

## DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR  
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February 13, 2003

Robert Tucker  
Water Resource Control Engineer  
California Regional Water Quality Control Board  
Lahontan Region  
2501 South Tahoe Blvd.  
South Lake Tahoe, CA 96150

Re: Public Works Case No. 2003-004  
Laboratory Field Operation/Leviathan Mine  
California Regional Water Quality Control Board - Lahontan  
Region

Dear Mr. Tucker:

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 operation of a field laboratory to monitor discharge from a state-run water treatment system at Leviathan Mine is not a public work.

Leviathan Mine is a state-owned, inactive sulphur mine. As a result of earlier mining operations, pyrite became exposed to air and water, resulting in acid mine drainage ("AMD"). As AMD travels through the ground, it attracts and carries with it metals contained in the soil. This metal-rich AMD discharges into the nearby creeks causing adverse effects to ranch land dependent on this water for irrigation.

The State Water Resources Control Board, through the Lahontan Regional Water Quality Control Board ("LRWQCB"), instituted a pollution abatement program, including the establishment of a series of evaporations ponds where hard groundwater is collected and metals contained in the water are separated by evaporation. The ponds were intended to reduce the volume of AMD discharged to the nearby creeks. Occasionally though, the ponds overflow, releasing the polluted water into the creeks. To correct this problem, in 1999 LRWQCB, under the direction of the United States Environmental Protection Agency ("USEPA")<sup>1</sup>, devised a treatment system where, by adding calcium hydroxide to the water in the

<sup>1</sup> Leviathan Mine is a USEPA Superfund site.

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ponds, metals could be separated resulting in metal-free effluent.

To assure the success of the pollution abatement activity and to comply with the USEPA orders, LRWQCB will be entering into a contract for the operation of a field laboratory to monitor the treatment system, specifically to monitor the effluent from the evaporation ponds. The contractor who will be awarded the contract is to provide laboratory technicians, a chemist, an industrial hygienist and a geochemist to staff the field laboratory. These individuals will be collecting and testing water samples from the pond and the pond effluent during the operation of the treatment system. Their work will also include writing reports on their findings.

Labor Code section 1720(a)(1) defines public works as "[c]onstruction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds...For purposes of this paragraph, 'construction' includes work performed during the design and preconstruction phases of construction including...inspection...work." Pursuant to this statutory provision this Department has consistently held that testing and inspection work related to construction is a public work if paid for out of public funds. Here though, this determination involves a unique set of facts where the testing work is not connected to a construction project, either in the pre-construction or construction phases. Therefore, under these limited facts the work performed by the laboratory technicians, chemist, hygienist and geochemist in the operation of the field laboratory is not a public work under 1720(a)(1).

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Chuck Cake  
Acting Director