

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

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**To All Interested Parties:**

**Re: Public Works Case No. 2001-060**

***Natali Levee Rehabilitation Project - San Joaquin County Reclamation District No. 684***

The Decision on Administrative Appeal, dated October 16, 2002, in PW 2001-060, *Natali Levee Rehabilitation Project - San Joaquin County Reclamation District No. 684*, was affirmed in a partially published Third District Court of Appeal opinion, dated January 13, 2005. See *Reclamation District 684 v. State Department of Industrial Relations* (2005) 125 Cal.App.4th 1000.

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

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DECISION ON ADMINISTRATIVE APPEAL

RE: PUBLIC WORKS CASE NO. 2001-060

NATALI LEVEE REHABILITATION PROJECT

SAN JOAQUIN COUNTY RECLAMATION DISTRICT NO. 684

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The undersigned, having reviewed the administrative appeal filed by San Joaquin County Reclamation District No. 684 ("District"), said appeal is hereby denied for the reasons set forth in the initial coverage determination ("Determination") dated July 1, 2002, which is incorporated by reference herein, and for the additional reasons set forth below.

In support of its position on appeal that the Project is not a public work, District argues that the Director is bound, under the doctrines of *res judicata* and collateral estoppel, by a San Joaquin County Superior Court Statement of Decision dated March 13, 1990, *Dutra Construction v. DIR, et.al.* This argument lacks merit for two principal reasons. First, even if it were controlling, the *Dutra* decision appears to support the Determination. It holds that an extensive reconstruction project does not constitute operation of the system. The instant project is a public

work under Labor Code section 1720(a)(2) because it is work done for a reclamation district and not excluded from coverage under the operation exemption.

Second, the requirements of *res judicata* and collateral estoppel are not satisfied. "The doctrine of *res judicata* ... preclud[es] parties from re-litigating issues that they could have raised in a prior action concerning the same controversy." *Hulsey v. Koehler* (1990) 218 Cal.App.3d 1150, 1157 [267 Cal.Rptr. 523.] "The most important criterion in determining that two suits concern the same controversy is whether they both arose from the same transactional nexus of facts." *Id.* Here, there is no transactional nexus since *Dutra's* facts involved a different contract, a different contractor, a different water reclamation district and facts that involved the operation of water pumps in or about 1990 when the case was decided.

Collateral estoppel precludes parties from litigating an issue previously determined in another cause of action between them or privities. *Hulsey, supra*, 218 Cal.App.3d at page 1156. As a prerequisite for asserting this doctrine, it must be shown that the issue was, in fact, litigated and decided in the prior action. *Id.*

Here, the issues are factually different. *Dutra* did not decide, as here, whether extensive rehabilitation in the form of alteration, repair and maintenance of a reclamation

district levee was a public work. *Dutra*, to the extent its limited facts can be discerned from the transcript of the court hearing, decided whether rebuilding or replacing stationary pumps used to remove water from an island due to a breached levee constituted "operations" of the reclamation district drainage system within the exceptions to Labor Code section 1720(a)(2), such that there was exception from coverage.<sup>1</sup>

Accordingly, the Director is not bound by the *Dutra* decision under either *res judicata* or collateral estoppel principles.

District cites *Franklin v. City of Riverside* (1962) 58 Cal.2d 114 in support of its argument that maintenance is excluded from public works coverage. *Franklin*, however, was implicitly overruled by the 1974 amendments to section 1771, which included maintenance in the definition of public work.

District also contends the Determination is an "underground" regulation that violates the Administrative Procedures Act ("APA") and there is no exemption. These

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<sup>1</sup> District cites *Citizens for Open Access to Sand and Tide, Inc. v. Seadrift Association* (1998) 60 Cal.App.4th 1053 for the proposition that *Dutra* is controlling as though *Dutra* were the same case or controversy presented here. The *Citizens* decision is distinguishable. The same issue in the *Citizens* cases was whether there was a prescriptive easement to a public beach, which was resolved in a Settlement Agreement allowing for public access. 60 Cal.App.4th at pages 1068-1069. Since the issues and parties in *Dutra* are different from those here, *i.e.*, because this case and *Dutra* involve different projects and different reclamation districts, they are not the same case or controversy and *res judicata* cannot apply.

arguments are also lacking in merit. The Director's wage and coverage determination process is exempted from the prior hearing requirements of the APA. *Winzler & Kelly v. DIR* (1981) 121 Cal.App.3d 120, 127-128, 174 Cal.Rptr. 744.

Finally, District requests that a hearing be set should the Determination not be withdrawn or the Project determined to be exempt. Title 8, California Code of Regulations, section 16002.5(b) states that the decision to hold a hearing is within the Director's sole discretion. Because the materials submitted supply the necessary facts upon which to base the decision that the Project is a public work and no factual question is at issue, this appeal is decided on the basis of the evidence submitted. The request for hearing is denied.

This decision constitutes the final administrative action in this matter.

Dated: 10-16-02

Chuck Cake  
Chuck Cake  
Acting Director