STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
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Arnold Schwarzenegger, *Governor*

January 12, 2007

Paul D. Jones II
General Manager
Irvine Ranch Water District
P.O. Box 57000
Irvine, CA 92619-7000

Re: Public Works Case No. 2006-022
Removal and Hauling of Biosolids
Irvine Ranch Water District

Dear Mr. Jones:

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 removal of biosolids from Irvine Ranch Water District's ("District") Los Alisos Water Reclamation Plant ("LAWRP") Pond 3 and the hauling of the biosolids to an off-site commercial composting or land application facility is not public work, and therefore is not subject to prevailing wage requirements.

Facts

District owns and operates the LAWRP, a facility for the treatment and reclamation of municipal sewage. LAWRP includes several treatment ponds, each of which serves a different purpose in the treatment process. Pond 3 is used to settle out digested sewage solids.

Pond 3 contains two primary classifications of solids: organic solids and chemical solids. Organic solids are the primary constituent being treated in the sewage at LAWRP. After being digested by bacteria, organic solids settle out readily and have good compaction properties. Chemical solids are generated by the LAWRP's tertiary treatment process. Chemical solids tend to stay suspended throughout Pond 3's water column and typically demonstrate poor compaction properties.

When Pond 3 is operated as designed and in accordance with normal District practice, the solids are removed by District employees through dredging and dewatering processes at a rate sufficient to consistently maintain the operational capacity of the Pond.

Over the past few years, there has been an increase in the volume of wastewater receiving tertiary treatment, producing a corresponding increase in the volume of chemical solids being returned to Pond 3. The effect this increase in chemical solids has had upon the existing removal processes was not anticipated or readily detectable, and therefore did not become apparent until after significant time had elapsed. In addition, this large volume of solids has substantially reduced

Pond 3's designed treatment capacity, resulting in a gradual degradation in the quality of Pond 3's effluent flow. The routine dredging and dewatering processes performed by District employees in the normal course of removing the solids are inadequate to address the existing problems. An engineering analysis has now been conducted and adjustments to the routine processes are being made to prevent the recurrence of the over-accumulation of the chemical solids in the future. In the meantime, however, District determined that a one-time contract for accelerated dredging, dewatering and removal is needed to restore the capacity of Pond 3 and allow the normal practice performed by District staff to resume.

Under a proposed District contract to dredge, dewater and remove the accumulated solids from Pond 3, a contractor will operate dredging equipment over a four- to five-month period at a rate sufficient to remove up to five truckloads of solids per day. The removal will occur at approximately four to five times the rate of the normal process. The solids will be delivered off-site either to a licensed composting facility, to be composted for sale or commercial use, or to a land application site, to be applied to the soil for agricultural purposes.

Discussion

A "public work" is defined by Labor Code section 1720(a)(1)[1] as: "Construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds...." Section 1720.3 states: "For the limited purposes of Article 2 (commencing with Section 1770), 'public works' also means the hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state." Section 1720(a)(2) also defines public works as: "Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. 'Public work' does not include the operation of the irrigation or drainage system of any irrigation or reclamation district...."

Finally, section 1771 requires payment of prevailing wages for maintenance work done under contract. California Code of Regulations, title 8, section 16000 provides that "maintenance" includes:

> (1) Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.
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> (2) Carpentry, electrical, plumbing, glazing, touchup painting, and other craft work designed to preserve the publicly owned or publicly operated facility in a safe, efficient and continuously usable condition for which it was intended,

[1]All statutory references herein are to the Labor Code unless otherwise indicated.

> including repairs, cleaning and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.
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> Exception: 1: Janitorial or custodial services of a routine, recurring or usual nature is excluded.
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> Exception: 2: Protection of the sort provided by guards, watchmen, or other security forces is excluded.

District acknowledges that the work in question will be done under contract and paid for out of public funds. The first issue is whether the work under the proposed contract is "alteration" within the meaning of section 1720(a)(1). The second issue is whether the proposed work qualifies as maintenance under section 1771 and its implementing regulation. The third issue is whether the hauling of the solids is covered under section 1720.3. The final issue is whether any of the proposed work is "[w]ork done for" a district under section 1720(a)(2).

As to the first issue, none of the work involved in the removal of the biosolids under the proposed contract is alteration within the meaning of section 1720(a)(1). "To 'alter' is merely to modify without changing to something else," and that term applies "to a changed condition of the surface or the below-surface." *Priest v. Housing Authority* (1969) 275 Cal.App.2d 751, 756. "Alter" as defined by Webster's Third New International Dictionary (2002) at page 63 is "to cause to become different in some particular characteristic (as measure, dimension, course, arrangement or inclination) without changing into something else." Thus, with regard to land, under these definitions to alter under section 1720(a)(1) is to modify a particular characteristic of the land.

The removal of the solids will not be alteration because it will not modify any particular characteristic of Pond 3. Pond 3 was designed and used to settle out digested sewage solids, and will continue to be used for that purpose. The work at issue will not modify Pond 3, but will simply facilitate its use as it was designed.[2]

Nor will the proposed contracted work constitute maintenance within the meaning of section 1771, as defined by the first part of the Department's regulation. While the work may be performed for the preservation of Pond 3 and the keeping of it for its intended purposes in a continually usable condition, the work is not routine, recurring and usual in that it was not anticipated and is being performed on a one-time basis only. Under the second part of the Department's regulation, the contracted work will be done for the purpose of preserving a publicly owned or publicly operated facility in a safe, efficient and continuously usable condition. The work, however, is not

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[2]This is consistent with the analysis in PW 2005-026, *Tree Removal Project, County of San Bernardino Fire Department* (July 28, 2006), which found the removal of dead and dying trees from a forest not to modify the land so as to constitute alteration because the land "will still be a forest, just a healthier one." See also, PW 2006-010, *Proposition 40 Watershed and Fuels Community Assistance Grants Program, Department of Forestry and Fire Protection* (August 24, 2006).

maintenance because it is not "craft work" similar to carpentry, electrical, plumbing, glazing and touchup painting.

As to the third issue concerning the hauling of the solids from LAWRP to an off-site location, LAWRP is a public facility but it is not a public works site. Because the solids will not be hauled from a public works site, section 1720.3 does not apply.[3]

The remaining issue is whether section 1720(a)(2) requires that "work done for" a district be construction, alteration, demolition, installation or repair as set forth in section 1720(a)(1) or maintenance under section 1771. Unlike section 1720(a)(1) or 1771, section 1720(a)(2) does not enumerate any particular type of covered work. Finding the reach of section 1720(a)(2) to be unlimited in scope, however, would be illogical and would create prevailing wage obligations for any type of work performed under contract for a district regardless of the nature of that work. This Department has concluded that in light of one of the general purposes of the California Prevailing Wage Law "to benefit the construction worker on public construction," the most reasonable way to define the scope of section 1720(a)(2) is to require that the work fall within one of the types of covered work enumerated in section 1720(a)(1) or 1771.[4] Here, the work at issue does not fall within any of the types of work in section 1720(a)(1) or 1771 and therefore is not covered work within the scope of section 1720(a)(2).[5]

For the foregoing reasons, the work involved under the proposed contract for the removal and hauling of biosolids from Pond 3 is not public work, and is not subject to prevailing wage requirements.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

John M. Rea
Acting Director

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[3]This is consistent with the analysis in PW 2005-009, *The Hauling of Biosolids from Orange County* (April 21, 2006). Under the proposed contract, the solids may be hauled either to a composting facility or a land application site. If the biosolids are hauled to a land application site and then applied to the land for agricultural purposes, it should be noted that such application would not constitute alteration within the meaning of section 1720(a)(1). Consistent with PW 2005-009, the application of biosolids as soil amendment would not modify any particular characteristic of the land because the land was agricultural prior to application of the biosolids and, after application, will continue to be agricultural land not noticeably different from before.

[4]PW 2005-009, *supra,* note 3, quoting *O.G. Sansone v. Department of Transportation* (1976) 55 Cal.App.3d 434, 461.

[5]This is consistent with the analysis in PW 2005-009, *supra,* note 3.