STATE OF CALIFORNIA
GRAY DAVIS, *GOVERNOR*

DEPARTMENT OF INDUSTRIAL RELATIONS
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July 19, 2002

Gareth I. Mills, RG, CEG
Office Manager/Associate Geologist
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31344 Via Colinas, Suite 102
Westlake Village, CA 91362-6793

Re: Public Works Case No. 2001-068
Field Technician Observation and Testing
Los Angeles County Sanitation Districts Sewer Line Project

Dear Mr. Mills:

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 Title 8, California Code of Regulations, section 16001(a). Based on my review of the documents submitted and the applicable laws and regulations pertaining to public works, it is my determination that the inspection and testing work performed by Leighton and Associates' ("Leighton") field technicians during the construction of the Tibbitts Trunk Sewer ("Sewer Line 1") and District 32 Main Relief Trunk Sewer ("Sewer Line 2") is a public work requiring the payment of prevailing wages.

On December 13, 2000, Newhall Land and Farming Company ("Developer"), entered into an agreement with County Sanitation Districts 26 and 32, County of Los Angeles ("Districts") for the design, construction and legal conveyance of two trunk sewer lines ("Project"). Sewer Line 1 serves a private development and the northern areas of Santa Clarita Valley. Sewer Line 2 was built as an extension of the Districts' sewer system conveying the new developments' wastewater to the Districts' wastewater treatment plant. At the conclusion of construction, pursuant to the terms of the agreement, title to the two sewer lines was conveyed to Districts.

Under the agreement, Developer paid for the construction of Sewer Line 1. Districts paid $ 1,040,262.30 for the construction of Sewer Line 2. To assure Districts that they would only pay for the construction of that portion of Sewer line 2 as agreed, Developer was required to obtain separate bids for the construction of each sewer line.

Developer was responsible for retaining the contractor, subject to the approval of Districts. The agreement provided that the

construction contract was to be administered as if Districts were the owners of the Project. Developer was advised that the Project may be regarded as a public works project and it was to "comply with all applicable laws as if Districts were owners and a party to the contract of construction contemplated...."

Under the agreement, Developer is required to supervise and inspect the construction of the sewer lines. As seen below, this was delegated to a subcontractor. The agreement further states that the Districts are to approve the plans and drawings for the construction of the two sewer lines. Districts' field technicians are to be provided complete access to the construction site to inspect pipe sub-bedding, pipe bedding, pipe laying, pipe testing and manholes.

The call for public bids issued in March 2001. After receiving several bids Developer, with Districts' approval, entered into a contract with Colich and Sons, L.P. ("Contractor") for the construction of the two sewers. Although Contractor submitted separate bids for the two sewer lines, only one construction contract was entered into. The contract is entitled "Lump Sum Contract For Construction" and required Developer to pay the sum of $3,465,000 for the construction of both sewers.

Developer entered into an agreement with The Culver Group to act as the construction manager on the Project and delegated its inspection and supervision duties to The Culver Group. In turn, The Culver Group retained Leighton and Associates to act as the geotechnical advisers and inspectors.[1] Under a portion of its contract with The Culver Group, Leighton's field technicians are to observe all trenching and backfill operations, perform soil and compaction testing and install bridge-monitoring devices to monitor any adverse effects of trenching under a freeway overpass. It is this work that Leighton has requested a public works coverage determination for.

Under what is now Labor Code[2] Section 1720(a)(1)(as amended by Statutes 2001, chapter 938, section 2), public works are generally defined to mean "[c]onstruction, alteration, demolition, installation or repair work done under contract and

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[1] Note that this determination work does not address the work of the off-site geotechnical services provided by Leighton because Leighton has only inquired about the public works coverage status of its field technicians.

[2] Unless otherwise noted, all statutory references herein refer to the California Labor Code.

paid for in whole or in part out of public funds...For purposes of this paragraph, 'construction' includes work performed during the design and pre-construction phases of construction including...inspection...work." It is not disputed that the construction of the sewer lines was done under contract and that public funds were paid for their construction. Therefore, the sewer line construction is a public work under section 1720(a)(1). Section 1772 states, in relevant part, "workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work."

The issues raised by the parties are (1) whether the services provided by Leighton are of a nature that takes them outside the public works laws; (2) whether the fact the Districts did not directly hire and pay Leighton for the observation and testing services removes the case from the public works laws; and (3) whether prevailing wages need be paid for the observation and testing services to the construction of Sewer Line 1 on the ground that it was a separate project constructed without public funds.

In response to the first issue, as noted above, inspection work is included in the definition of construction in section 1720(a)(1). Although this statute references inspection work during pre-construction phases, it necessarily includes inspections during construction. The purpose of adding the definition of construction was to expand the type of work covered to include pre-construction phases, not to exclude the same type of work during construction.[3] To restrict the definition of construction to inspections only during the design and pre-construcion phases would give the statute a nonsensical construction that must be avoided (*Herbert Hawkins Realtors, Inc. v. Milheiser* (1983) 189 Cal.App.3d 334, 338: "statutes must be construed in a reasonable and common sense manner consistent with their apparent purpose and the legislative intent underlying them...").

Furthermore, since 1999 this Department has consistently held that observation and soils testing conducted during construction require payment of prevailing wages under section 1772 because the work is performed in the execution of a contract for public

[3] Leg. Counsel's Dig. of Sen. Bill 1999, Stats. 2000, ch 881 section 1(1999-2000 Reg. Sess.)

works.[4] The Culver Group's argument that these types of work are professional in nature and do not constitute "construction" was rejected in Precedential Public Works Coverage Determination Case No. 99-046, Northridge Earthquake Recovery Project/California State University, Northridge (June 9, 2000). In the Northridge Earthquake Recovery Project decision, construction managers were retained to perform the same types of inspections and observations that Leighton was hired to do in the instant case. These field inspections were found to be covered pursuant to section 1772 since they were being performed in execution of an underlying public works contract. Here, the observation and testing performed by Leighton was also being performed in execution of the underlying public works contract between Contractor and Developer, and the workers are therefore deemed to be employed upon a public work under section 1772.

Addressing the second issue, the fact that Districts were not signatory to any of the construction contracts has no bearing on whether a public work exists.[5] Section 1720(a)(1)'s definition of a public work does not require that a public agency be a party to the construction contract. "The important element is that the construction be done under contract and paid for in whole or in part by public funds." Precedential Public Works Coverage Determination Case No. 98-005, Goleta Amtrak Station (November 23, 1998), p. 5. Here, there is a contract for construction paid for out of public funds. Thus, the project is a public work requiring the payment of prevailing wages.

The last issue raised by the parties is whether the Project should be viewed as two separate projects requiring the payment of prevailing wages only on the work performed in the construction of Sewer Line 2. For the reasons set forth below, I find that the construction of both sewer lines is a single, interdependent and integrated public works project requiring the payment of prevailing wages to all workers on the Project.

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[4] See Precedential Public Works Coverage Determination Case No. 99-014, Family Services Building Geotechnical Work/County of San Diego (November 5, 1999); Precedential Public Works Case No. 99-070, Olivenhain Dam Project Soil Drilling and Testing/San Diego Water Authority (February 23, 2000); and Precedential Public Works Decision on Appeal No. 99-046, Northridge Earthquake Recovery Project/California State University, Northridge (June 9, 2000).

[5] As noted above, it was understood that Districts were to be considered as owners of the Project, and the Developer was to comply with all applicable laws "as if Districts were a party to the contract of construction."

The determination whether a construction undertaking is one project or a series of separate projects must be done on a case-by-case basis. Nevertheless, a variety of factors must be considered, including: (1) the manner in which the construction is organized in view of, for example, bids, construction, contracts and workforce; (2) the physical layout of the project; (3) the oversight, direction and supervision of the work; (4) the financing and administration of the construction funds; and (5) the general interrelationship of the various aspects of the construction. A finding that a construction undertaking is either a single project or a series of separate projects is relevant in determining the extent to which prevailing wage obligations apply. In making this finding, it is the analysis of the above factors, not the labels assigned to the various parts of the project of the parties, which control. Under section 1720(a), if there is a single project involving the payment of public funds, prevailing wages will apply to the entire project; if there are multiple projects, prevailing wages may apply to one project but not another, depending on the circumstances.

Under the first factor, there is a single agreement between Districts and Developer wherein construction of both sewers was treated, out of necessity, as one project. The agreement points out that it was necessary to build Sewer Line 2 simultaneously with Sewer Line 1 because of the accelerated building schedule of the development and the need for the Sewer Line 2 extension to handle the new development's wastewater. Also, there was only one contract for the construction of both sewer lines. The same contractor built both for a lump sum contract price. It is true that separate bids were obtained for construction of each sewer line. It is apparent, however, from the agreement between Developer and Districts that the only reason separate bids were obtained was for accounting purposes to assure Districts it was only paying 70 percent of the construction costs for Sewer Line 2. This simply shows the Districts only wanted to pay for one portion of this entire construction project. Further, even if the separate bids were not for accounting purposes only, this fact is only one in the overall analysis that otherwise points to the existence of one sewer line project.

As to the second factor, the construction of Sewer Line 1 would have no value without the construction of the extension, Sewer Line 2. The agreement states Sewer Line 2 needed to be built to convey the wastewater being sent through Sewer Line 1. Thus, construction of Sewer Line 1 was dependent on construction of

Sewer Line 2, supporting the conclusion that the construction of both sewer lines was a single project.

With regard to the third factor, the agreement between Developer and Districts is replete with requirements that the sewer line be built to the Districts' specifications, that the contractor selected be first approved by the Districts and that the Districts' field engineers be given complete access to all phases of the construction. Thus, Districts maintain strict control and supervision over the construction of both sewer lines. This fact supports a finding that the construction was a single, interdependent and integrated project.

Under the fourth factor, it is true the Districts only funded a portion of the construction of Sewer Line 2. This public funds expenditure, however, would never have been made except for the construction of Sewer Line 1. Without the new development's need for sewer services, there would be no need to construct the sewer extension, Sewer Line 2. Thus, Developer's construction of Sewer Line 1 necessitated the construction of Sewer Line 2, and Developer drew a distinct advantage from the expenditure of public funding for the construction of Sewer Line 2.

As to the last factor regarding the interrelationship of the various aspects of the construction, both Developer and Districts benefited from the completion of the entire Project. Developer needed to provide a sewer line to its development, and the agreement between the Districts and Developer state unequivocally that both sewer lines benefited the respective districts. Also, title to both sewer lines was conveyed to Districts at the conclusion of the Project. These facts support a finding that the Project was a single, interdependent and integrated public work.

Independent of sections 1720(a)(1) and 1772, the inspection work is a public work under sections 1720(a)(2) and (3). Section 1720(a)(2) states in pertinent part that public works means: "...Work done for irrigation, utility, reclamation and improvement districts, and other districts of this type." The inspection work is a public work under 1720(a)(2) because it is work done for the Districts, which are sanitation districts of the type enumerated in section 1720(a)(2) because they are formed

to provide an improvement benefiting a specific area.[6] This is the sole purpose of improvement districts.[7]

Section 1720(a)(3) states public works means:"...sewer, or other improvement work done under the direction and supervision...of any...public body of the state, or of any...district thereof...." The inspection work is also a public work under 1720(a)(3) because it is an integral part of the sewer work done under the supervision of Districts.

In sum, based on the analysis provided above, the Leighton field technicians who performed the observation and testing work are entitled to be paid prevailing wages.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

Stephen J. Smith
Director

[6] Health and Safety Code, section 4741, et. seq.
[7] Government Code, section 56041.