therefore the Project is a matter of statewide concern rather than a municipal affair. However, the Project is not part of a unified regional or statewide system (e.g. *Southern California Roads Co. v. McGuire* (1934) 2 Cal.2d 115 [state highways] or *Pacific Telephone & Telegraph. Co. v. City & County of San Francisco* (1959) 51 Cal. 2d 766 [telephones]) but rather is an upgrade to a discrete and self-contained municipal facility. The Project cannot be said to impact the streams in a way that creates extra-territorial effects for purposes of determining whether the chartered city exemption applies. While the water in the streams may not be confined to City, the extra-territoriality of some of the stream water does not negate the municipal nature and purpose of the Project, which is to prevent the streams from flooding City during a storm.

For the foregoing reasons, under the facts of this case, the Project is a public work but City's chartered city status exempts it from California's prevailing wage laws.

I hope this determination letter satisfactorily answers your inquiry.

Sincerely,



John C. Duncan
Director