



May 23, 2014

Frances Oyung, Coordinator
Bear Creek Watershed Council
PO Box 1548
Medford, OR 97501

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*
Project: Larson Creek Fish Passage
Requested by: Bear Creek Watershed Council

Dear Ms. Oyung:

On April 23, 2014, you submitted a request asking if the Prevailing Wage Rate laws would apply to the proposed project known as the Larson Creek Fish Passage Project. Sufficient information to make a determination was received on May 20, 2014, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. The Bear Creek Watershed Council ("BCWC") was formed from the Jackson County Water Quality Advisory Committee under the Rogue Valley Council of Governments in 1993. In April 1994, the Bear Creek Valley "2050" Committee was designated as the new Bear Creek Watershed Council, and was chartered in accordance with HB-2215 (1993 legislation that created Oregon's watershed council program). As defined in ORS 541.890(15), a watershed council means "a voluntary local organization, designated by a local government group convened by a county governing body, to address the goal of sustaining natural resource and watershed protection, restoration and enhancement within a watershed." BCWC became a fully independent Council in July 2003, and established itself as a not-for-profit 501(c)(3) corporation in August 2007.
2. BCWC plans to improve fish passage at two street crossings over Larson Creek – Black Oak Drive and Ellendale Drive – in Medford, Oregon. The culvert structures at these two locations are owned by the City of Medford, but are on private property using the City's road easement. The project will be done in and around the two culverts and on the private land adjacent to the culvert structures.

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The work will include grading, excavation, placement of engineered riffles below both culverts, installation of baffles in each culvert, and revegetation. BCWC has contracted with K&C Environmental Services, Inc. to perform this work.

3. BCWC has contracted with Rogue Valley Council of Governments (“RVCOG”) to be Project Manager for this project. As provided for in ORS 190, RVCOG was established by the member governments in 1968 to operate in Jackson and Josephine Counties. It is an association of 22 public agencies, including cities, counties, special districts, and higher education. According to its web site, its primary focus is to support local and regional problem solving through technical expertise and project management.
4. As Project Manager, RVCOG managed the project pre-implementation, which included obtaining all necessary permits and licenses needed for the project, and obtaining all signed landowner agreements that will allow the work to occur on private property. RVCOG coordinated engineering services for the project, and solicited construction bids for the project. During the project, RVCOG will manage the construction work.
5. The total project cost will be approximately \$168,000. The project will use the following funds of a public agency:
\$168,040 Oregon Watershed Enhancement Board grant
\$26,000 Medford Water Commission

CONCLUSIONS OF LAW

1. For purposes of the prevailing wage rate laws, the term “public agency” is defined in ORS 279C.800(5) as “the state of Oregon or a political subdivision of the state of Oregon, or a county, city, district, authority, public corporation or public entity organized and existing under law or charter or an instrumentality of the county, city, district, authority, public corporation or public entity.” RVCOG meets this definition of “public agency.”
2. The proposed project meets the definition of “public works” under ORS 279C.800(6)(a)(A), as the project will include construction, reconstruction, major renovation or painting and will be carried on or contracted for by a public agency.
3. The proposed project cost will exceed \$50,000, and funds of a public agency will be used on the project. Therefore, no exemptions from the prevailing wage rate laws apply to this project. ORS 279C.810(2)(b)

DETERMINATION

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will apply to the Larson Creek Fish Passage Project.

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

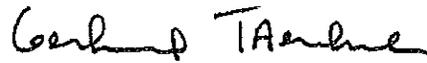
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: May 23, 2014

Brad Avakian, Commissioner
Bureau of Labor and Industries



Gerhard Taeubel, Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On May 23, 2014, I mailed the Prevailing Wage Rate Determination for the proposed project known as the Larson Creek Fish Passage Project to the requestor, as follows:

Frances Oyung, Coordinator
Bear Creek Watershed Council
PO Box 1548
Medford, OR 97501



Susan Wooley
PWR Technical Assistance Coordinator
Wage and Hour Division
Bureau of Labor and Industries