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STATE OF CALIFORNIA GRAY DAVIS, GOVERNOR

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
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September 18, 2003

Bryan Berthiaume
Field Supervisor
Foundation For Fair Contracting
3807 Pasadena Avenue, Suite 150
Sacramento, CA 95821

Re: Public Works Case No. 2003-024
Highway 41 Road Widening
Coarsegold, California

Dear Mr. Berthiaume:

This letter constitutes the determination of the Director of the Department of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, section 16001(a). Based upon my review of the documents submitted and an analysis of the relevant facts, it is my determination that the expansion of State Highway 41 in relation to the Chukchansi Gold Resort and Casino ("Casino") at Picayune Rancheria outside Coarsegold is a public works project requiring the payment of prevailing wages.

The Chukchansi Band of Indians has opened the Casino under a construction and operations agreement with Cascade Entertainment Group ("Cascade"). Cascade has awarded a general construction contract to Walton Construction which, in turn, has awarded a subcontract to Kris Koontz Construction for the expansion of Highway 41 to allow traffic to access the Casino.

The work involves widening approximately 1,800 feet of Highway 41, putting in right and left turn lanes, eight-foot shoulders on both sides of the road, traffic signals, drainage facilities and appurtenances for access to 711 Lucky Lane (previously Buck Run Lane) leading to the Casino complex. It is being performed under a Memorandum of Understanding with the Madera County Board of Supervisors as a condition of developing the property. The expansion work is being constructed under an encroachment permit issued by the California Department of Transportation ("Caltrans"). The construction work must be inspected and approved by Caltrans before it may be accepted as part of the highway system.

Streets and Highways Code section 670.1 states:

> (a) The department may issue a permit to the owner or developer of property adjacent to or near a state highway to construct, alter, repair, or improve any portion of the highway for the purpose of improving local traffic access, if the improvements to the highway are required as part of, or as a condition to the development of property, and the improvements are accepted by the department.
> (b) The permit may be issued only if the work within the highway right-of-way is to be performed in accordance with plans and specifications approved by the department and the department reserves the right to inspect and accept the work as complying with the approved plans and specifications.
> (c) All road, bridge, street lighting, or installation of signal work performed under a permit issued pursuant to this section for acceptance into the state highway system, except work performed solely to allow private encroachments onto the state highway or for utility or drainage encroachments within the state highway, are public works for purposes of Part 7 (commencing with Section 1720) of Division 2 of the Labor Code.

The Project involves construction on a road performed under contract. Caltrans has issued an encroachment permit for the Highway 41 widening, which will be accepted into the highway system. Under the specific terms of Streets and Highways Code section 670.1(c), such work is deemed to be public work for which prevailing wages must be paid. [1]

[1] The exclusion contained in 670.1(c), "except work performed solely to allow private encroachments onto the state highway," is not applicable to this construction because it is being done to allow the general public access to the Casino and, as such, is not solely a "private encroachment." Similarly, the work is not solely for "for utility or drainage encroachments within the state highway."

I hope this determination satisfactorily answers your inquiry.

Sincerely,

Chuck Cake

Chuck Cake
Acting Director