

August 6, 2009

Diana Butts, Procurement and Contract Specialist 3
Oregon Department of Fish and Wildlife
3406 Cherry Ave. NE
Salem, OR 97303

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: Fish Screen and Passage Project
Requested by: Oregon Department of Fish and Wildlife

Dear Ms. Butts:

On July 30, 2009, you submitted a request on behalf of Oregon Department of Fish and Wildlife (“ODFW”), asking if the Prevailing Wage Rate law would apply to the Fish Screen and Passage project on the Running Y Ranch in Klamath Falls. Sufficient information to make a determination was received on August 4, 2009, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. The Running Y Ranch (“Ranch”) is privately-owned property located near Klamath Falls. On April 21, 2009, Jeld-Wen Timber & Ranches submitted a grant request to ODFW asking for funds to help construct a traveling belt screen system at the Ranch’s gravity irrigation diversion on the Geary Arm of Upper Klamath Lake.
2. The project will consist of construction of a multi-bay traveling belt screen system housed within a sheetpile enclosure, constructed within the existing levee. The system will reduce Short-nosed and Lost River sucker entrainment into the irrigated fields on the Ranch.
3. The total project cost is estimated to be \$800,000. Through a Cost Share Grant Agreement (“Agreement”), ODFW has agreed to contribute \$720,000 for this project. Jeld-Wen Timber & Ranches will contribute \$80,000. According to the Agreement, ODFW will “take the lead on construction activities, including procurement of materials and contracted services.” Jeld-Wen Timber & Ranches will pay for some of the materials and for the excavation of the site.

CONCLUSIONS OF LAW

1. The Fish Screen and Passage project will be privately owned. Less than \$750,000 in funds of a public agency will support the project, and no public agency will occupy or use the completed structure. Therefore, the definitions of a “public works” under ORS 279C.800(6)(a)(B) and (C) do not apply to this project.
2. If the project is a public works under ORS 279C.800(6)(a)(A), the exemption applies for privately owned projects for which less than \$750,000 of funds of a public agency are used and less than 25 percent of the square footage will be occupied or used by a public agency. ORS 279C.810(2)(c).

DETERMINATION

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will not apply to the Fish Screen and Passage project. However, if more than \$750,000 in funds of a public agency are used on this project, the project will be subject to the prevailing wage rate law.

This determination is based on the agency’s file as of the date of this determination. The commissioner may make a different determination if any of the project information is incorrect, or if the project or project documents are modified or supplemented after the date of this determination.

REQUEST FOR A RECONSIDERATION

After the commissioner issues a determination, the requestor or any public agency served with a copy of the determination may request that the commissioner reconsider the determination. A request for reconsideration must be submitted in writing to the Prevailing Wage Rate Unit, must include the reason or reasons for the request and any documents in support of the request, and must be received within 15 calendar days of the date the determination was mailed. A request for reconsideration does not toll the time period for requesting a contested case hearing on the determination.

RIGHT TO A HEARING

The requestor and any person adversely affected or aggrieved by this determination are entitled to a hearing as provided by the Administrative Procedures Act (ORS 183.413 to 183.470) and ORS 279C.817. If you want a hearing, the Bureau of Labor and Industries, Wage and Hour Division must receive your written request for hearing within 21 days from the date this notice was mailed. Hearing requests should be addressed and delivered to:

Administrator
Wage and Hour Division
Bureau of Labor and Industries

800 NE Oregon St., Suite 1045
Portland, Oregon 97232

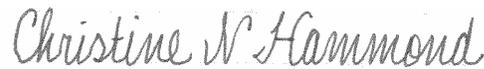
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

If you request a hearing, you will be notified of the date, time and place of the hearing. You have the right to be represented by legal counsel at a hearing. However, if you are a government agency, corporation, partnership, or unincorporated association, you must be represented by either legal counsel or an authorized representative. If you request a hearing, you will receive information on Contested Case Rights and Procedures before the hearing. After the hearing, an order confirming, modifying, or reversing this determination will be issued. This determination shall remain in effect until the final order is issued.

If you request a hearing, but fail to appear at any scheduled hearing, you will have waived your right to hearing, and the commissioner may issue a final order by default. If the commissioner issues a final order by default, the agency file on this matter shall serve as the record for purposes of proving a prima facie case. You are not entitled to judicial review of this determination order unless you have made a timely request for a hearing.

Date: August 6, 2009

Brad Avakian, Commissioner
Bureau of Labor and Industries



Christine N. Hammond, Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On August 6, 2009, I mailed the Prevailing Wage Rate Determination for the Fish Screen and Passage project to the requestor and public agency personnel associated with this project, as follows:

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