



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage
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June 8, 2012

John Carpita
Municipal Research and Services Center
2601 Fourth Avenue, Suite 800
Seattle, WA 98121-1280

Re: Conservation Districts, Reclamation/Restoration Projects: Prevailing Wage Requirements

Dear Mr. Carpita:

Thank you for your May 25, 2012 e-mail regarding the exclusions from the definition of "municipality" which are identified in RCW 39.04.010(3). Those exceptions apply to certain stated districts and "other districts authorized by law for the reclamation or development of waste or undeveloped lands." Your message provided information relevant to some types of work involving conservation districts. You contend that conservation districts are not "municipalities" for some types of work and therefore do not have a prevailing wage requirement under chapter 39.12 RCW.

As you observed, the definition of "public work" in RCW 39.04.010(4) applies to work performed at a cost to the state or a municipality. RCW 39.12.020 requires the payment of not less than the prevailing rate of wage to the laborers, workers, or mechanics performing public work. The prevailing wage requirement in chapter 39.12 RCW is not activated if the public agency is neither the state nor a "municipality" and the work is not by law a lien or charge on any property therein.

You first request a determination that work performed on private lands under the SCC Cost Share program would not be public works and not be subject to prevailing wages; and, second, note that "conservation districts have a number of other programs in which they contract directly with licensed contractors on projects that are indeed public works projects" that require payment of not less than the prevailing rates of wage.

The enabling statute for conservation districts is in title 89 RCW, "Reclamation, soil conservation, and land settlement." The conservation districts law is in chapter 89.08 RCW. The legislature detailed the importance of the lands of the state and the importance of preservation of those lands in RCW 89.08.010. Problems with soils blowing, washing, and soil erosion are linked to other issues including degradation of streams and waterways, fisheries, agricultural issues including drought and crop failures, diminishing underground water reserves, and damage

to infrastructure. The legislature concludes that certain actions are necessary to conserve resources such as “the construction of terraces, terrace outlets, check-dams, desilting basins, flood water retarding structures, channel floodways, dikes, ponds, ditches, and the like; the utilization of strip cropping, contour cultivating, and contour furrowing; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilizations with trees, grasses, legumes, and other thick-growing, soil-holding crops, retardation of run-off by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.”

Are these conservation activities for the “reclamation or development of waste or undeveloped lands”?

There is an area in chapter 89.16 RCW that talks about which public agency districts are considered to be reclamation districts:

Payments from account — Reclamation districts specified — Rehabilitation of existing projects.

From the moneys appropriated from the reclamation account there shall be paid, upon vouchers approved by the director of ecology, the administrative expenses of the director under this chapter and such amounts as are found necessary for the investigation and survey of reclamation projects proposed to be financed in whole or in part by the director, and such amounts as may be authorized by him for the reclamation of lands in diking, diking improvement, drainage, drainage improvement, diking and drainage, diking and drainage improvement, irrigation and irrigation improvement districts, *and such other districts as are authorized by law for the reclamation or development of waste or undeveloped lands or the rehabilitation of existing reclamation projects, and all such districts and improvement districts shall, for the purposes of this chapter be known as reclamation districts.*

RCW 89.16.040 (emphasis added).

Arguably, this section of statute clarifies that certain land rehabilitation projects are considered to be the work of “reclamation districts.” This thought is important since much of the work of conservation districts as detailed above is rehabilitation of lands that may be environmentally impaired or challenged.

Certain work that conservation districts may contract to have performed will not involve the reclamation or development of waste or undeveloped lands. Such work includes building construction, reconstruction, and repair or maintenance of improvements to property including janitorial work, and landscape maintenance work such as mowing the lawn. That work will be subject to the prevailing wage requirements of chapter 39.12 RCW.

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Some work by conservation districts including the partial reimbursements to private landowners for conservation actions consistent with the reclamation work identified in RCW 89.16.040 will not require prevailing wages under chapter 39.12 RCW since those actions are for the reclamation or development of waste or undeveloped lands.

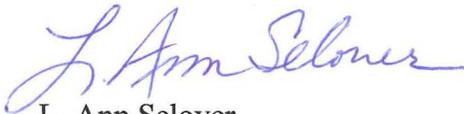
As you can see, prevailing wage issues are heavily dependent on the facts. If the facts vary, the answer could be different.

I appreciate the opportunity to address your questions. Please let me know if you have any questions or new fact sets to consider.

Washington State prevailing wage information, including the WACs, are available on the Department's web site: <http://www.lni.wa.gov/TradesLicensing/PrevWage/default.asp>

I hope this answers your questions. If you need additional information or have questions, please call or e-mail me at 360 902-5330 or sela235@lni.wa.gov.

Sincerely,



L. Ann Selover
Industrial Statistician
Program Manager

Loomis, Deborah (LNI)

From: John Carpita [jcarpita@mrsc.org]
Sent: Friday, May 25, 2012 8:21 AM
To: Selover, Ann (LNI)
Cc: Trefry, Stu (SCC); Heinitz, Karla (SCC)
Subject: Conservation Districts
Attachments: SCC Cost Share 2-21-12.docx; AGM_09191996_Sellars.pdf

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Ann, we had discussed, briefly, prevailing wages for conservation district pass-through reclamation/restoration projects when we last met. Stu Trefry and Karla Heinz of the Conservation Commission staff have provided me with some information that may be useful to arrive at a win-win for both L&I and Conservation Districts. Note the attachments.

There are two parts to a win-win for both agencies:

First, for the purposes of the SCC Cost Share program, which operates almost entirely on lands that are rural, agricultural, and undeveloped – land meeting both the intent and practicality of Title 89 definitions as outlined in the AG memorandum – that this program be considered as under the exception clause in RCW 39.04.010(3): “except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts, *or other districts authorized by law for the reclamation or development of waste or undeveloped lands.*” Therefore, work on private lands under the auspices of the SCC Cost Share program would not be public works and not subject to prevailing wages.

Second, conservation districts have a number of other programs in which they contract directly with licensed contractors on projects that are indeed public works projects. As a matter of course, they require payment of prevailing wages on these projects now.

Given the timing (Memorial Day is almost here) and the host of other issues you are working on, it is probably not fair to ask for speedy review and action. However, Laura Herman is to present at the Washington Association of (Conservation) District Employees (WADE) on Monday, June 11th and it would be wonderful to be able to clarify this important point during her presentation.

To that end, Stu, Karla and I are willing to rearrange our schedules to meet with you at any time and place that fits your schedule.

Please call or email me if you have any questions or need further information.

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