NOTICE OF REGULAR MEETING OF BOARD OF DIRECTORS

DATE: **Wednesday, August 18, 2010**

TIME: **7:00 p.m.**

LOCATION: **Zone 7 Administration Building**
100 North Canyons Parkway, Livermore, California

Any member of the audience desiring to address the Board on an item under discussion may do so upon receiving recognition from the President. After receiving recognition, please step to the podium and state your name and address.

In compliance with the Americans with Disabilities Act, the meeting room is wheelchair accessible and disabled parking is available at the Zone 7 Administrative Building lot. If you are a person with a disability and you need disability-related modifications or accommodations to participate in this meeting, please contact the Acting Zone 7 Board Secretary, Judy Rector, at (925) 454-5053 or fax (925) 454-5727. Notification 48 hours prior to the meeting will enable Zone 7 to make reasonable arrangements to ensure accessibility to this meeting. {28 CFR 35.102-35, 104 ADA Title II}

A G E N D A

1. Call Meeting to Order
2. Salute to Flag
3. Citizens Forum

   This is an opportunity for members of the audience to speak on an item not listed on the agenda. The Board cannot deliberate or take action on a non-agenda item unless it is an emergency as defined under Government Code Section 54954.2.

4. Minutes of the Regular Meeting of July 21, 2010
5. Consent Calendar

   a) Termination of Treated Water Supply Contract and Partial Exemption from Water Connection Fees for the Arroyo Vista Development
   b) Adoption of Zone 7's Labor Compliance Program
   c) 2010 Cost Sharing Agreement for Invasive Mussel Inspection Program at Lake Del Valle
   d) Request by Director Quigley for Authorization to Attend the Elected Officials Conference

   Recommended action: Adopt resolutions approving items as presented.

6. Staffing Updates:

   a. New Employee Introduction
   b. Employee of the Month Recognition

7. Presentation on East Bay Regional Communications

   Recommended action: Information only.

8. Authorization to Negotiate and Execute the Agreement for Supplemental Funding with the Department of Water Resources (DWR) for the Delta Habitat Conservation and Conveyance Program (DHCCP)

   Recommended action: Adopt resolution.

9. Hydrostratigraphic Investigation of Chain of Lakes Project – Monitoring Well Installation, Project Number 208-11

   Recommended action: Adopt resolution.

10 Committees

11. Items for Future Agenda – Directors

12. Reports – Directors

   a. Written report by Director Quigley
   b. Verbal reports

13. Staff Reports (Information items. No action will be taken.)

   a. General Manager's Report
   b. Recent & Current Public Outreach Activities
   c. Legislative Update
   d. Status Report on Separation Efforts
   f. Verbal Reports

14. CLOSED SESSION

   a) Conference with Legal Counsel – Significant exposure to litigation pursuant to Subdivision (b) of Government Code Section 54956.9: 2 cases

   b) Conference with Legal Counsel – Existing litigation pursuant to Subdivision (a) of Government Code Section 54956.9: 2 cases

      Central Delta Water Agency, et.al., v. California Department of Water Resources, et al.;
      Sacramento County Superior County Case No. 34-2010-80000561

      ACFC&WCD Zone 7, et al., v. State of California Department of Water Resources, et al.;
      Sacramento County Superior Court Case No. 05AS01775, Consolidated with Case No. 07AS04901;
      Court of Appeals Case No. C065522

   c) Conference with Labor Negotiators:
      Agency Negotiator: G.F Duerig
      Employee Organizations: Alameda County Management Employees Association; Alameda County Building and Construction Trades Council, Local 342, AFL-CIO; International Federation of Professional and Technical Engineers, Local 21, AFL-CIO; Local 1021 of the Service Employees International Union, CTW; Unrepresented Management

16. Open Session and Report Out of Closed Session

17. Adjournment

18. Upcoming Board Schedule:
   (All meeting locations are in the Board Room at 100 North Canyons Parkway, Livermore, California, unless otherwise noted)

   a) Finance Committee Meeting: August 25, 2010, 4:00 p.m.
   b) Regular Board Meeting: September 15, 2010, 7:00 p.m.

Materials related to an item on this agenda that have been provided to the Board less than 72 hours prior to the meeting are available for public inspection at the Zone 7 office at the time of, and prior to, the meeting and at www.zone7water.com . All other material otherwise provided to the Board will be available at the public meeting.

ORIGINATING SECTION: ENGINEERING
CONTACT: STEVEN ELLIS\ JARNAIL CHAHAL

AGENDA DATE: August 18, 2010 ITEM NO.

SUBJECT: Termination of Treated Water Supply Contract and Partial Exemption from Water Connection Fees for the Arroyo Vista Development

SUMMARY:

- Currently Zone 7 has a treated water supply contract with Dublin Housing Authority (DHA) to supply water to the Arroyo Vista Development. The development is served directly by Zone 7 through the Arroyo Vista turnout.
- The Arroyo Vista Development is going to be redeveloped with 378 new units replacing the existing 150 units. One hundred eighty (180) units in the new development will be reserved for low-income housing.
- Zone 7 has received advanced notice from DHA of their intent to terminate the existing treated water supply contract once the U. S. department of Housing and Urban Development releases their interest in the property and DHA conveys this property to the developer, anticipated to be in February 2011. The redeveloped Arroyo Vista property would then be served by Dublin San Ramon Services District (DSRSD).
- DHA has also requested transfer of the existing water usage credits to the new Arroyo Vista Development.
- Zone 7 staff, with the assistance of the developer, calculated a conversion of existing water usage credit to new water connection credits for the proposed development based upon the total number of fixture units in the existing development and the proposed development.
- Staff recommends a credit equivalent to the meters required for 117 housing units in the low-income portion of the new development and that no Zone 7 water connection fee be collected for these units. In addition, it is recommended that the Arroyo Vista water supply contract be terminated upon receiving final notice from DHA.

FUNDING:
Water Connection Fees for the remaining units will be collected in Fund 72 - Expansion

RECOMMENDED ACTION:
Adopt the attached resolution granting an exemption of Zone 7 water connection fees for the meters for 117 units in the low-income housing portion of the new Arroyo Vista Development and authorizing the General Manager to terminate the treated water delivery contract between Zone 7 and the DHA for the existing Arroyo Vista Development upon receiving final notice from DHA.

ATTACHMENTS:
1. Memo providing additional background and discussion of agenda item
2. Proposed Arroyo Vista Development Site Plan
3. Letter from DHA requesting contract termination upon property conveyance
4. Resolution

Interoffice Memo

Date: August 18, 2010
To: Jill Duerig, General Manager
From: Steven Ellis, Associate Civil Engineer
Subject: Determination of Water Usage Credits for the Arroyo Vista Housing Development and Termination of Existing Treated Water Service Contract with Dublin Housing Authority

The following provides additional background and discussion of the above-referenced agenda item.

BACKGROUND:

Zone 7 currently delivers treated water to the Arroyo Vista Housing Development through its Arroyo Vista turnout. In 1981, Zone 7 entered into an agreement with the Housing Authority of the City of Pleasanton (HACP) to serve water to the Arroyo Vista (Komandorski Village) area, currently within the City of Dublin. The HACP was required to pay the costs for constructing the water line and metered turnout required to serve this development. The development was later taken over by the Dublin Housing Authority (DHA). This development is currently served directly by Zone 7 and not by the local retailer, Dublin San Ramon Services District (DSRSD). There are currently 150 low-income housing units on the site.

This site is currently going through the redevelopment process to convert the site to a mix of single-family homes, multi-family homes, low-income senior housing, low-income units and market-rate for sale units. The current plan is to provide a total of 180 low-income units and 198 market-rate units, for a total of 378 units. Eden Housing Authority of Hayward, California will be managing the low-income housing portion of the project.

It is proposed that DSRSD will serve this new development and Zone 7 will take the Arroyo Vista Turnout out of service. In order for DSRSD to take over the water service of this new development, the existing contract between DHA and Zone 7 will need to be terminated. Additionally, Eden Housing is interested in determining the best way to transfer the historic water usage credit to the new development to lessen the impact of new water connection fees.

DISCUSSION:

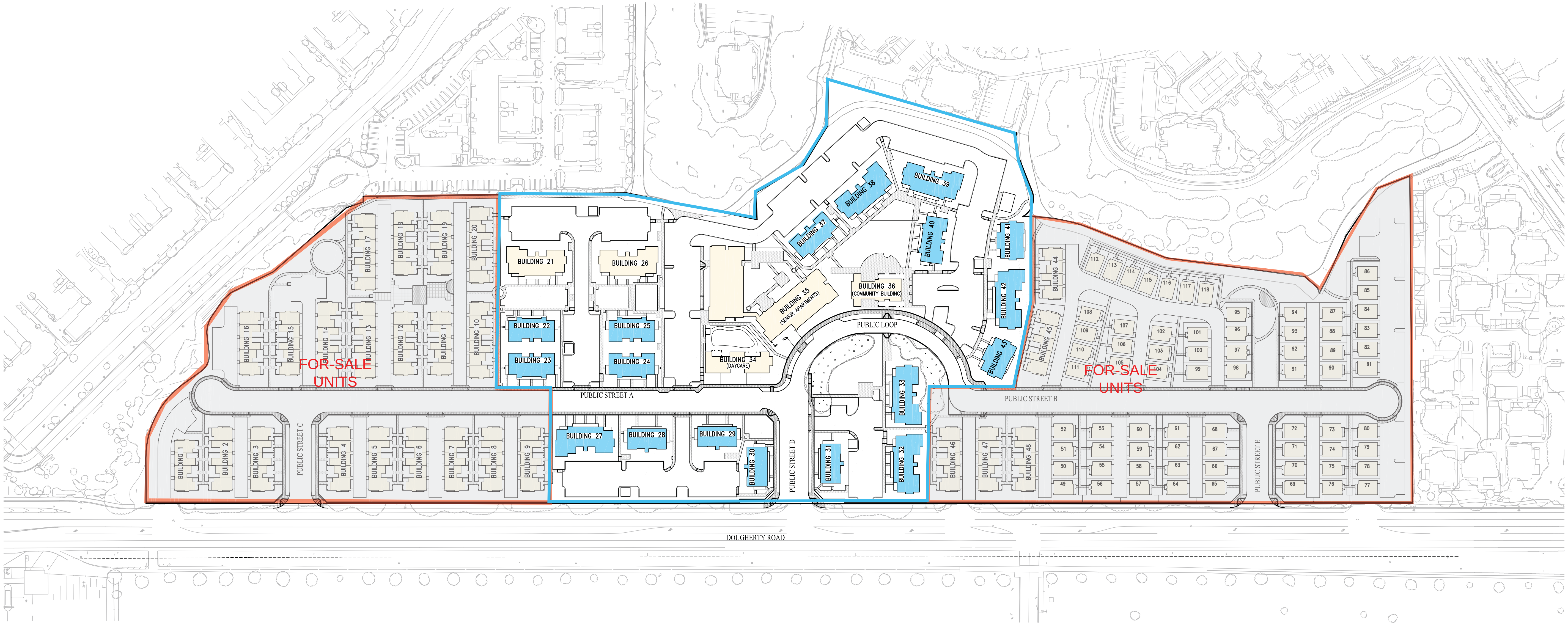
Zone 7 staff met with the developers to determine a fair and balanced method for determining an existing water use for the existing development that could be applied to the new development. Early on in the discussions it was determined that any water usage credit applied to the new development, based upon prior water usage, could only be applied to the low-income portion of the development. The method that was settled upon was based upon the total number of fixture units in the existing development of 150 housing units and the proposed development of 180 housing units. The fixture unit count of the existing development is 2051 compared to 3152 for the new development or a ratio of 65% existing to new. We applied this ratio to the proposed new unit count of 180 housing units which gave us a figure of 117 housing units. This figure of 117 housing units represents the number of units in the new development that correspond to the number of fixture units currently in use in the existing 150 housing unit development.

Development	Fixture Units	Housing Units	Unit Credit
Existing	2051	150	
Proposed	3152	180	117
Ratio Exist fixture units/Proposed fixture units	0.65		

The attached map identifies the areas in which the historic water usage credit can be used – the housing units shaded in blue. Based upon this method, the water meters needed to supply these 117 housing units will not require the payment of Zone 7 water connection fees. All additional meters needed for both the low-income units and the market-rate units will require payment of the Zone 7 water connection fees in effect at the time of purchase. The termination of this contract will allow DSRSD to serve the Arroyo Vista Development and allow Zone 7 to take the Arroyo Vista Turnout out of service. The initial contract was signed in 1981 between Zone 7 and the HACP. The contract was assigned to the DHA sometime after 1981. (The exact date of the transfer to DHA is unknown, but was probably in 1982 when the City of Dublin incorporated. However, the current contract still lists HACP.) This contract has a term of 30-years and is set to expire in May of 2011.

The DHA will be conveying this property to the developer once the U. S. Department of Housing and Urban Development releases their interest in the property which is anticipated to be around February 2011. Zone 7 has received advanced notice from DHA of their intent to terminate the existing treated water supply contract upon property conveyance. DHA has also requested transfer of the existing water usage credits to the new Arroyo Vista Development.

Staff recommends adopting the attached resolution granting exemption of Zone 7 water connection fees for the meters for 117 units in the low-income housing portion of the new Arroyo Vista Development and authorizing the General Manager to terminate the treated water delivery contract between Zone 7 and the DHA upon receiving final notice from DHA.



WATER METER SUMMARY

BUILDING CALCULATIONS:

BUILDING	TOTAL NO. OF UNITS	METER SIZE	PROJECT UNITS	ZONE 7 CREDIT UNITS
1–3	14	1.5" AND 5/8"	14	–
4–6	15	1.5" AND 3/4"	15	–
7–9	15	1.5" AND 3/4"	15	–
10, 20	12	1.5"	12	–
11, 12, 18, 19	20	2"	20	–
13, 17	12	1.5"	12	–
14–16	16	1.5" AND 3/4"	16	–
21, 26	14	3/4" AND 1"	14	–
22–25	28	3/4" AND 1.5"	–	28
27–30	25	5/8" AND 1.5"	–	25
31–33	20	1.5"	–	20
37, 38	14	3/4" AND 1"	–	14
39–43	29	5/8" (x2) AND 1.5"	–	29
CHILDCARE	–	1"	–	–
SENIOR	50	2"	49	1
COMMUNITY BLDG	–	1"	–	–
44, 45	9	1" AND 5/8"	9	–
46–48	15	1.5" AND 3/4"	15	–
49–118	70	5/8" (x70)	70	–
PROJECT TOTAL	378		261	117

METER CALCULATIONS FOR ZONE 7 CREDIT UNITS:

METER SIZE	TOTAL
5/8"	4
3/4"	2
1"	1
1.5"	4

ZONE 7
WATER METER EXHIBIT
ARROYO VISTA

CITY OF DUBLIN   ALAMEDA COUNTY   CALIFORNIA

0' 80' 240' 320'

SCALE: 1" = 80'   DATE: JULY 23, 2010

Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS
6111 BOLLINGER CANYON ROAD, SUITE 150
SAN RAMON, CALIFORNIA 94583
(925) 866-0322
FAX (925) 866-8575
SAN RAMON • LATHROP

G:\1417-20\ACAD\EXHIBITS\EDEN\ZONE 7 WATER EXHIBIT.DWG

Respond To:

Arroyo Vista Office ☐
6700 Dougherty Rd. #151
Dublin, CA 94568
(925) 828-3132

Administrative Office ☑
22941 Atherton St.
Hayward, CA 94541
(510) 538-8876

DUBLIN HOUSING AUTHORITY

August 3, 2010

Zone 7 Water Agency
Attn: Jarnail Chahal, Acting Principal Engineer
100 North Canyons Parkway
Livermore, CA 94551

Dear Mr. Chahal:

This letter is to provide notice for plans for future water service for the Arroyo Vista public housing site located at 6700 Dougherty Road in Dublin. The Dublin Housing Authority will be conveying this property to a for-profit developer, Citation Homes, and a non-profit developer, Eden Housing, for redevelopment. It is anticipated that the conveyance will take place in February 2011.

The Housing Authority is giving Zone 7 advance notice of its intent to terminate our agreement pending this redevelopment activity. Once we are aware of the exact date that the U.S. Department of Housing and Urban Development releases its interest in the property, and the date on which the transfer of title will take place, we will provide you with further detailed notice. In addition to the contract termination, we are also requesting a transfer of historic water usage credits to the new development.

The property will need water service for maintenance and fire suppression reasons until such time as the conveyance.

Upon termination of our agreement, the Dublin San Ramon Services District will become the retail water service provider for the property and Zone 7 will no longer bear the responsibility for servicing or maintaining water service to this property. Please direct any questions you may have to Tom Makin, our Deputy Director for Operations, at tomm@haca.net or 510-727-8516.

Very truly yours,

Christine Gouig
Executive Director

ZONE 7
ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

BOARD OF DIRECTORS

RESOLUTION NO.

INTRODUCED BY
SECONDED BY

Termination of Treated Water Supply Contract and Partial Exemption from Water Connection Fees for the Arroyo Vista Development

WHEREAS, Zone 7 of Alameda County Flood Control and Water Conservation District currently delivers treated water to the Arroyo Vista Development in the City of Dublin; and

WHEREAS, the Dublin Housing Authority (DHA) has provided staff with advanced notice of DHA's intention to terminate the existing treated water supply contract and transfer the existing water usage credits to the new Arroyo Vista Development upon conveyance of the property to the developer; and

WHEREAS, Zone 7 and the developer agree to an exemption from water connection fees for meters serving 117 low-income housing units of the proposed new development.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of Zone 7 of the Alameda County Flood Control and Water Conservation District does hereby grant exemptions from payment of water connection fees for 117 units in the low-income portion of the new Arroyo Vista Development upon termination of existing water supply contract; and

BE IT FURTHER RESOLVED that the General Manager be authorized to terminate the existing treated water supply contract for the existing Arroyo Vista Development upon receiving final notice from DHA.

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSENT:

ABSTAIN:

I certify that the foregoing is a correct copy of a resolution Adopted by the Board of Directors of Zone 7 of Alameda County Flood Control and Water Conservation District on

August 18, 2010

By ______________________________
President, Board of Directors

ORIGINATING SECTION: WATER SUPPLY ENGINEERING
CONTACT: DIANA GAINES\JARNAIL CHAHAL

AGENDA DATE: August 18, 2010 ITEM NO.

SUBJECT: Adoption of Zone 7's Labor Compliance Program

SUMMARY:

- California Labor Code (§1720-1861) and Water Code Section 17920 require that contractors on State and Federally Funded public works projects pay their workers prevailing wage rates established and issued by the Department of Industrial Relations (DIR) and employ properly registered apprentices.
- To ensure compliance, projects receiving state or federal funding must be governed by a certified LCP.
- Zone 7 utilized the Alameda County Labor Compliance Program (LCP) prior to 2006. In 2007, Zone 7 contracted with RGM & Associates to enforce RGM's LCP for the Mocho Groundwater Demineralization Plant Project since Zone 7 was receiving state grant funds for the project.
- Zone 7's "Hydrostratigraphic Investigation of Chain of Lakes Project" has been approved to receive a state grant under the Local Groundwater Assistance (LGA) Program and the project requires an LCP .
- Staff intends to enforce Zone 7's LCP using in-house resources for future grant funded projects and has prepared Zone 7's Labor Compliance Program Implementation Plan and Operational Manual (attached).
- Zone 7's LCP needs to be adopted by the Zone 7 Board and certified by the California Department of Industrial Relations to satisfy these requirements.
- To start the DIR certification process, staff has submitted the application and the draft LCP Manual to the DIR, and will be submitting the Board resolution adopting the LCP.
- Staff recommends that the Board adopt the attached Labor Compliance Program and authorize the General Manager to approve and enforce the Labor Compliance Program.

FUNDING:

Funding for LCP implementation will be provided by grant funds and budgeted (from Fund 50, 72, and 73) under the projects requiring LCP enforcement.

RECOMMENDED ACTION:

Adopt the attached resolution adopting the Labor Compliance Program and authorizing the General Manager to approve and enforce the Labor Compliance Program.

ATTACHMENTS:

1. Memo providing additional background and discussion of agenda item
2. Zone 7's Labor Compliance Program Manual
3. Zone 7 Board Resolution

Interoffice Memo

Date: August 18, 2010
To: Jill Duerig, General Manager
From: Diana Gaines, Senior Engineer
Jarnail Chahal, Acting Principal Engineer
Subject: Labor Compliance Program (LCP)

The following provides additional background and discussion of the above-referenced agenda item.

BACKGROUND:
California has regulated employment on public works projects for over a century and traditionally has relied on the Department of Industrial Relations' (DIR) Division of Labor Standards Enforcement (aka Labor Commissioner) to enforce these laws. In 1989, the Labor Code was amended to allow other government agencies to use DIR-approved Labor Compliance Programs (LCP) to enforce state prevailing wages requirements on their own projects. Legislation requires LCPs for specific projects generally where state funding is involved.

A report in 2007 found that LCP's were costly and ineffective in their reporting and recovery of back wages and penalties. More recently in 2009 SBX2-9 was signed into law to develop an alternative method of regulating the Prevailing Wage Laws. SBX2-9 resulted in the DIR developing a fee for their service and new regulations for the monitoring and enforcing of prevailing wages. On August 1, 2010 the new regulations went into effect. This change will do away with the option of contracting out LCP responsibilities to approved third party programs. If a public agency has an approved LCP it can request continued authorization or pay the State fee of ¼ of 1 % of the bond, for construction project monitoring.

Zone 7 utilized Alameda County's Labor Compliance Program prior to 2006 and in 2007 contracted with RGM & Associates for what is considered a third party Labor Compliance Program for the Mocho Groundwater Demineralization Plant Project. The new law has taken this option away and staff proposes using in-house labor to manage and enforce labor code requirements on projects with Federal or State grant funds.

DISCUSSION

Staff intends to enforce Zone 7's LCP using in-house resources for future grant funded projects and has prepared a Labor Compliance Program Implementation Plan and Operational Manual. The purpose of the LCP is to ensure that contractors on State and Federally Funded public works projects pay their workers prevailing wage rates established and issued by the Department of Industrial Relations and employ properly registered apprentices. The LCP Manual is made up of five sections:

1. Labor Compliance Program Description - contains program requirements, information about the Prevailing Wage Laws, the program applicability, enforcement actions, and outreach activities.
2. LCP Implementation Plan – discusses Labor Compliance Officer's duties which includes participation in pre-construction meetings, providing site monitors, verifying certified payroll, receives monthly employment verification reports, preparing and submitting annual reports to Zone 7 Board and DIR.

3. LCP Operational Manual – provides guidance to Site Monitors.
4. LCP Procedures - lays out certified payroll verification procedures and site monitoring procedures
5. LCP forms and sample letters – contains forms for use in administering the Program, Prevailing wage handout, Pre-Bid Conference Checklist, Sign Off sheet for Contractor acknowledging Program, Rules on hiring Apprentices on Public Works, Sample Monthly Utilization Report, Public Works Payroll Reporting form, Interview forms and sample letters

Zone 7's LCP needs to be adopted by the Board and certified by the California Department of Industrial Relations prior to implementation. To start the DIR certification process, staff has submitted the application and the LCP Manual to the DIR, and will be submitting the Board resolution adopting the LCP as soon as it is available. The certification process may take up to 90 days to complete. Staff recommends that the Board adopt the attached Labor Compliance Program and authorize the General Manager to approve and enforce the Labor Compliance Program.

ZONE 7
ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
BOARD OF DIRECTORS
RESOLUTION NO.

INTRODUCED BY
SECONDED BY

Adoption of Zone 7's Labor Compliance Program

WHEREAS, California Labor Code (§1720 et seq) requires that contractors on State and Federally funded public works projects pay their workers prevailing wage rates established and issued by the Department of Industrial Relations (DIR) and employ properly registered apprentices; and

WHEREAS, the Labor Code requires; contractors to be informed of State requirements for paying prevailing wages, monitoring of compliance by obtaining and reviewing certified payroll reports, investigating complaints and other suspected violations and appropriate enforcement actions be taken should violations occur; and

WHEREAS, Zone 7 has developed a Labor Compliance Program for implementation which describes the above requirements and enforcements; and

WHEREAS, Staff shall implement the program for Public Works projects receiving State or Federal funds.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of Zone 7 of Alameda County Flood Control and Water Conservation District does hereby adopt the Labor Compliance Program and authorize the General Manager to approve, enforce and modify, as needed to satisfy the DIR, the Zone 7 Labor Compliance Program.

AYES:

NOES:

ABSENT:

ABSTAIN:

I certify that the foregoing is a correct copy of a resolution Adopted by the Board of Directors of Zone 7 of Alameda County Flood Control and Water Conservation District on

August 18 , 2010 ____________________________

By____
President, Board of Directors

Zone 7 Water Agency

100 North Canyons Parkway, Livermore CA 94551
Phone (925) 454-5000; FAX (925) 454-5724
http://www.zone7water.com

G.F. DUERIG
General Manager

Labor Compliance Program

Implementation Plan
And
Operational Manual

To Be Approved and Adopted: August 18, 2010
Accepted by California Department of Industrial Relations:

PREPARED BY
Diana Gaines
Senior Engineer

ZONE 7 WATER AGENCY

LABOR COMPLIANCE PROGRAM
IMPLEMENTATION PLAN & OPERATIONAL MANUAL

Table of Contents

Section

ZONE 7 WATER AGENCY

LABOR COMPLIANCE PROGRAM

<u>OVERVIEW/EXECUTIVE SUMMARY</u>

Zone 7 of Alameda County Flood Control and Water Conservation District, known as Zone 7 Water Agency (Zone 7) institutes this Labor Compliance Program for the purpose of satisfying the labor compliance provisions related to state and federal funded public works contracts.

This program is applicable to all District projects that are funded under Proposition 50, AB 303 or other state grants that may have similar requirements, and which commence construction after January 1, 2004. In particular, a Labor Compliance Program approved by the California Department of Industrial Relations is required for work funded by the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002.

California Labor Code Section 1720 through 1861 (in particular SB 278, as codified in Labor Code Section 1771.8) and Water Code Section 17920, *et seq.,* require that contractors on state-funded public works projects pay their workers based on the prevailing wage rates which are established and issued by the Department of Industrial Relations (DIR), Division of Labor Statistics and Research. These Labor Code sections are supplemented by regulations published as Title 8 of the California Code of Regulations (8 CCR 16000, *et seq.*). Oversight of compliance is under the direction of the California Division of Labor Standards Enforcement (DLSE) within the DIR.

In addition, these statutes and regulations require contractors to keep accurate payroll records of trades workers on all public works projects and to submit copies of certified payroll records upon request. Furthermore, these statutes and regulations require contractors to employ registered apprentices on public works projects.

This labor compliance program (“LCP”) contains the labor compliance standards required by state and federal laws, regulations, and directives, as well as Zone 7 policies and contract provisions, which include, but are not limited to, the following:

1. Contractors’ payment of applicable general prevailing wage rates.
2. Contractors’ employment of properly registered apprentices.
3. Contractors’ providing certified payroll records upon request but not less than weekly.
4. Program’s monitoring District construction sites for the verification of proper payments of prevailing wage rates and work classification.
5. Program’s conducting pre-job conferences with contractors/subcontractors.
6. Program’s withholding contract payments and imposing penalties for noncompliance.
7. Program’s preparation and submittal of annual reports.

The Labor Compliance Officer (“LCO”) is Zone 7’s representative for enforcement of the LCP.

Section I

ZONE 7 WATER AGENCY
LABOR COMPLIANCE PROGRAM

Labor Compliance Program

SECTION I. LABOR COMPLIANCE PROGRAM

I. INTRODUCTION

The Zone 7 Water Agency institutes this Labor Compliance Program for the purpose of satisfying the labor compliance provisions related to state-funded public works contracts.

This program is applicable to all public works projects that are funded under Proposition 50: Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Water Code § 79500 et seq.) or other state grants that may have similar requirements such as projects funded by Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006. This Labor Compliance Program (LCP) contains the labor compliance standards required by state laws, regulations, and directives, as well as Zone 7 policies and contract provisions.

All projects to which this LCP applies will be so noted in all bid and contract documents. In addition, any request for proposals, advertisement for bids or construction contract will contain language appropriate to the requirements of prevailing wage law as contained in Labor Code Sections 1771, 1775, 1777.4, 1813 and 1815. This information will again be discussed in any Pre-Bid Conferences (Job Walk Meetings) and/or Kick-Off Meetings (Pre-Job Conferences).

California Labor Code Section 1720, *et seq.* and, in particular Labor Code Sections 1771, 1771.8, 1774 and 1813, as well as Water Code Section 10795, *et seq.,* require that contractors on public works projects subject to this LCP pay their workers based on the prevailing wage rates which are established and issued by the Department of Industrial Relations (DIR), Division of Labor Statistics and Research.

In addition, Labor Code Section 1776 requires that contractors on public works projects subject to this LCP maintain and furnish records. Furthermore, Labor Code Section 1777.5 requires that contractors on public works projects subject to this LCP comply with apprenticeship requirements. Oversight of compliance is under the direction of the California Division of Labor Standards Enforcement (DLSE) within the DIR.

In establishing this LCP, Zone 7 adheres to the statutory requirements as enunciated in Section 1771.5(b) of the Labor Code. Further, it is the intent of the District to actively enforce this LCP by monitoring District construction sites for the payment of prevailing wage rates, and by requiring contractors and subcontractors having workers on District sites to submit copies of certified payroll records demonstrating their compliance with the payment of prevailing wage rates. In addition, the District will investigate any worker complaints related to underpayment of prevailing wages with subsequent calculation of back wages and penalties, as appropriate.

Should applicable sections of the Labor Code or Title 8 of the California Code of Regulations undergo alteration, amendment, or deletion, Zone 7 will modify the affected portions of this program accordingly.

It is important to note that ultimate responsibility for compliance with the LCP remains with the contractor on such jobs.

II. PUBLIC WORKS SUBJECT TO PREVAILING WAGE LAWS

State prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720 *et seq.*, and include, but are not limited to, such types of work as construction, alteration, demolition, repair, or maintenance work. The Division of Labor Statistics and Research (DLSR) predetermines the appropriate prevailing wage rates for particular construction trades and crafts by county.

A. Types of Contracts to Which Prevailing Wage Requirements Apply

As provided in Labor Code section 1771.5, an awarding body shall initiate and enforce a Labor Compliance Program as described in subdivision (b) of that section with respect to public works projects funded with state grants or loans. Accordingly, upon approval by the Director of the Department of Industrial Relations, this awarding body LCP shall apply to public works using funds derived from state Bond Acts, which commence on or after January 1, 2004.

B. Applicable Dates for Enforcement of the LCP

The applicable dates for enforcement of awarding body Labor Compliance Programs is established by Section 16422 of the California Code of Regulations. Contracts are not subject to the jurisdiction of the Labor Compliance Program until after the program has received initial or final approval.

III. COMPETITIVE BIDDING ON DISTRICT PUBLIC WORKS CONTRACTS

The District publicly advertises upcoming public works projects to be awarded according to a competitive bidding process. All District bid advertisements (or bid invitations) and public works contracts shall contain appropriate language concerning the requirements of the Labor Code.

IV. KICK-OFF MEETING

After Zone 7 awards the public works contract, and prior to the commencement of the work, a mandatory Kick-Off Meeting (Job Start Meeting or Pre-Job Conference) shall be conducted by the Labor Compliance Officer (LCO) with the contractor and those subcontractors listed in the contract bid documents.

At that meeting, the LCO will discuss the state labor law requirements applicable to the contract, including prevailing wage requirements, the respective record keeping responsibilities, the requirement for the submittal of certified payroll records to the District, and the prohibition against discrimination in employment.

The LCO will provide the contractor and each subcontractor with a Checklist of Labor Law Requirements (presented as **Attachment A** to this document) and will discuss in detail the following checklist items:

1. The contractor's duty to pay prevailing wages (Labor Code Section 1770, *et seq*.), should the project exceed the exemption amounts;

2. The contractor's duty to employ registered apprentices on public works projects (Labor Code Section 1777.5);

3. The penalties for failure to pay prevailing wages (for non-exempt projects) and to employ apprentices, including forfeitures and debarment (Labor Code Sections 1775, and 1777.7, ;

4. The requirement to keep and submit copies upon request of certified payroll records under Labor Code Section 1776, and penalties for failure to do so under Labor Code Section 1776(g), The requirement includes and applies to all subcontractors performing work on Zone 7 projects even if their portion of the work is less than one half of one percent of the total amount of the contract.

5. The prohibition against employment discrimination (Labor Code Sections 1777.6; the Government Code; and Title VII of the Civil Rights Act of 1964);

6. The prohibition against accepting or extracting kickback from employee wages under Labor Code Section 1778;

7. The prohibition against accepting fees for registering any person for public works under Labor Code Section 1779; or for filling work orders on public works under Labor Code Section 1780;

8. The requirement to list all subcontractors under Public Contract Code Section 4104);

9. The requirement to be properly licensed and to require all subcontractors to be properly licensed, and the penalty for employing workers while unlicensed (Labor

Code Section 1021 and under California Contractors License Law, found at *Business and Professions Code Section 7000, et seq.;*

10. The prohibition against unfair competition under Business and Professions Code Sections 17200-17208);

11. The requirement that the contractors and subcontractors be properly insured for Workers Compensation under Labor Code 1861;

12. The requirement that the contractor abide by the Occupational Safety and Health laws and regulations that apply to the particular construction project.

13. The federal prohibition against hiring undocumented workers, and the requirement to secure proof of eligibility/citizenship from all workers.

14. The requirement to provide itemized wage statements to employees under Labor Code Section 226

The contractors and subcontractors present at the Kick-Off meeting will be given the opportunity to ask questions of the LCO relative to the items contained in the Labor Law Requirements Checklist. The checklist will then be signed by the contractor's representative and the District's LCO, **a representative of each subcontractor**, and the LCO.

At the Kick-Off meeting, the LCO will provide the contractor with a copy of the District's LCP package which includes: a copy of the approved LCP, the checklist of Labor Law Requirements, applicable Prevailing Wage Rate Determinations and/or website link to DIR for prevailing Wage Determinations, blank certified payroll record forms, fringe benefit statements, and State apprenticeship requirements., Labor Codes relating to Public Works and Public Agencies are found in Part 7, Chapter 1, Sections 1720-1861).

It will be the contractor's responsibility to provide copies of the LCP package to all listed subcontractors and to any substituted subcontractors, if and when such substituted contractors are approved by Zone 7.

V. REVIEW OF CERTIFIED PAYROLL RECORDS

A. Certified Payroll Records Required

The contractor and each subcontractor shall maintain payroll and basic records (timecards, canceled checks, cash receipts, trust fund forms, accounting ledgers, tax forms, superintendent and foreman daily logs, etc.) during the course of the work and shall preserve them for a period of three (3) years thereafter for all trades workers working on District projects which are subject to the LCP. Such records shall include the name, address, and social security number of each worker, his or her classification, a general description of the work each employee performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, and actual wages paid.

1. Submittal of Certified Payroll Records

   The contractor and each subcontractor shall maintain weekly-certified payroll records for submittal to the Zone 7 LCO as required. The contractor shall be responsible for the submittal of payroll records of all its subcontractors. All certified payroll records shall be accompanied by a statement of compliance signed by the contractor or each subcontractor indicating that the payroll records are correct and complete, that the wage rates contained therein are not less than those determined by the Director of the Department of Industrial Relations, and that the classifications set forth for each employee conform with the work performed.

   Time cards, front and back copies of cancelled checks, daily logs, employee sign-in sheets and/or any other record maintained for the purposes of reporting payroll may be requested by the Labor Compliance Officer at any time and shall be provided within 10 days following the receipt of the request.

2. Full Accountability

   Each individual, laborer or craftsperson working on a public works contract must appear on the payroll. The basic concept is that the employer who pays the trade's worker must report that individual on its payroll. This includes individuals working as apprentices in an apprenticeable trade. Owner-operators are to be reported by the contractor employing them, rental equipment operators are to be reported by the rental company paying the workers' wages.

   Sole owners and partners who work on a contract must also submit a certified payroll record listing the days and hours worked, and the trade classification descriptive of the work actually done.

   The contractor shall provide the records required under this section to Zone 7 within five (5) days of each payday, maintain these records available for inspection by the Department of Industrial Relations, and shall permit representatives of each to interview trades workers during working hours on the project site.

3. Responsibility for Subcontractors

   The contractor shall be responsible for ensuring adherence to labor standards provisions by its subcontractors. Moreover, the prime contractor is responsible for Labor Code violations of its subcontractors in accordance with Labor Code section 1775.

4. Payment to Employees

   Employees must be paid unconditionally, and not less often than once each week, the full amounts that are due and payable for the period covered by the particular payday. Thus, an employer must establish a fixed workweek (Sunday through Saturday, for example) and an established payday (such as every Friday or the preceding day should such payday fall on a holiday). On every payday, each worker must be paid all sums due as of the end of the preceding workweek and must be provided with an itemized wage statement.

   If an individual were called a subcontractor, whereas, in fact, he/she is merely a journey level mechanic supplying only his/her labor, such an individual would not be deemed a bona fide subcontractor and must be reported on the payroll of the prime contractor as a trades worker. Moreover, any person who does not hold a valid contractor's license cannot be a subcontractor, and anyone hired by that person is the worker or employee of the general contractor for purposes of prevailing wage requirements, certified payroll reporting and workers' compensation laws.

   The worker's rate for straight time hours must equal or exceed the rate specified in the contract by reference to the "Prevailing Wage Determinations" for the class of work actually performed. Any work performed on Saturday, Sunday, and/or on a holiday, or portion thereof, must be paid the prevailing rate established for those days regardless of the fixed workweek. The hourly rate for hours worked in excess of 8 hours in a day and 40 hours in a workweek shall be premium pay. All work performed on Saturday, Sunday and holidays shall be paid pursuant to the Prevailing Wage determination.

B. <u>Apprentices</u>

Apprentices shall be permitted to work as such only when they are individually registered under a bona fide apprenticeship program registered and approved by the State Division of Apprenticeship Standards. The allowable ratio of apprentices to journeypersons in any craft/classification shall not be greater than the ratio permitted to the contractor as to its entire workforce under the registered program.

Any worker listed on a payroll at an apprentice wage rate who is not registered shall be paid the journey level wage rate determined by the Department of Industrial

Relations for the classification of the work he/she actually performed. Pre-apprentice trainees, trainees in non-apprenticeable crafts, and others who are not duly registered will not be permitted on public works projects unless they are paid full prevailing wage rates as journeypersons.

Compliance with California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

1. Submit contract award information to the apprenticeship committee for each apprenticeable craft or trade in the area of the Project;

2. Request dispatch of apprentices from the applicable Apprenticeship Program(s) and employ apprentices on public works projects in a ratio to journeypersons which in no case shall be less than one (1) hour of apprentice work to each five (5) hours of journeyperson work; and

3. Contribute to the applicable Apprenticeship Program(s) or the California Apprenticeship Council in the amount identified in the prevailing wage rate publication for journeypersons and apprentices. If payments are not made to an Apprenticeship Program, they shall be made to the California Apprenticeship Council, Post Office Box 420603, San Francisco, CA 94142.

If the contractor is registered to train apprentices, it shall furnish written evidence of the registration (i.e., Apprenticeship Agreement or Statement of Registration) of its training program and apprentices, as well as the ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the contract work. It should be noted that a prior approval for a separate project does not confirm approval to train on any project. The contractor/subcontractor must check with the applicable Joint Apprenticeship Committee to verify status.

C. <u>Audit of Certified Payroll Records</u>

Audits shall be conducted by the LCO, and shall also be conducted at the request of the Labor Commissioner to determine whether all trades workers on project sites have been paid according to the prevailing wage rates.

The audit record form (presented as **Attachment B**) demonstrates the sufficient detail that is necessary to verify compliance with Labor Code requirements.

VI. REPORTING OF WILLFUL VIOLATIONS TO THE LABOR COMMISSIONER

If an investigation reveals that a willful violation of the Labor Code has occurred, the LCO will make a written report to the Labor Commissioner which shall include: (1) an audit consisting of a comparison of payroll records to the best available information as to the actual hours worked, (2) the classification of workers employed on the public works contract. Six (6) types of willful violations are reported:

A. Failure to Comply with Prevailing Wage Rate Requirements

Failure to comply with prevailing wage rate requirements (as set forth in the Labor Code and Zone 7 contracts) is determined a willful violation whenever less than the stipulated basic hourly rate is paid to trades workers, or if overtime, holiday rates, fringe benefits, and/or employer payments are paid at a rate less than stipulated.

B. Falsification of Payroll Records, Misclassification of Work and/or Failure to Accurately Report Hours of Work

Falsification of payroll records and failure to accurately report hours of work is characterized by deliberate underreporting of hours of work; underreporting the headcount; stating that the proper prevailing wage rate was paid when, in fact, it was not; clearly misclassifying the work performed by the worker; and any other deliberate and/or willful act which results in the falsification or inaccurate reporting of payroll records.

C. Failure to Submit Certified Payroll Records

The contractors and subcontractors shall have ten (10) days upon notification by the LCO in which to comply with the requirement of submittal of weekly-certified payroll records and/or to correct inaccuracies or omissions that have been detected.

D. Failure to Pay Fringe Benefits

Fringe benefits are defined as the amounts stipulated for employer payments or trust fund contributions and are determined to be part of the required prevailing wage rate. Failure to pay or provide fringe benefits and/or make trust fund contributions on a timely basis is equivalent to payment of less than the stipulated wage rate and shall be reported to the Labor Commissioner as a willful violation, upon completion of an investigation and audit.

E. Failure to Pay the Correct Apprentice Rates and/or Misclassification of Workers as Apprentices

Failure to pay the correct apprentice rate or classifying a worker as an apprentice when not properly registered is equivalent to payment of less than the stipulated wage rate and shall be reported to the Labor Commissioner as a willful violation, upon completion of an investigation and audit.

F. Taking of Kickbacks

Accepting or extracting kickbacks from employee wages under Labor Code Section 1778 constitutes a felony and may be prosecuted by the appropriate enforcement agency.

VII. ENFORCEMENT ACTION

A. Duty of the Awarding Body (§ 16434)

Zone 7 Water Agency , as the awarding body having an approved LCP, have a duty to the Director to enforce the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code and these regulations in a manner consistent with the practice of the Labor Commissioner. It is the practice of the Labor Commissioner to refer to the Director's ongoing advisory service of web-posted public works coverage determination as a source of information and guidance in making enforcement decisions. It is also the practice of the Labor Commissioner to be represented by an attorney in prevailing wage hearings conducted pursuant to the Labor Code Section 1742(b) and sections 17201-17270 of Title 8 of the California Code of Regulations.

In addition, Zone 7 has a duty to investigate worker complaints related to implementation and requirements of the LCP for these same projects. Within 15 days after receipt of the complaint, send a written acknowledgment to the complaining party that the complaint has been received and identifying the name, address, and telephone number of the investigator assigned to the complaint; within 15 after receipt of complaint also provide the affected contractor with the notice required under Labor Code section 1775 if the complaint is against a subcontractor; lastly notify the complaining party in writing of the resolution of the complaint within ten days after the complaint has been resolved by the Labor Compliance Program. The following are needed for case preparation resulting from a worker complaint:

- Notes from worker interview
- Calendar of dates and hours worked
- Copies of check stubs or other form of proof of underpayment
- Document all attempts to authenticate the complaint
- Other supporting documentation, as needed
- Copy of all correspondence to and forms signed by the contractor
- Certified payroll records
- Inspector's daily log
- Prevailing wage determination and applicable increases
- Scope of work for trade classifications used
- Tabulation of bids
- Surety company information
- NWCP and Release
- Memo to file summarizing actions taken

B. Withholding Contract Payments when Payroll Records are Delinquent or Inadequate (§ 16435)

1. "Withhold" means to cease payments by the awarding body, its agents or others who pay on its behalf to the contractor. Where the violation is by a subcontractor, the contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.

A release bond under Civil Code Section 3196 may not be posted for the release of the funds being withheld for the violation of the prevailing wage law.

2. "Contracts" except as otherwise provided by agreement, means only contracts under a single master contract, including a Design-Build contract, or contracts entered into as stages of a single project, may be the subject of withholding.

3. "Delinquent payroll records" means those not submitted on the basis set forth in the Zone 7 Contract;

4. "Inadequate payroll records" are any one of the following:

    a. A record lacking the information required by Labor Code Section 1776;

    b. A record which contains the required information but which is not certified, or is certified by someone not an agent of the contractor or subcontractor;

    c. A record remaining uncorrected for one payroll period, after the Labor Compliance Program has given the contractor or subcontractor notice of inaccuracies detected by audit or record review; However, prompt correction will stop any duty to withhold if such inaccuracies do not amount to 1 percent of the entire certified weekly payroll in dollar value and do not affect more than half the persons listed as workers employed on that certified weekly payroll, as defined in Labor Code Section 1776 and section 16401 of Title 8 CCR.. Prompt correction will stop any duty to withhold if such inaccuracies are *de minimus*.

    Pursuant to Labor Code Section 1776, the contractor shall, as a penalty to the Water District, forfeit twenty-five dollars ($25) for each calendar day, or portion thereof, in which such withholding has occurred, for each worker, until strict compliance is effectuated.

C. Withholding for Violation of Not Paying the Per Diem Prevailing Wages

1. The withholding of contract payments when payroll records are delinquent or inadequate is required by Labor Code Section 1771.5(b)(5), and it does not require the prior approval of the Labor Commissioner. The Awarding Body shall only withhold those payments due or estimated to be due to the contractor or subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Compliance Program has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor whose payroll records are delinquent or inadequate; provided that a contractor shall be required in turn to cease all payment to a subcontractor whose payroll records are delinquent or inadequate until the Labor Compliance Program provides notice that the subcontractor has cured the delinquency or deficiency.
2. a. When contract payments are withheld under this section, the LCP shall provide the contractor and subcontractor, if applicable, with immediate written

notice that includes all of the following: (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate; (2) specifies the amount being with held; and (3) informs the contractor or subcontractor of the right to request an expedited hearing to review the withholding of contract payments under Labor Code Section 1742, limited to the issue of whether the records are delinquent or inadequate or the LCP has exceeded its authority under this section.

b. No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced.

c. In addition to withholding contract payment based on delinquent or inadequate payroll records, penalties shall be assessed under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records. The assessment of penalties under Labor Code Section 1776(g) does require the prior approval of the Labor Commissioner under section 16436 of these regulations.

Withholding Contract Payments When, After Investigation, It Is Established That Underpayment or Other Violation Has Occurred (§16435.5).

a. Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.
b. "Amount equal to the underpayment" is the total of the following determined by payroll review, audit, or admission of contractor or subcontractor:
    i. The difference between amounts paid workers and the correct General Prevailing Rate of Per Diem Wages, as defined in Labor Code Section 1773, and determined to be the prevailing rate due workers in such craft, classification or trade in which they were employed and the amounts paid;
    ii. The difference between amounts paid on behalf of workers and the correct amounts of Employer Payment, as defined in Labor Code Section 1773.1 and determined to be a part of the prevailing rate costs of contractors due for employment of workers in such craft, classification or trade in which they were employed and the amounts paid;
    iii. Estimated amounts of "illegal taking of wages";
    iv. Amounts of apprenticeship training contributions paid to neither the program sponsor's training trust not the California Apprenticeship Council;
    v. Estimated penalties under Labor Code Sections 1775, 1776, and 1813

The withholding of contract payments when, after investigation, it is established that underpayment or other violations have occurred requires the prior approval of the Labor Commissioner under sections 16436 and 16437 of these regulations.

2. Provisions relating to the penalties under Labor Code Sections 1775 and 1813:

   a. Pursuant to Labor Code Section 1775, the contractor shall, as a penalty to Zone 7, forfeit up to fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages.

   b. Pursuant to Labor Code section 1813, the contractor shall, as a penalty to Zone 7 on whose behalf the contract is awarded, forfeit twenty-five dollars ($25) for each worker employed in the execution of the contract by the contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week.

D. Forfeitures Requiring Approval by the Labor Commissioner (§16436)

1. "Forfeitures" are the amounts of wages, penalties and forfeitures assessed by the Zone 7 and proposed to be withheld pursuant to Labor Code section 1771.6(a), and includes difference between the prevailing wage rates and the amount paid and penalties assessed.
2. If the amount of forfeitures assessed is less than $1000.00, the forfeitures shall be deemed approved by the Labor Commissioner upon service and the Labor Commissioner's receipt of copies
   a. Notice of withholding
   b. Audit as defined in section 16432(e)
   c. A brief narrative identifying the Bid Advertisement Date of the contract for public work and summarization of nature of violation, basis of underpayment and factors considered in assessing penalties
3. All other forfeitures, approval by the Labor Commissioner shall be requested and obtained in accordance with section 16437 below
4. "Failing to pay the correct rate of prevailing wages" means those public works violations which the Labor Commissioner has exclusive authority to approve before they are recoverable by the Labor Compliance Program, and which are appealable by the contractor before the Director of the Department of Industrial Relations under Labor Code sections 1742 and 1742.1 pursuant to the California Code of Regulations Title 8, Chapter 8, Subchapter 8 (§§ 17201 through 17270).

   Regardless of what is defined as "prevailing wages" in contract terms, noncompliance with the following are considered failures to pay prevailing wages:

   a. Nonpayment of items defined as "Employer Payments" and "General Prevailing Rate of Per Diem Wages" in Title 8 CCR Section 16000 and Labor Code Section 1771.

b. Failure to provide complete and accurate payroll records, as required by Labor Code Section 1776;

c. Paying apprentice wages lower than the journey level rate to a worker who is not an apprentice as defined in Labor Code Section 3077, working under an apprentice agreement in a recognized program;

d. Accepting or extracting kickbacks, in violation of Labor Code Section 1778;

e. Engaging in prohibited actions related to fees for registration as a public works employee, in violation of Labor Code Section 1779;

Failure to pay overtime for work over 8 hours in any one day or 40 hours in any one week, in violation of Labor Code sections 1813, 1815, or Title 8 CCR section 16200(a)(3)(F).

E. Determination of Amount of Forfeiture by the Labor Commissioner (§ 16437)

1. Where the LCO requests a determination of the amount of forfeiture (Attachment C), the request shall include a file or report to the Labor Commissioner which contains at least the following information:

   a. The date that the public work was accepted, and the date that a notice of completion was filed;

   b. Any other deadline, which, if missed, would impede collection;

   c. Evidence of violation in narrative form;

   d. Evidence that an “audit” or “investigation” occurred in compliance with Title 8 CCR Section 16432;

   e. Evidence that the contractor was given the opportunity to explain why it believes there was no violation; or that any violation was caused by mistake, inadvertence, or neglect before the forfeiture was sent to the Labor Commissioner, and the contractor either did not do so or failed to convince the awarding body of its position;

   f. Where the Zone 7 seeks not only amounts of wages but also a penalty as part of the forfeiture, and the contractor has unsuccessfully contended that the cause of violation was a mistake, inadvertence, or neglect, a statement should accompany the proposal for a forfeiture with a recommended penalty amount, pursuant to Labor Code Section 1775;

   g. Where Zone 7 seeks only wages or a penalty less than $50 per day as part of the forfeiture, and the contractor has successfully contended that the cause of violation was a mistake, inadvertence, or neglect, then the file should include the evidence as to the contractor's knowledge of its obligation, including the Program's communication to the contractor of the obligation in the bid invitations, at the pre-job conference agenda and records, and any other notice given as part of the contracting process. Included with the file should be a statement similar to that described in subsection (f) above and recommended penalty amounts, pursuant to Labor Code Section 1775 (a);

h. The previous record of the contractor in meeting prevailing wage obligations;

i. Whether the LCP has been granted approval on only an interim or temporary basis under sections 16425 or 16426 and whether it has been granted extended approval under 16427.

2. The file or report shall be served on the Labor Commissioner not less than thirty (30) days before the final payment or, if that deadline has passed, not less than 30 days before the expiration of the limitations period set forth in Labor Code Section 1741.

3. A copy of the file or report shall be served on the contractor at the same time as it is sent to the Labor Commissioner.

   Zone 7 may exclude from the documents served on the contractor/ subcontractor any surety copies of documents secured from these parties during an audit, investigation, or meeting if those documents are clearly referenced in the file or report.

4. The Labor Commissioner shall affirm, reject, or modify the forfeiture in whole or in part as to penalty and/or wages due.

5. The determination of the forfeiture by the Labor Commissioner is effective on the following date for Labor Compliance Programs having **<u>initial approval</u>** pursuant to Section 16427 of the California Code of Regulations: on the date the Labor Commissioner serves by first class mail on the Zone 7 Water Agency and on the contractor, an endorsed copy of the proposed forfeiture, or a drafted forfeiture statement which sets out the amount of forfeiture approved. Service on the contractor is effective if made on the last address supplied by the contractor in the record.

   The Labor Commissioner's approval, modification, or disapproval of the proposed forfeiture shall be served within 30 days of receipt of the proposed forfeiture.

F. <u>Deposits of Penalties and Forfeitures Withheld (§16438)</u>

1. Where the involvement of the Labor Commissioner has been limited to a determination of the actual amount of penalty, forfeiture, or underpayment of wages and the matter has been resolved without litigation by or against the Labor

Commissioner, Zone 7 shall deposit penalties and forfeitures into its General Fund.

2. Where collection of fines, penalties, or forfeitures results from court action to which the Labor Commissioner and Zone 7 Water Agency are both parties, the fines, penalties or forfeitures shall be divided between the General Funds of the State and of Zone 7 Water Agency, as the court may decide.

3. All amounts recovered by suit brought by the Labor Commissioner, and to which Zone 7 Water Agency is not a party, shall be deposited in the General Fund of the State of California.

4. All wages and benefits which belong to a worker and are withheld or collected from a contractor or subcontractor, either by withholding or as a result of court action, and which have not been paid to the worker or irrevocably committed on the worker's behalf to a benefits fund, shall be deposited with the Labor Commissioner, who will deal with such wages and benefits in accordance with Labor Code Section 96.7.

G. Request for Review of a Labor Compliance Program Enforcement Action; Settlement Authority

1) A contractor or subcontractor may request a settlement meeting pursuant to Labor Code Section 1742.1(b) and may request review of a Labor Compliance Program enforcement action in accordance with Labor Code Sections 1771.6(b) and 1742 and the regulations found in sections 17201-17270 of the Title 8 of the California Code of Regulations. The Labor Compliance program shall have rights and responsibilities of the Enforcing Agency, as defined in section 17202(f), in responding to such a request for a review, including but not limited to the obligations to serve notices, transmit the Request for Review to the hearing office, and provide an opportunity to review evidence in a timely manner, to participate through counsel in all hearing proceedings, and to meet the burden of establishing prima facie support for the Notice of Withholding of Contract Payments.
2) Except in cases where the Labor Commission has intervened, the LCP shall have the authority to prosecute, settle, or seek the dismissal of any Notice of Withholding of Contract Payments issued pursuant to Labor Code Section 1771.6 and any review proceeding Labor Code Section 1742, without any further need for approval by the Labor Commissioner

H. <u>Debarment Policy (§ 16800-16802)</u>

It is the policy of Zone 7 that the public works prevailing wage requirements set forth in the California Labor Code, Section 1720-1861, be strictly enforced on projects to which this LCP applies. In furtherance thereof, construction contractors and subcontractors found to be repeat violators of the California Labor Code shall be referred to the Labor Commissioner for debarment from bidding on or otherwise being awarded any public work contract, within the State of California, The duration of the debarment period shall depend upon the nature and severity of the Labor Code violations and any mitigating and/or aggravating factors, which may be presented at the hearing conducted by the Labor Commissioner for such purpose.

VIII. NOTICE OF WITHHOLDING AND REVIEW THEREOF

A. Notice of Withholding of Contract Payments (NWCP) (§17220-17229)

After determination of the amount of forfeiture by the Labor Commissioner, the Zone 7 shall provide notice of withholding of contract payments to the contractor and subcontractor, if applicable. The notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld.

Service of the notice shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. The awarding body shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the notice and to any surety on a bond, if their identities are known to the awarding body.

The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments.

> **Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond (Labor Code Section 1743**.)

Upon receipt of a timely written request for a settlement meeting, the Enforcing Agency shall afford the Affected Contractor or Subcontractor a reasonable opportunity to meet for such purpose. The settlement meeting may be held in person or by telephone and shall take place before expiration of the 60-day limit for filing a Request for Review under Rule 22 [Section 17222].

A copy of the Notice of Withholding of Contract Payments (NWCP) to be utilized by Zone 7 Water Agency is found as Attachment D to this document.

B. Review of the NWCP (§17222,3)

1. An affected contractor or subcontractor may obtain review of the NWCP by transmitting a written request to the office of the LCP that appears on the NWCP within 60 days after service of the NWCP. If no hearing is requested within 60 days after service of the NWCP, the NWCP shall become final.

2. Within ten days following the receipt of the request for review, the LCP shall transmit to the Office of the Director-Legal Unit the request for review and copies of the Notice of Withholding of Contract Payments, any audit summary that accompanied the notice, and a proof of service or other documents showing the name and address of any bonding company or

surety that secures the payment of the wages covered by the notice. **A copy of the required Notice of Transmittal to be utilized by Zone 7 Water Agency is found as Attachment E to this document. (§17223)**

3. Upon receipt of a timely request, a hearing shall be commenced within 90 days before the director, who shall appoint an impartial hearing officer possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The appointed hearing officer shall be an employee of the department, but shall not be an employee of the Division of Labor Standards Enforcement.

   The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the LCP at the hearing within 20 days of the receipt of the written request for a hearing. Any evidence obtained by the LCP subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor.(§ 17224)

   A copy of a Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b) form is found as Attachment F to this document.

   17250 The contractor or subcontractor shall have the burden of proving that the basis for the NWCP is incorrect.The NWCP shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing.

   17253 Within 45 days of the conclusion of the hearing, the director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the director shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the LCP. 17261 Within 15 days of the issuance of the decision, the director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

   The director has adopted regulations setting forth procedures for hearings under this subdivision. **The regulations are found as Attachment G to this document.**

4. An affected contractor or subcontractor may obtain review of the decision of the director by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the decision. If no petition for writ of mandate is filed within 45 days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is

established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

5. A certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

6. A judgment entered pursuant to this procedure shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.

7. This procedure shall provide the exclusive method for review of an NWCP issued by the Zone 7 to withhold contract payments pursuant to Section 1771.7 of the Labor Code.

IX. DISTRIBUTION OF FORFEITED SUMS (ref §16438)

Before making payments to the contractor of money due under a contract for public work, the Zone 7 shall withhold and retain there from all amounts required to satisfy the Notice of Withholding of Contract Payments (NWCP). The amounts required to satisfy the NWCP shall not be disbursed by Zone 7 until receipt of a final order that is no longer subject to judicial review.

Pending a final order, or the expiration of the time period for seeking review of the NWCP, Zone 7 shall not disburse any contract payments withheld.

From the amount recovered, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers employed on the public works project who are paid less than the prevailing wage rate and such disbursement shall have **PRIORITY** over all Stop Notices filed against the prime contractor.

Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund of the Zone 7 that has enforced this chapter pursuant to Labor Code Section 1771.7.

X. OUTREACH ACTIVITIES

To ensure the successful implementation of the District's Labor Compliance Program, there shall be several outreach activities initiated and maintained.

A. Providing Information to the Public

The Labor Compliance Officer shall be responsible for communication and outreach activities relative to public information on the District's Labor Compliance Program:

1. Regular presentations to contractors at all Zone 7 Pre-Bid Conferences (Job Walk Meetings) and Kick-Off Meetings (Pre-Job Conferences or Job Start Meetings);

2. Ongoing communication via correspondence and with workers at Zone 7 job sites when review of the certified payroll records reveals the possibility of prevailing wage violations.

3. Periodic meetings with contractor organizations, prime contractors and subcontractors interested in public works contracting with the Zone 7.

B. On-The-Job Management Training on the Labor Compliance Program

The Labor Compliance Program shall provide ongoing on-the-job management training and workshops for Operations and Accounting staff relative to the terms, requirements and administration of the Labor Compliance Program.

XI. ANNUAL REPORTS

A. <u>Annual Report on Prevailing Wage Monitoring to the ZONE 7 Board of Directors</u>

The LCO will submit to the Zone 7 Water Agency Board of Directors an annual report on prevailing wage monitoring for any years in which the LCP has been applied which will include the following information:

1. Progress report on the LCP.

2. Fiscal year-end summary of:

   a. Monitoring activities

   b. Record keeping activities

   c. Labor Code violations identified and reported to DLSE

   d. Statistical analysis of the prevailing wage violations on District public works projects

   e. Summary of outreach activities

B. <u>Annual Report on the LCP to the Director of the Department of Industrial Relations</u>

The LCO will submit to the Director of the Department of Industrial Relations an annual report on the operation of its LCP within 60 days after the end of its fiscal year, or accompany its request for an extension of initial approval, whichever comes first. The annual report will contain, at a minimum, the following information:

1. Number of public works contracts awarded using state funds, if any, and their total value;

2. A summary of wages due to workers resulting from failure by contractors to pay prevailing wage rates; the total amount withheld from money due the contractors; and the total amount recovered by action in any court of competent jurisdiction;

3. A summary of penalties and forfeitures imposed and withheld, or recovered in a court of competent jurisdiction; and

4. A special summary of all audits that were conducted upon the request of the Labor Commissioner.

Copies of this report will be distributed to the Director of the Department of Industrial Relations and the ZONE 7 Board of Directors.

ATTACHMENT A

ZONE 7 WATER AGENCY
Labor Compliance Program

Checklist of Labor Law Requirements

(CCR Title 8, Section 16421)

Ultimately the prime contractor is liable for their sub and specialty contractors. This checklist is a useful tool for the prime contractor to ensure that their sub and specialty contractors know their responsibilities on public works projects. Contractors who understand and comply with the law are more likely to deliver the job on time, on budget and done right the first time. We suggest the prime contractor encourage completion of this checklist by their sub and specialty contractors.

NAME (PRINT) ______________________ DATE ______________

COMPANY ______________________ PHONE ______________

ADDRESS ______________________ FAX ______________

CITY ______________________ STATE ________ ZIP CODE ______________

PROJECT MANAGER ______________________ SUPERINTENDENT/FOREMAN ______________

CERTIFIED PAYROLL ______________________ PHONE/EXT. ______________

CONTRACTOR LICENSE NO. ______________ EXP. DATE ______________ SPECIALTY LICENSE NO. ______________

SELF-INSURED CERTIFICATE NO. ______________________ WORKERS COMP. POLICY NO. ______________

PROJECT NAME ______________________ PROJECT #/BID PACKAGE# ______________

AWARDING BODY ______________________ ADVERTISEMENT DATE ______________

IF SUB-CONTRACTING, LIST YOUR PRIME/GENERAL CONTRACTOR ______________________

CONTRACT AWARD AMOUNT ______________________

THE FEDERAL AND STATE LABOR LAW REQUIREMENTS APPLICABLE TO THE CONTRACT ARE COMPOSED OF, BUT NOT LIMITED TO, THE FOLLOWING:

☐ **Payment of Prevailing Wage Rates**

The contractor to whom the contract is awarded and its subcontractors hired for the public works project are required to pay not less than the specified general prevailing wage rates to all workers employed in the execution of the contract. *Labor Code Section 1770 et seq*.

The contractor is responsible for ascertaining and complying with all current general prevailing wage rates for crafts and any rate changes that occur during the life of the contract. Information on all prevailing wage rates and all rate changes are to be posted at the job site for all workers to view. Additionally, current wage rate information can be found at the DLSR web site, *www.dir.ca.gov/dlsr/statistics_research.html*.

☐ **Apprentices**

It is the duty of the contractor and subcontractors to employ registered apprentices on the public works project and to comply with all aspects of *Labor Code Section 1777.5*, relating to Apprentices on Public Works. (1) Notify approved apprenticeship programs of contract award; (2) employ apprentices; (3) pay training fund contributions.

☐ **Penalties**

There are penalties required for contractor's/subcontractor's failure to pay prevailing wages and for failure to employ apprentices, including forfeitures and debarment under *Labor Code Sections 1775; 1776; 1777.1; 1777.7 and 1813*.

☐ **Certified Payroll Reports**

Under *Labor Code Section 1776*, contractors and subcontractors are required to keep accurate payroll records showing the name, address, social security number and work classification of each employee and owner performing work; also the straight time and overtime hours worked each day for each week, the fringe benefits, and, the actual per diem wage paid to each owner, journey person, apprentice worker or other employee hired in connection with the public works project.

This requirement includes and applies to all subcontractors performing work on Awarding Body projects even if their portion of the work is less than one half of one percent (0.05%) of the total amount of the contract.

The certified payroll records shall contain the same data fields listed on the *Public Works Payroll Reporting Form (A-1-131)* and contain or is accompanied by a declaration made under penalty of perjury. *(California Code of Regulations, Section 16401)*.

Prime Contractors are responsible for submittal of their payrolls and those of their respective subcontractors as one package. Any payroll not submitted in the proper form will be rejected. In the event that there has been no work performed during a given week, the Certified Payroll Report shall be annotated: "No work" for that week or a Non-Performance Statement must be submitted.

Employee payroll records shall be certified and shall be made available for inspection at all reasonable hours at the principal office of the contractor/subcontractor, or shall be furnished to any employee, or his/her authorized representative on request, pursuant to *Labor Code Section 1776.*

Under *Labor Code Section 1776(g)* there are penalties required for contractor's/subcontractor's failure to maintain and submit copies of certified payroll records on request.

☐ **Nondiscrimination in Employment**

There exist prohibitions against employment discrimination under *Labor Code Sections 1735 and 1777.6,* the *Government Code,* the *Public Contracts Code,* and *Title VII of the Civil Rights Act of 1964.*

☐ **Kickbacks Prohibited**

Contractors and subcontractors are prohibited from recapturing wages illegally by accepting or extracting "kickbacks" from employee wages under *Labor Code Section 1778.*

☐ **Acceptance of Fees Prohibited**

There exists a prohibition against contractor/subcontractor acceptance of fees for registering any person for public work under *Labor Code Section 1779;* or for filling work orders on public works contracts pursuant to *Labor Code Section 1780.*

☐ **Listing of Subcontractors**

All prime contractors are required to list properly all subcontractors hired to perform work on the public works projects covering more than one-half of one percent, pursuant to *Government Code Section 4104.*

☐ **Proper Licensing**

Contractors are required to be licensed properly and to require that all subcontractors be properly licensed. Penalties are required for employing workers while unlicensed under *Labor Code Section 1021* and under the California Contractor License Law found at *Business and Professions Code Section 7000 et seq.*

☐ **Unfair Competition Prohibited**

Contractors and sub-contractors are prohibited from engaging in unfair competition as specified under *Business and Professions Code Sections 17200 to 17208.*

☐ **Workers Compensation Insurance**

Labor Code Section 1861 requires that contractors and subcontractors be insured properly for Workers Compensation.

☐ **OSHA**

Contractors and subcontractors are required to abide by the Occupational, Safety and Health laws and regulations that apply to the particular construction project.

☐ **Proof of Eligibility/Citizenship**

The federal prohibition against hiring undocumented workers, and the requirement to secure proof of eligibility/citizenship from all workers, is required.

☐ **Itemized Wage Statement**

Labor Code Section 226 requires that employees be provided with itemized wage statements.

CERTIFICATION

I acknowledge that I have been informed and am aware of the foregoing requirements and that I am authorized to make this

certification on behalf of ______________________________
(COMPANY NAME)

I fully understand that failure to comply with any of the above requirements may subject me, or my company, to penalties as provided above.

Contractor ______________________________ ______________
(SIGNATURE) (DATE)

Awarding Agency /Labor Compliance Program ______________________________ ______________
(SIGNATURE) (DATE)

ATTACHMENT B

Zone 7 Water Agency
Labor Compliance Program Office

LCP AUDIT RECORD FORM
(For Use in 8 CCR 16432 Audits)

An LCP Audit Record must be sufficiently detailed to "verify compliance with the requirements of Chapter 1, Public Works, Part 7 of Division 2." This requirement is satisfied when the audit record displays that the following procedures have been followed:

1. Audit of the obligation to carry workers' compensation insurance means producing written evidence of a binder issued by the carrier, or telephone or written inquiry to the Workers' Compensation Insurance Rating Bureau;

2. Audit of the obligation to employ and train apprentices means inquiry to the program sponsor for the apprenticeable craft or trade in the area of the public work as to: whether contract award information was received, including an estimate of journeyperson hours to be performed and the number of apprentices to be employed; whether apprentices have been requested, and whether the request has been met; whether the program sponsor knows of any amounts received from the contractor or subcontractor for the training fund or the California Apprenticeship Council; and whether persons listed on the certified payroll in that craft or trade being paid less than the journeyperson rate are apprentices registered with that program and working under apprentice agreements approved by the Division of Apprenticeship Standards;

3. Audit of the obligation to pass through amounts, made part of the bid, for apprenticeship training contributions to either the training trust or the California Apprenticeship Council, means asking for copies of checks remitted, or when the audit occurs more than 30 days after the month in which payroll has been paid, copies of canceled checks remitted;

4. Audit of "illegal taking of wages" means inspection of written authorizations for deductions (as listed in Labor Code Section 224) in the contractor's files and comparison to wage deduction statements furnished to employees (Labor Code Section 226), together with an interview of several employees as to any payments made which are not reflected on the wage deduction statements;

5. Audit of the obligation to keep records of working hours (Title 8 CCR Section 16432), and pay not less than required for hours worked in excess of 8 hours/day and 40 hours/week (Title 8 CCR Section 16200(a)(3)(F), means review and audit of weekly certified payroll records;

6. Audit of the obligation to pay the prevailing per diem wage means review and audit of weekly-certified payroll records for compliance with:

   a. All elements defined as the General Prevailing Rate of Per Diem Wages in Title 8 CCR Section 16000, which were determined to be prevailing in the Director's determination in effect on the date of the call for bids, or as reflected in any subsequent revised determination issued by the Director's office, copies of which are available at the LCO's Office and posted at the public works job site;

   b. All elements defined as Employer Payments to Workers set forth in Title 8 CCR Section 16000, which were determined to be prevailing in the Director's (Office of Industrial Relations) determination in effect on the date of the call for bids, or as reflected in any subsequent revised determination issued by the Director's office, copies of which are available at the LCO's Office and posted at the public works job site.

ATTACHMENT C

ZONE 7 WATER AGENCY
Labor Compliance Program

LCP NOTICE OF DEADLINES FOR FORFEITURES
(Under 8 CCR 16437)

TO: (NAME OF CONTRACTOR)

This document requests the Labor Commissioner of California to approve a forfeiture of money you would otherwise be paid. The Zone 7 Water Agency Labor Compliance Officer is asking the Labor Commissioner of California to agree, in 20 days, that the enclosed Evidence Report and package of materials indicates that you have violated the law.

Your failure to respond to Zone 7 Water Agency request that the Labor Commissioner approve a forfeiture, by writing to the Labor Commissioner within 20 days of the date of service (the date of postmark) of this document on you, may lead the Labor Commissioner to affirm the proposed forfeiture and may also end your right to contest those amounts further.

You must serve any written response on the Labor Commissioner and the Zone 7 Water Agency Labor Compliance Officer by return receipt requested/certified mail. If you serve a written explanation, with evidence, as to why the violation did not occur or why the penalties should not be assessed within the 20-day period, the explanation and evidence will be considered.

And

If you change your address, or decide to hire an attorney, it is your responsibility to advise the Zone 7 Water Agency Labor Compliance Officer by certified mail. Otherwise, notices will be served at your last address on file, and deadlines may pass before you receive such notice.

ATTACHMENT D

Labor Compliance Program ___________________________________ ___________________________________ ___________________________________ ___________________________________ Phone: Fax:	(SEAL)
Date:	In Reply Refer to Case No.:

Notice of Withholding of Contract Payments (NWCP)

Awarding Body	³ Work Performed in County of
Project Name	³ Project No.
Prime Contractor	
Subcontractor	

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the Labor Compliance Officer for Zone & Water Agency has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code sections 1771.5 and 1771.6, the Labor Compliance Officer hereby issues this Notice of Withholding of Contract Payments.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

____
____
____
____

The Labor Compliance Officer has determined that the total amount of wages due is: $___________________

The Labor Compliance Officer has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: $__________________

The Labor Compliance Officer has determined that the amount of penalties assessed under Labor Code section 1776 is: $__________________

ZONE 7 WATER AGENCY
LABOR COMPLIANCE OFFICER

____

Date:___________________________________

Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code sections 1742 and 1771.6, an affected contractor or subcontractor may obtain review of this Notice of Withholding of Contract Payments (NWCP) by transmitting a written request to the office of the Labor Compliance Program that appears below within 60 days after service of the notice. **To obtain a hearing, a written Request for Review must be transmitted to the following address:**

Labor Compliance Program

____

Review Office-Notice of Withholding of Contract Payments

____

____

A **Request for Review** either shall clearly identify the Notice of Withholding of Contract Payments from which review is sought, including the date of the notice, or it shall include a copy of the notice as an attachment, and shall also set forth the basis upon which the notice is being contested. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing within 20 days of the Labor Compliance Program's receipt of the written **Request for Review**.

> **Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. Labor Code section 1743.**

In accordance with Labor Code section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

Opportunity for Settlement Meeting

In accordance with Labor Code Section 1742.1 (b), the Labor Compliance Program shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of this Notice of Withholding of Contract Payments, afford the contractor or subcontractor the opportunity to meet with the Labor Compliance Program's designee **to attempt to settle a dispute regarding the notice**. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth above under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is **in addition** to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written **Request for Review** has already been made. Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested.

A written request to meet with the Labor Compliance Program's designee to attempt to settle a dispute regarding this notice must be transmitted to ______________________ at the following address:

____

____

____

Liquidated Damages

In accordance with Labor Code section 1742.1, after 60 days following the service of this Notice of Withholding of Contract Payments, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof that still remain unpaid. If the notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

Notwithstanding the above, in accordance with Labor Code 1742.1 (b), there shall be no liability for liquidated damages if the full amount found due in this Notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of this Notice, for the Department to hold in escrow pending administrative and judicial review. The Department shall release such funds, and any interest earned, at the conclusion of all administrative and judicial review to the persons and entities that are found to be entitled to such funds.

In lieu of a cash deposit, the contractor may post an undertaking with the Department in full amount of the Notice of Withholding of Contract Payments. The undertaking shall be on the condition that, if any decision is issued by the Director upholding this Notice in any respect, the contractor shall pay the amount owed pursuant to a decision that is final under Labor Code Section 1742, unless the parties have executed a settlement agreement for the payment of some other amount, in which case the contractor shall pay the amount that the contractor is obligated to pay under the terms of the settlement agreement. The undertaking must provide that if the contractor fails to pay the amount owed within 10 days of the date the decision is final or the execution of the settlement agreement, a portion of the undertaking equal to the amount owed, or the entire undertaking if the amount exceeds the undertaking is forfeited to the Labor Commissioner for the State of California for the purpose of satisfying the amounts owed under this Notice. A payment bond obtained by a contractor for the public works project which is the subject to this Notice shall not be accepted as an undertaking unless the following two conditions are completely satisfied: (1) the payment bond provides the payment of the full amount of this Notice, including but not limited to, all wages, training, trust contributions, and penalties, and (2) the conditions of payment set forth above are expressly agreed to by the affected contractor(s) and the surety which issued the payment bond. The undertaking should be forwarded to the Department as directed below. The Department's Accounting Office will hold the undertaking until the administrative and judicial review is completed. The disbursement of the bond funds will follow the same process as described above for a cash deposit.

Deposits must be made by check or money order payable to the Department of Industrial Relations with a letter and a copy of the Notice of Withhold Contract Payments and mailed to:

Department of Industrial Relations
Attention Cashiering Unit
P.O. Box 420603
San Francisco, CA 94142

The Amount of Liquidated Damages Available Under this Notice is $_______________.

Distribution:

Attach:

Prime Contractor Audit Summary
Subcontractor Proof of Service
Surety(s) on Bond

ATTACHMENT E

LABOR COMPLIANCE PROGRAM ______________________________ Review Office - Notice of Withholding of Contract Payments ______________________________ ______________________________ ______________________________ Phone: Fax:	(SEAL)
Date:	In Reply Refer to Case No.:

Notice of Transmittal

To: Department of Industrial Relations
Office of the Director-Legal Unit
Attention: Lead Hearing Officer
P. O. Box 420603
San Francisco, CA 94142-0603

Enclosed herewith please find a Request for Review, dated __________________, postmarked ___________________, and received by this office on ____________________.

Also enclosed please find the following:

____Copy of Notice of Withholding of Contract Payments
____Copy of Audit Summary

LABOR COMPLIANCE OFFICER

____

Date:____________________________

cc: Prime Contractor
Subcontractor
Bonding Company

Please be advised that the Request for Review identified above has been received and transmitted to the address indicated. Please be further advised that the governing procedures applicable to these hearings are set forth at Title 8, California Code of Regulations sections 17201-17270. These hearings are **not** governed by Chapter 5 of the Government Code, commencing with section 11500.

ATTACHMENT F

LABOR COMPLIANCE PROGRAM ____________________________ Review Office - Notice of Withholding of Contract Payments ____________________________ ____________________________ ____________________________ Phone: Fax:	(SEAL)
Date:	In Reply Refer to Case No.:

Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b)

To: Prime Contractor

____
____
____

Subcontractor

____
____
____

Please be advised that this office has received your **Request for Review**, dated _____________, and pertaining to the Notice of Withholding of Contract Payments issued by the Labor Compliance Program in Case No. _____________.

In accordance with Labor Code section 1742(b), this notice provides you with an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing on the Request for Review, and the procedures for reviewing such evidence.

Rule 17224 of the Prevailing Wage Hearing Regulations (8 CCR 17224) provides as follows:

> (a) Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall also notify the affected contractor or subcontractor of its opportunity and the procedures for reviewing evidence to be utilized by the Enforcing Agency at the hearing of the Request for Review.
>
> (b) An Enforcing Agency shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the affected contractor or subcontractor the option at said party's own expense to either (i) obtain copies of all such evidence through a

commercial copying service or (ii) inspect and copy such evidence at the office of the Enforcing Agency during normal business hours; or if (2) the Enforcing Agency at its own expense forwards copies of all such evidence to the affected contractor or subcontractor.
(c) The evidence required to be provided under this Rule shall include the identity of witnesses whose testimony the Enforcing Agency intends to present, either in person at the hearing or by declaration or affidavit. This provision shall not be construed as requiring the Enforcing Agency to prepare or provide any separate listing of witnesses whose identities are disclosed within the written materials made available under subpart (a).

(d) The Enforcing Agency shall make evidence available for review as specified in subparts (a) through (c) within 20 days of its receipt of the Request for Review; *provided that*, this deadline may be extended by written request or agreement of the affected contractor or subcontractor. The Enforcing Agency's failure to make evidence available for review as required by Labor Code section 1742(b) and this Rule, shall preclude the enforcing agency from introducing such evidence in proceedings before the Hearing officer or the Director.

(e) This Rule shall not preclude the Enforcing Agency from relying upon or presenting any evidence first obtained after the initial disclosure of evidence under subparts (a) through (d), *provided that*, such evidence is promptly disclosed to the affected contractor or subcontractor. This Rule also shall not preclude the Enforcing Agency from presenting previously undisclosed evidence to rebut new or collateral claims raised by another party in the proceeding.

In accordance with the above Rule, please be advised that the Labor Compliance Program's procedure for you to exercise your opportunity to review evidence is as follows:

Within five calendar days of the date of this notice, please transmit the attached Request to Review Evidence to the following address:

____
____
____
____
____
Attention:___________________________

Request to Review Evidence

To: ________________________________
____
____
____

From: ________________________________
____
____
____

Regarding Notice of Withholding of Contract Payments Dated ____________

Our Case No.: _________________

The undersigned hereby requests an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing on the Request for Review.

____
Phone No.:________________________
Fax No.:__________________________

ATTACHMENT G
Prevailing Wage Hearings – Excerpts from Regulations

The Following Statutory Excerpts Are Provided By Zone 7 Water Agency Only For Convenience And By Way Of Explanation. Any Changes To The Referenced Regulations Will Be Automatically Implemented By The District, Without Requiring Revisions To This Document. No Guarantees Are Provided As To Accuracy Of The Following.

The Reader Is Directed To The Actual Code For Complete, Accurate Representations Of The Current Laws And Regulations. Law Codes must be obtained from the Internet, Law Libraries or the Department of Industrial Relations. The California Code of Regulations is posted at the state website, http://www.ccr.oal.ca.gov .

PREVAILING WAGE HEARING REGULATIONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8, CHAPTER 8, SUBCHAPTER 6

(SECTIONS 17201 through 17270)

C O N T E N T S

ARTICLE 1. GENERAL

ARTICLE 2. ASSESSMENT OR NOTICE AND REQUEST FOR REVIEW

ARTICLE 3. PREHEARING PROCEDURES

ARTICLE 4. HEARINGS

ARTICLE 6. DECISION OF THE DIRECTOR

ARTICLE 7. TRANSITIONAL RULE

ARTICLE 1. GENERAL

17201. Scope and Application of Rules.

(a) These Rules govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Articles 1 and 2 of Division 2, Part 7, Chapter 1 (commencing with section 1720) of the Labor Code, as well as any notice assessing penalties for noncompliance with payroll record obligations under Labor Code section 1776. The provisions of Labor Code section 1742 and these Rules apply to all such assessments and notices served on a contractor or subcontractor on or after July 1, 2001 and provide the exclusive method for an Affected Contractor or Subcontractor to obtain review of any such notice or assessment. These Rules also apply to transitional cases in which notices were served but no court action was filed under Labor Code sections 1731-1733 prior to July 1, 2001, in accordance with Section 17270 (Rule 70) below.
(b) These Rules do not govern debarment proceedings under Labor Code section 1777.1, nor proceedings to review determinations with respect to the violation of apprenticeship obligations under Labor Code sections 1777.5 and 1777.7, nor any criminal prosecution.
(c) These Rules do not preclude any remedies otherwise authorized by law to remedy violations of Division 2, Part 7, Chapter 1 of the Labor Code.
(d) For easier reference, individual sections within these prevailing wage hearing regulations are referred to as “Rules” using only their last two digits. For example, this Section 17201 may be referred to as Rule 01.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742, 1771.5, 1771.6(b), 1773.5, 1776, and 1777.1 – 1777.7, Labor Code; and Stats. 2000, Chapter 954, §1.

17202. Definitions.

For the purpose of these Rules:
(a) "Affected Contractor or Subcontractor" means a contractor or subcontractor (as defined under Labor Code section 1722.1) to whom the Labor Commissioner has issued a civil wage and penalty assessment pursuant to Labor Code section 1741, or to whom an Awarding Body has issued a notice of the withholding of contract payments pursuant to Labor Code section 1771.6, or to whom the Labor Commissioner or the Division of Apprentice Standards has issued a notice assessing penalties for noncompliance with payroll record obligations under Labor Code section 1776;
(b) “Assessment" means a civil wage and penalty assessment issued by the Labor Commissioner or his or her designee pursuant to Labor Code section 1741, and it also includes a notice issued by either the Labor Commissioner or the Division of Apprenticeship Standards pursuant to Labor Code section 1776;
(c) “Awarding Body” means an awarding body or body awarding the contract (as defined in Labor Code section 1722) that exercises enforcement authority under Labor Code section 1726 or 1771.5;
(d) “Department” means the Department of Industrial Relations;
(e) “Director” means the Director of the Department of Industrial Relations;
(f) “Enforcing Agency” means the entity which has issued an Assessment or Notice of Withholding of Contract Payments and with which a Request for Review has been filed; i.e., it refers to the Labor Commissioner when review is sought from an Assessment, the Awarding Body when review is sought from a Notice of Withholding of Contract Payments, and the

Division of Apprenticeship Standards when review is sought from a notice issued by that agency that assesses penalties under Labor Code section 1776;
(g) "Hearing Officer" means any person appointed by the Director pursuant to Labor Code section 1742(b) to conduct hearings and other proceedings under Labor Code section 1742 and these Rules;
(h) “Joint Labor-Management Committee” means a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (section 175a of Title 29 of the United States Code).
(i) "Labor Commissioner" means the Chief of the Division of Labor Standards Enforcement and includes his or her designee who has been authorized to carry out the Labor Commissioner’s functions under Chapter 1, Part 7 of Division 2 (commencing with section 1720) of the Labor Code;
(j) "Party" means an Affected Contractor or Subcontractor who has requested review of either an Assessment or a Notice of Withholding of Contract Payments, the Enforcing Agency that issued the Assessment or the Notice of Withholding of Contract Payments from which review is sought, and any other Person who has intervened under subparts (a), (b), or (c) of Rule 08 [Section 17208];
(k) "Person" means an individual, partnership, limited liability company, corporation, governmental subdivision or unit of a governmental subdivision, or public or private organization or entity of any character;
(l) "Representative" means a person authorized by a Party to represent that Party in a proceeding before a Hearing Officer or the Director, and includes the Labor Commissioner when the Labor Commissioner has intervened to represent the Awarding Body in a review proceeding pursuant to Labor Code section 1771.6(b).
(m) “Rule” refers to a section within this subchapter 6. The Rule number corresponds to the last two digits of the full section number. (For example, Rule 08 is the same as section 17208.)
(n) “Surety” has the meaning set forth in Civil Code section 2787 and refers to the entity that issues the public works bond provided for in Civil Code sections 3247 and 3248 or any other surety bond that guarantees the payment of wages for labor.
(o) “Working Day” means any day that is not a Saturday, Sunday, or State holiday, as determined with reference to Code of Civil Procedure sections 12(a) and 12(b) and Government Code sections 6700 and 6701.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 2787, 3247, and 3248, Civil Code; sections 12a and 12b, Code of Civil Procedure; sections 6700, 6701, 11405.60 and 11405.70, Government Code; sections 1720 et seq., 1722, 1722.1, 1726, 1741, 1742, 1742(b), 1771.5, 1771.6, 1771.6(b), and 1776, Labor Code; and 29 U.S.C. §175a.

17203. Computation of Time and Extensions of Time to Respond or Act.

(a) In computing the time within which a right may be exercised or an act is to be performed, the first day shall be excluded and the last day shall be included. If the last day is not a Working Day, the time shall be extended to the next Working Day.
(b) Unless otherwise indicated by proof of service, if the envelope was properly addressed, the mailing date shall be presumed to be: a postmark date imprinted on the envelope by the U.S. Postal Service if first-class postage was prepaid; or the date of delivery to a common carrier promising overnight delivery as shown on the carrier’s receipt.
(c) Where service of any notice, decision, pleading or other document is by first class mail, and if within a given number of days after such service, a right may be exercised, or an act is to be performed, the time within which such right may be exercised or act performed is extended five

days if the place of address is within the State of California, and 10 days if the place of address is outside the State of California but within the United States. However, this Rule shall not extend the time within which the Director may reconsider or modify a decision to correct an error (other than a clerical error) under Labor Code section 1742(b).
(d) Where service of any notice, pleading, or other document is made by an authorized method other than first class mailing, extensions of time to respond or act shall be calculated in the same manner as provided under section 1013 of the Code of Civil Procedure, unless a different requirement has been specified by the appointed Hearing Officer or by another provision of these Rules.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1010 through 1013, Code of Civil Procedure; and section 1742(b), Labor Code.

17204. Appointment of Hearing Officers; Delegation of Appointment Authority to Chief Counsel.

(a) Upon receipt of a Request for Review of an Assessment or of a Notice of Withholding of Contract Payments, the Director, acting through the Chief Counsel (see subpart (d) below), shall appoint an impartial Hearing Officer to conduct the review proceeding.
(b) The appointed Hearing Officer shall be an attorney employed by the Office of the Director – Legal Unit. However, if no attorney employed by the Office of the Director – Legal Unit is available or qualified to serve in a particular matter, the appointed Hearing Officer may be any attorney or administrative law judge employed by the Department, other than an employee of the Division of Labor Standards Enforcement.
(c) Any person appointed to serve as a Hearing Officer in any matter shall possess at least the minimum qualifications for service as an administrative law judge pursuant to Government Code section 11502(b) and shall be someone who is not precluded from serving under Government Code section 11425.30.
(d) The Director's authority under Labor Code section 1742(b) to appoint an impartial Hearing Officer, is delegated in all cases to the Chief Counsel of the Office of the Director or to the Chief Counsel's designated Assistant or Acting Chief Counsel when the Chief Counsel is unavailable or disqualified from participating in a particular matter. This delegation includes all related authority under Rule 40 [Section 17240] below to appoint a different Hearing Officer to conduct all or any part of a review proceeding as well as the authority to consider and decide or to assign to another Hearing Officer for consideration and decision any motion to disqualify an appointed Hearing Officer.
NOTE: Authority cited: sections 7, 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 11425.30 and 11502(b), Government Code; and sections 7, 55, 59, and 1742(b), Labor Code.

17205. Authority of Hearing Officers.

(a) In any proceeding assigned for hearing and decision under the provisions of Labor Code section 1742, the appointed Hearing Officer shall have full power, jurisdiction and authority to hold a hearing and ascertain facts for the information of the Director, to hold a prehearing conference, to issue a subpoena and subpoena duces tecum for the attendance of a Person and the production of testimony, books, documents, or other things, to compel the attendance of a Person residing anywhere in the state, to certify official acts, to regulate the course of a hearing, to grant a withdrawal, disposition or amendment, to order a continuance, to approve a stipulation voluntarily entered into by the Parties, to administer oaths and affirmations, to rule on objections, privileges, defenses, and the receipt of relevant and material evidence, to call and examine a Party or witness and introduce into the hearing record documentary or other

evidence, to request a Party at any time to state the respective position or supporting theory concerning any fact or issue in the proceeding, to extend the submittal date of any proceeding, to exercise such other and additional authority as is delegated to Hearing Officers under these Rules or by an express written delegation by the Director, and to prepare a recommended decision, including a notice of findings, findings, and an order for approval by the Director.
(b) There shall be no right of appeal to or review by the Director of any decision, order, act, or refusal to act by an appointed Hearing Officer other than through the Director's review of the record in issuing or reconsidering a written decision under Rules 60 [Section 17260] and 61 [Section 17261] below.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11512, Government Code and section 1742(b), Labor Code.

17206. Access to Hearing Records.

(a) Hearing case records shall be available for inspection and copying by the public, to the same extent and subject to the same policies and procedures governing other records maintained by the Department. Hearing case records normally will be available for review in the office of the appointed Hearing Officer; provided however, that a case file may be temporarily unavailable when in use by the appointed Hearing Officer or by the Director or his or her designee.
(b) Nothing in this Rule shall authorize the disclosure of any record or exhibit that is required to be kept confidential or is otherwise exempt from disclosure by law or that has been ordered to be kept confidential by an appointed Hearing Officer.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 6250 et seq. Government Code and section 1742(b), Labor Code.

17207. Ex Parte Communications.

(a) Except as provided in this Rule, once a Request for Review is filed, and while the proceeding is pending, there shall be no direct or indirect communication regarding any issue in the proceeding to the appointed Hearing Officer or the Director, from the Enforcing Agency or any other Party or other interested Person, without notice and the opportunity for all Parties to participate in the communication.
(b) A communication made on the record in the hearing is permissible.
(c) A communication concerning a matter of procedure or practice is presumed to be permissible, unless the topic of the communication appears to the Hearing Officer to be controversial in the context of the specific case. If so, the Hearing Officer shall so inform the other participant and may terminate the communication or continue it until after giving all Parties notice and an opportunity to participate. Any written communication concerning a matter of procedure or practice, and any written response, or a written memorandum identifying the participants and stating the substance of any such oral communication or response, shall be added to the case file so that all Parties have a reasonable opportunity to review it. Unless otherwise provided by statute or these Rules, the appointed Hearing Officer may determine a matter of procedure or practice based upon a permissible ex-parte communication. The term "matters of procedure or practice" shall be liberally construed.
(d) A communication from the Labor Commissioner to the Hearing Officer or the Director which is deemed permissible under Government Code section 11430.30 is permitted only if any such written communication and any written response, or a written memorandum identifying the participants and stating the substance of any such oral communication or response, is added to the case file so that all Parties have a reasonable opportunity to review it.

(e) If the Hearing Officer or the Director receives a communication in violation of this Rule, he or she shall comply with the requirements of Government Code section 11430.50.
(f) To the extent not inconsistent with Labor Code section 1742, the provisions of Article 7 of Chapter 4.5 of Title 2, Division 3, Part 1 (commencing with section 11430.10) of the Government Code governing ex parte communications in administrative adjudication proceedings shall apply to review proceedings conducted under these Rules.
(g) This Rule shall not be construed as prohibiting communications between the Director and the Labor Commissioner or between the Director and any other interested Person on issues or policies of general interest that coincide with issues involved in a pending review proceeding; *provided that* (1) the communication does not directly or indirectly seek to influence the outcome of any pending proceeding; (2) the communication does not directly or indirectly identify or otherwise refer to any pending proceeding; and (3) the communication does not occur at a time when the Director or the other party to the communication knows that a proceeding in which the other party to the communication is interested is under active consideration by the Director.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections

11430.10 through 11430.80, Government Code, and section 1742(b), Labor Code.

17208. Intervention and Participation by other Interested Persons.

(a) The Labor Commissioner may intervene as a matter of right in any review from a Notice of Withholding of Contract Payments, either as the Representative of the Awarding Body or as an interested third Party.
(b) A bonding company and any Surety on a bond that secures the payment of wages covered by the Assessment or Notice of Withholding of Contract Payments shall be permitted to intervene as a matter of right in any pending review filed by the contractor or subcontractor from the Assessment or Withholding of Contract Payments in question; *provided that,* intervention is sought at or before the first prehearing conference held pursuant to Rule 31 [Section 17231] below and within either 30 days after the bonding company or Surety was served with a copy of the Assessment or Notice of Withholding of Contract Payments or 30 days after the filing of the Request for Review, whichever is later. Thereafter, any request to intervene by such a bonding company or Surety shall be treated as a motion for permissive participation under subpart (~~c~~d) of this Rule. A bonding company or Surety shall have the burden of proof with respect to any claim that it did not receive notice of the Assessment or Notice of Withholding of Contract Payments until after the filing of the Request for Review.
(c) The employee(s), labor union, or Joint Labor-Management Committee who filed the formal complaint which led the Enforcing Agency to issue the Assessment or Notice of Withholding of Contract payments shall be permitted to intervene in a pending review filed by the contractor or subcontractor from the Assessment or Withholding of Contract Payments in question; *provided that,* intervention is sought at or before the first prehearing conference held pursuant to Rule 31 [Section 17231] below and there is no good cause to deny the request. Thereafter, any request to intervene by such employee(s), labor union, or Joint Labor-Management Committee shall be treated as a motion for permissive participation as an interested Person under subpart (d) of this Rule.
(d) Any other Person may move to participate as an interested Person in a proceeding in which that Person claims a substantial interest in the issues or underlying controversy and in which that Person's participation is likely to assist and not hinder or protract the hearing and determination of the case by the Hearing Officer and the Director. Interested Persons who are permitted to participate under this Rule shall *not* be regarded as Parties to the proceeding for any purpose, but may be provided notices and the opportunity to present arguments under such terms as the Hearing Officer deems appropriate.

(e) Rights to intervene or participate as an interested party are only in accordance with this Rule. Intervention or permissive participation under this Rule shall not expand the scope of issues under review nor shall it extend any rights or interests that have been forfeited as a result of an Affected Contractor or Subcontractor's own failure to file a timely Request for Review. The Hearing Officer may impose conditions on an intervener's or other interested Person's participation in the proceeding, including but not limited to those conditions specified in Government Code §11440.50(c).
(f) No Person shall be required to seek intervention in a review proceeding as a condition for pursuing any other remedy available to that Person for the enforcement of the prevailing wage requirements of Division 2, Part 7, Chapter 1 (starting with section 1720) of the Labor Code.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11440.50(c), Government Code; and sections 1720 et seq., 1741, 1742, and 1771.6, Labor Code.

17209. Representation at Hearing.

(a) A Party may appear in person or through an authorized Representative, who need not be an attorney at law; however, a Party shall use the form Authorization for Representation by Non-Attorney [8 CCR 17209(b) (New 1/15/02)] to authorize representation by any non-attorney who is not an owner, officer, or managing agent of that Party.
(b) Upon formal notification that a Party is being represented by a particular individual or firm, service of subsequent notices in the matter shall be made on the Representative, either in addition to or instead of the Party, unless and until such authorization is terminated or withdrawn by further written notice. Service upon an authorized Representative shall be effective for all purposes and shall control the determination of any notice period or the running of any time limit for the performance of any acts, regardless of whether or when such notice may also have been served directly on the represented Party.
(c) An authorized Representative shall be deemed to control all matters respecting the interests of the represented Party in the proceedings.
(d) Parties and their Representatives shall have a continuing duty to keep the appointed Hearing Officer and all other Parties to the proceeding informed of their current address and telephone number.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

17210. Proper Method of Service.

(a) Unless a particular method of service is specifically prescribed by statute or these Rules, service may be made by: (1) personal delivery; (2) priority or first class mailing postage prepaid through the U. S. Postal Service; (3) any other means authorized under Code of Civil Procedure section 1013; or (4) if authorized by the Hearing Officer pursuant to Rule 11 [Section 17211] below, by facsimile or other electronic means.
(b) Service is complete at the time of personal delivery or mailing, or at the time of transmission as determined under Rule 11 [Section 17211] below.
(c) Proof of service shall be filed with the document and may be made by: (1) affidavit or declaration of service; (2) written statement endorsed upon the document served and signed by the party making the statement; or (3) copy of letter of transmittal.
(d) Service on a Party who has appeared through an attorney or other Representative shall be made upon such attorney or Representative.
(e) In each proceeding, the Hearing Officer shall maintain an official address record, which shall contain the names and addresses of all Parties and their Representatives, agents, or attorneys

of record. Any change or substitution in such information must be communicated promptly in writing to the Hearing Officer. The official address record may also include the names and addresses of interested Persons who have been permitted to participate under Rule 08(d) [Section 17208].
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1013, Code of Civil Procedure and section 1742(b), Labor Code.

17211. Filing and Service of Documents by Facsimile or Other Electronic Means.

(a) In individual cases the Hearing Officer may authorize the filing and service of documents by facsimile or by other electronic means, subject to reasonable restrictions on the time of transmission and the page length of any document or group of documents that may be transmitted by facsimile or other electronic means, and subject to any further requirements on the use of cover sheets or the subsequent filing and service of originals or hard copies of documents as the Hearing Officer deems appropriate. Filing and service by facsimile or other electronic means shall not be authorized under terms that substantially disadvantage any Party appearing or participating in the proceeding as a matter of right. A document transmitted by facsimile or other electronic means shall not be considered received until the next Working Day following transmission unless it is transmitted on a Working Day and the entire transmission is completed by no later than 4:00 p.m. Pacific Time.
(b) Filings and service by facsimile or other electronic means shall not authorized or accepted as a substitute for another method of service that is required by statute or these Rules, unless the Party served has expressly waived its right to be served in the required manner.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

17212. Administrative Adjudication Bill of Rights.

(a) The provisions of the Administrative Adjudication Bill of Rights found in Article 6 of Chapter 4.5 of Title 2, Division 3, Part 1 (commencing with section 11425.10) of the Government Code shall apply to these review proceedings to the extent not inconsistent with a state or federal statute, a federal regulation, or a court decision which applies specifically to the Department. The enumeration of certain rights in these Rules may expand but shall not be construed as limiting the same or similar provision of the Administrative Adjudication Bill of Rights; nor shall the enumeration of certain rights in these Rules be construed as negating other statutory rights not stated.
(b) Ex parte communications shall be permitted between the appointed Hearing Officer and the Director in accordance with Government Code section 11430.80(b).
(c) The presentation or submission of any written communication by a Party or other interested Person during the course of a review proceeding shall be governed by the requirements of Government Code §11440.60 (b) and (c).
(d) Unless otherwise indicated by express reference within the body of one of these Rules, the provisions of Chapter 5 of Title 2, Division 3, Part 1 (commencing with section 11500) of the Government Code shall not apply to these review proceedings.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 11415.20, 11425.10 et seq., and 11430.80(b), Government Code; and section 1742(b), Labor Code.

ARTICLE 2. ASSESSMENT OR NOTICE AND REQUEST FOR REVIEW

17220. Service and Contents of Assessment or Notice of Withholding of Contract

Payments.

(a) An Assessment, a Notice of Withholding of Contract Payments, or a notice assessing penalties under Labor Code section 1776 shall be served on the contractor and subcontractor, if applicable, by first class and certified mail pursuant to the requirements of Code of Civil Procedure section 1013. A copy of the notice shall also be served by certified mail on any bonding company issuing a bond that secures the payment of the wages covered by the Assessment or Notice and to any Surety on a bond, if the identities of such companies are known or reasonably ascertainable. The identity of any Surety issuing a bond for the benefit of an Awarding Body as designated obligee, shall be deemed "known or reasonably ascertainable," and the Surety shall be deemed to have received the notice required under this subpart if sent to the address appearing on the face of the bond.
(b) An Assessment or Notice of Withholding of Contract Payments shall be in writing and shall include the following information:
(1) a description of the nature of the violation and basis for the Assessment or Notice; and
(2) the amount of wages, penalties, and forfeitures due, including a specification of amounts that have been or will be withheld from available contract payments, as well as all additional amounts that the Enforcing Agency has determined are due, including the amount of any liquidated damages that potentially may be awarded under Labor Code section 1742.1.
(c) An Assessment or Notice of Withholding of Contract Payments shall also include the following information:
(1) the name and address of the office to which a Request for Review may be sent;
(2) information on the procedures for obtaining review of the Assessment or Withholding of Contract Payments;
(3) notice of the Opportunity to Request a Settlement Meeting under Rule 21 [Section 17221] below; and
(4) the following statement that shall appear in bold or another typeface that makes it stand out from the other text:
Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. Labor Code section 1743.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1013, Code of Civil Procedure, and sections 1741, 1742, 1743, 1771.6, and 1776, Labor Code.

17221. Opportunity for Early Settlement.

(a) The Affected Contractor or Subcontractor may, within 30 days following the service of an Assessment or Notice of Withholding of Contract Payments, request a meeting with the Enforcing Agency for the purpose of attempting to settle the dispute regarding the Assessment or Notice.
(b) Upon receipt of a timely written request for a settlement meeting, the Enforcing Agency shall afford the Affected Contractor or Subcontractor a reasonable opportunity to meet for such purpose. The settlement meeting may be held in person or by telephone and shall take place before expiration of the 60-day limit for filing a Request for Review under Rule 22 [Section 17222].
(c) Nothing herein shall preclude the Parties from meeting or attempting to settle a dispute after expiration of the time for making a request or after the filing of a Request for Review.
(d) Neither the making or pendency of a request for a settlement meeting, nor the fact that the Parties have met or have failed or refused to meet as required by this Rule shall serve to extend the time for filing a Request for Review under Rule 22 [Section 17222] below.

(e) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, such a settlement meeting shall be admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, such a settlement meeting, other than a final settlement agreement, shall be admissible or subject to discovery in any administrative or civil proceeding.
NOTE: Authority cited: sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: sections 1742, 1742.1, and 1771.6, Labor Code.

17222. Filing of Request for Review.

(a) Any Request for Review of an Assessment or of a Notice of Withholding of Contract Wages shall be transmitted in writing to the Enforcing Agency within 60 days after service of the Assessment or Notice. Failure to request review within 60 days shall result in the Assessment or the Withholding of Contract Wages becoming final and not subject to further review under these Rules.
(b) A Request for Review shall be transmitted to the office of the Enforcing Agency designated on the Assessment or Notice of Withholding of Contract Payments from which review is sought.
(c) A Request for Review shall be deemed filed on the date of mailing, as determined by the U.S. Postal Service postmark date on the envelope or the overnight carrier's receipt in accordance with Rule 03(b) [Section 17203(b)] above, or on the date of receipt by the designated office of the Enforcing Agency, whichever is earlier.
(d) An additional courtesy copy of the Request for Review may be served on the Department by mailing to the address specified in Rule 23 [Section 17223] below at any time on or after the filing of the Request for Review with the Enforcing Agency. The service of a courtesy copy on the Department shall *not* be effective for invoking the Director's review authority under Labor Code section 1742; however, it may determine the time within which the hearing shall be commenced under Rule 41(a) [Section 17241(a)] below.
(e) A Request for Review either shall clearly identify the Assessment or Notice from which review is sought, including the date of the Assessment or Notice, or it shall include a copy of the Assessment or Notice as an attachment. A Request for Review shall also set forth the basis upon which the Assessment or Notice is being contested. A Request for Review shall be liberally construed in favor of its sufficiency; however, the Hearing Officer may require the Party seeking review to provide a further specification of the issues or claims being contested and a specification of the basis for contesting those matters.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742, and 1771.6(a), Labor Code.

17223. Transmittal of Request for Review to Department.
Within ten (10) days followings its receipt of a Request for Review, the Enforcing Agency shall transmit to the Office of the Director – Legal Unit, the Request for Review and copies of the Assessment or Notice of Withholding of Contract Wages, any Audit Summary that accompanied the Assessment or Notice, and a Proof of Service or other document showing the name and address of any bonding company or Surety entitled to notice under Rule 20(a) [Section 17220(a)] above. The Enforcing Agency shall transmit these items to the following address:

Department of Industrial Relations

Office of the Director - Legal Unit

Attention: Lead Hearing Officer

P.O. Box 420603

San Francisco, CA 94142-0603

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742(a) and 1771.6(a), Labor Code.

17224. Disclosure of Evidence.

(a) Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall also notify the Affected Contractor or Subcontractor of its opportunity and the procedures for reviewing evidence to be utilized by the Enforcing Agency at the hearing on the Request for Review.
(b) An Enforcing Agency shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the Affected Contractor or Subcontractor the option, at the Affected Contractor or Subcontractor's own expense, to either (A) obtain copies of all such evidence through a commercial copying service or (B) inspect and copy such evidence at the office of the Enforcing Agency during normal business hours; or if (2) the Enforcing Agency at its own expense forwards copies of all such evidence to the Affected Contractor or Subcontractor.
(c) The evidence required to be provided under this Rule shall include the identity of witnesses whose testimony the Enforcing Agency intends to present, either in person at the hearing or by declaration or affidavit. This provision shall not be construed as requiring the Enforcing Agency to prepare or provide any separate listing of witnesses whose identities are disclosed within the written materials made available under subpart (a).
(d) The Enforcing Agency shall make evidence available for review as specified in subparts (a) through (c) within 20 days of its receipt of the Request for Review; provided that, this deadline may be extended by written request or agreement of the Affected Contractor or Subcontractor. The Enforcing Agency's failure to make evidence available for review as required by Labor Code section 1742(b) and this Rule, shall preclude the Enforcing Agency from introducing such evidence in proceedings before the Hearing Officer or the Director.
(e) This Rule shall not preclude the Enforcing Agency from relying upon or presenting any evidence first obtained after the initial disclosure of evidence under subparts (a) through (d), provided that, such evidence is promptly disclosed to the Affected Contractor or Subcontractor. This Rule also shall not preclude the Enforcing Agency from presenting previously undisclosed evidence to rebut new or collateral claims raised by another Party in the proceeding.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742(b) and 1771.6, Labor Code.

17225. Withdrawal of Request for Review; Reinstatement.

(a) An Affected Contractor or Subcontractor may withdraw a Request for Review by written notification at any time before a decision is issued or by oral motion on the hearing record. The Hearing Officer may grant such withdrawal by letter, order or decision served on the Parties.
(b) For good cause, a Request for Review so dismissed may be reinstated by the Hearing Officer or the Director upon a showing that the withdrawal resulted from misinformation given by the Enforcing Agency or otherwise from fraud or coercion. A motion for reinstatement must be filed within 60 days of service of the letter, order or decision granting withdrawal of the Request for Review or, in the event of fraud which could not have been suspected or discovered with the exercise of reasonable diligence, within 60 days of discovery of such fraud. The motion shall be accompanied by a declaration containing a statement that any facts therein are based upon the personal knowledge of the declarant.
(c) Notwithstanding any application or showing made under subpart (b) of this Rule, neither the Hearing Officer nor the Director may reinstate any Request for Review where the underlying

Assessment or Withholding of Contract Payments has become final and entered as a court judgment.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742 and 1771.6, Labor Code.

17226. Dismissal or Amendment of Assessment or of Notice of Withholding of Contract Payments.

(a) Upon motion to the appointed Hearing Officer, an Enforcing Agency may dismiss or amend an Assessment or Notice of Withholding of Contract Payments as follows:
(1) An Assessment or Notice of Withholding may be dismissed or amended to eliminate or reduce all or part of any claim for wages, damages, or penalties that has been satisfied or that is not warranted under the facts and circumstances of the case or to conform to an order of the Hearing Officer or the Director.
(2) An Assessment or Notice of Withholding may be amended to eliminate a claim for penalties as to the affected contractor upon a determination that the affected contractor is not liable for same under either Labor Code section 1775(b) [subcontractor's failure to pay prevailing rate] or Labor Code section 1776 (g) [failure to comply with request for certified payroll records].
(3) For good cause, an Assessment or Notice of Withholding of Contract Payments may be amended to revise or increase any claim for wages, damages, or penalties based upon a recomputation or the discovery of new evidence subsequent to the issuance of the original Assessment or Notice.
(b) The Hearing Officer shall grant any motion to dismiss or amend an Assessment or Notice of Withholding downward under subparts (a)(1) or (a)(2) absent a showing that such dismissal or amendment will result in the forfeiture of substantial substantive rights of another Party to the proceeding. The Hearing Officer may grant a motion to amend an Assessment or Notice of Withholding upward under subpart (a)(3) under such terms as are just, including where appropriate the extension of an additional opportunity for early settlement under Rule 21 [Section 17221]. Unless the Hearing Officer determines otherwise, an amended Assessment or Notice of Withholding shall be deemed fully controverted without need for filing an additional or amended Request for Review.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742, 1771.6, 1775(b), and 1776(g), Labor Code.

17227. Early Disposition of Untimely Assessment, Withholding, or Request for Review.

(a) Upon the application of any Party or upon his or her own motion, the appointed Hearing Officer may issue an Order to Show Cause why an Assessment, a Withholding of Contract Payments, or a Request for Review should not be dismissed as untimely under the relevant statute.
(b) An Order to Show Cause issued under subpart (a) of this Rule shall be served on all Parties who have appeared or been served with any prior notice in the matter and shall provide the Parties with at least 10 days to respond in writing to the Order to Show Cause and an additional 5 days following the service of such responses to reply to any submission by any other Party. Evidence submitted in support or opposition to an Order to Show Cause shall be by affidavit or declaration under penalty of perjury. There shall be no oral hearing on an Order to Show Cause issued under this Rule unless requested by a Party or by the Hearing Officer.
(c) After the time for submitting responses and replies to the Order to Show Cause has passed or after the oral hearing, if any, the Hearing Officer may do one of the following: (1) recommend that the Director issue a decision setting aside the Assessment or Withholding of Contract Payments or dismissing the Request for Review as untimely under the statute; (2) find the

Assessment, Withholding, or Request for Review timely and direct that the matter proceed to hearing on the merits; or (3) reserve the timeliness issue for further consideration and determination in connection with the hearing on the merits.
(d) A decision by the Director which sets asides an Assessment or Withholding of Contract Payments or which dismisses a Request for Review as untimely shall be subject to reconsideration and to judicial review in the same manner as any other Final Order or Decision of the Director. A determination by the Hearing Officer that the Assessment, Withholding, or Request for Review was timely or that the timeliness issue should be reserved for further consideration and determination in connection with the hearing on the merits shall not be subject to appeal or review except as part of any reconsideration or appeal from the Decision of the Director made after the hearing on the merits.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1741, 1742, 1771.5, and 1771.6, Labor Code.

17228. Finality of Assessment or of Withholding of Contract Payments When No Timely Request for Review is Filed;

Authority of Awarding Body to Disburse Withheld Funds.
(a) Upon the failure of an Affected Contractor or Subcontractor to file a timely Request for Review under Labor Code section 1742(a) and Rule 22(a) [Section 17222(a)] above, the Assessment or Notice of Withholding of Contract Payments shall become a “final order” as to the Affected Contractor or Subcontractor that the Labor Commissioner may certify and file with the superior court in accordance with Labor Code section 1742(d).
(b) Where an Assessment or Notice of Withholding of Contract Payments has become final as to at least one but not as to every Affected Contractor or Subcontractor, the Awarding Body shall continue to withhold and retain the amounts required to satisfy any wages and penalties at stake in a review proceeding initiated by any other Affected Contractor or Subcontractor until there is a final order in that proceeding that is no longer subject to judicial review.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1727, 1742, and 1771.6, Labor Code.

17229. Finality of Notice of Withholding of Contract Payments; Authority of Awarding Body to Recover Additional Funds.

Where a Notice of Withholding of Contract Payments seeks to recover wages, penalties, or damages in excess of the amounts withheld from available contract payments (see Rule 20(b)(2) [Section 17220(b)(2)] above), an Awarding Body may recover any excess amounts that become or remain due when the Notice of Withholding of Contract Payments has become final under Labor Code section 1771.6. To recover the excess amounts, the Awarding Body shall transmit to the Labor Commissioner the Notice together with any decision of the Director or court that has become final and not subject to further review. The Labor Commissioner in turn shall certify and file the final order with the superior court in accordance with Labor Code section 1742(d).
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742(d), and 1771.6, Labor Code.

ARTICLE 3. PREHEARING PROCEDURES

17230. Scheduling of Hearing; Continuances and Tolling.

(a) The appointed Hearing Officer shall establish the place and time of the hearing on the merits, giving due consideration to the needs of all Parties and the statutory time limits for hearing and deciding the matter. Parties are encouraged to communicate scheduling needs to the Hearing Officer and all other Parties at the earliest opportunity. It shall not be a violation of Rule 07 [Section 17207]'s prohibition on ex parte communications for the Hearing Officer or his or her designee to communicate with Parties individually for purposes of clearing dates and times and proposing locations for the hearing. The Hearing Officer may also conduct a prehearing conference by telephone or any other expeditious means for purposes of establishing the time and place of the hearing.
(b) Once a hearing date is set, a request for a continuance that is not joined in by all other Parties or that is for more than 30 days will not be granted absent a showing of extraordinary circumstances, giving due regard to the potential prejudice to other Parties in the case and other Persons affected by the matter under review. Absent an enforceable waiver (see subpart (d) below), no continuance will be granted nor any proceeding otherwise delayed if doing so is likely to prevent the Hearing Officer from commencing the hearing on the matter within the statutory time limit.
(c) A request for a continuance that is for 30 days or less and is joined by all Parties shall be granted upon a showing of good cause. Notwithstanding subpart (b) above, a unilateral request for a continuance made by the Party who filed the Request for Review shall be granted upon a showing of good cause if the new date for commencing the hearing is no more than 150 days after the date of service of the Assessment or Notice of Withholding of Contract Payments.
(d) If a Party makes or joins in any request that would delay or otherwise extend the time for hearing or deciding a review proceeding beyond any prescribed time limit, such request shall also be deemed a waiver by that Party of that time limit.
(e) The time limits for hearing and deciding a review proceeding shall also be deemed tolled (1) when proceedings are suspended to seek judicial enforcement of a subpoena or other order to compel the attendance, testimony, or production of evidence by a necessary witness; (2) when the proceedings are stayed or enjoined by any court order; (3) between the time that a proceeding is dismissed and then ordered reinstated under Rule 25 [Section 17225] above; (4) upon the order of a court reinstating or requiring rehearing of the merits of a proceeding; or (5) during the pendency of any other cause beyond the Director's direct control (including but not limited to natural disasters, temporary unavailability of a suitable hearing facility, or absence of budget authority) that prevents the Director or any appointed Hearing Officer from carrying out his or her responsibilities under these Rules.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

17231. Prehearing Conference.

(a) Upon the application of any Party or upon his or her own motion, the appointed Hearing Officer may conduct a prehearing conference for any purpose that may expedite or assist the preparation of the matter for hearing or the disposition of the Request for Review. The prehearing conference may be conducted by telephone or other means that is convenient to the Hearing Officer and the Parties.
(b) The Hearing Officer shall provide reasonable advance notice of any prehearing conference conducted pursuant to this Rule. The Notice shall advise the Parties of the matters which the Hearing Officer intends to cover in the prehearing conference, but the failure of the Notice to enumerate some matter shall not preclude its discussion or consideration at the conference.
(c) With or without a prehearing conference, the Hearing Officer may issue such procedural Orders as are appropriate for the submission of evidence or briefs and conduct of the hearing, consistent with the substantial rights of the affected Parties.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11511.5, Government Code, and section 1742(b), Labor Code.

17232. Consolidation and Severance.

(a) The Hearing Officer may consolidate for hearing and decision any number of proceedings where the facts and circumstances are similar and consolidation will result in conservation of time and expense. Where the Hearing Officer proposes to consolidate proceedings on his or her own motion, the Parties shall be given reasonable notice and an opportunity to object before consolidation is ordered.
(b) The Hearing Officer may sever consolidated proceedings for good cause.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11507.3, Government Code, and section 1742(b), Labor Code.

17233. Prehearing Motions; Cut Off Date.

(a) Any motion made in advance of the hearing on the merits, any opposition thereto, and any further reply shall be in writing and directed to the appointed Hearing Officer. No particular format shall be required; however, the following information shall appear prominently on the first page: (1) the case name (i.e., names of the Parties); (2) any assigned case number; (3) the name of the Hearing Officer to whom the paper is being submitted; (4) the identity of the Party submitting the paper; (5) the nature of the relief sought; and (6) the scheduled date, if any, for the hearing on the merits of the Request for Review. The motion shall also include a Proof of Service, as defined in Rule 10 [Section 17210] above, showing that copies have been served on all other Parties to the proceeding.
(b) Prehearing motions shall be served and filed no later than 20 days prior to the hearing on the merits of the Request for Review. Any opposition shall be served and filed no later than 10 days after service of the motion or at least 7 days prior to the hearing on the merits, whichever is earlier. The Hearing Officer may in his or her discretion decide the motion in writing in advance of the hearing on the merits or reserve the matter for further consideration and determination at the hearing on the merits.
(c) There shall be no right to a separate oral hearing on any prehearing motion, except in those instances in which an oral hearing has been specially requested by a Party or the Hearing Officer and in which the enforcement or forfeiture of a fundamental right is at stake. When the Hearing Officer determines that such an oral hearing is necessary or appropriate, it may be conducted by telephone or other manner that is convenient to the Parties.
(d) With the exception of timeliness challenges under Rule 27 [Section 17227], prehearing motions which seek to dispose of a Request for Review or any related claim or defense are disfavored and ordinarily will not be considered prior to the hearing on the merits.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

17234. Evidence by Affidavit or Declaration.

(a) At any time 20 or more days prior to commencement of a hearing, a Party may serve upon all other Parties a copy of any affidavit or declaration which the proponent proposes to introduce in evidence, together with a notice as provided in subpart (b). Unless another Party, within 10 days after service of such notice, delivers to the proponent a request to cross-examine the affiant or declarant, the right to cross-examine such affiant or declarant is waived and the affidavit or declaration, if introduced in evidence, shall be given the same effect as if the affiant or declarant had testified in person. If an opportunity to cross-examine an affiant or declarant is

not afforded after request therefore is made as herein provided, the affidavit or declaration may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.
(b) The notice referred to in subpart (a) shall be substantially in the following form with the appropriate information inserted in the places enclosed by brackets:
"The accompanying affidavit or declaration of [name of affiant or declarant] will be introduced as evidence at the hearing in [title and other information identifying the proceeding]. [Name of affiant or declarant] will not be called to testify orally, and you will not be entitled to question the affiant or declarant unless you notify [name of the proponent, Representative, agent or attorney] at [address] that you wish to cross-examine the affiant or declarant. Your request must be mailed or delivered to [name of proponent, Representative, agent or attorney] on or before [specify date at least 10 days after anticipated date of service of this notice on the other Parties]."
(c) If a timely request is made to cross-examine an affiant or declarant under this Rule, the burden of producing that witness at the hearing shall be upon the proponent of the witness. If the proponent fails to produce the witness, the affidavit or declaration may be introduced in evidence, but shall be given only the same effect as other hearsay evidence under Rule 44 [Section 17244].
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: Rule 1613, California Rules of Court; section 11514, Government Code; and section 1742(b), Labor Code.

17235. Subpoena and Subpoena Duces Tecum.

(a) Subpoenas and subpoenas duces tecum may be issued for attendance at a hearing and for the production of documents at any reasonable time and place or at a hearing.
(b) Subpoenas and subpoenas duces tecum shall be issued by the Hearing Officer at the request of a Party, or by the attorney of record for a Party, in accordance with sections 1985 to 1985.6, inclusive, of the Code of Civil Procedure. The burden of serving a subpoena that has been issued by the Hearing Officer shall be upon the Party who requested the subpoena.
(c) Service of subpoenas and subpoenas duces tecum, objections thereto, and mileage and witness fees shall be governed by the provisions of Government Code sections 11450.20 through 11450.40.
(d) Subpoenas and subpoenas duces tecum shall be enforceable through the Contempt and Monetary Sanctions provision set forth in Rule 47 [Section 17247] below. A Party aggrieved by the failure or refusal of any witness to obey a subpoena or subpoena duces tecum shall have the burden of showing to the satisfaction of the Hearing Officer that the subpoena or subpoena duces tecum was properly issued and served and that the testimony or evidence sought was necessary to prove or disprove a significant claim or defense in the proceeding.
NOTE: Authority cited: 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1985 through 1988, Code of Civil Procedure; section 1563, Evidence Code; sections 11450.20 through 11455.30, Government Code; and section 1742(b), Labor Code.

17236. Written Notice to Party in Lieu of Subpoena.

(a) In the case of the production of a Party of record in the proceeding or of a Person for whose benefit a proceeding is prosecuted or defended, the service of a subpoena upon any such witness is not required if written notice requesting the witness to attend, with the time and place of the hearing, is served on the attorney of the Party or Person. For purposes of this Rule, a Party of record in the proceeding or Person for whose benefit a proceeding is prosecuted or defended includes an officer, director, or managing agent of any such Party or Person.

(b) Service of written notice to attend under this Rule shall be made in the same manner and subject to the same conditions provided in section 1987 of the Code of Civil Procedure for service of written notice to attend in a civil action or proceeding.
(c) The Hearing Officer shall have authority under Rule 47 [Section 17247] below to sanction a Party who fails or refuses to comply with a written notice to attend that meets the requirements of this Rule and has been timely served in accordance with section 1987 of the Code of Civil Procedure. However, the Hearing Officer may not initiate contempt proceedings against the witness for failing to appear based solely on non-compliance with a written notice to attend served on the Party's attorney. A Party seeking sanctions for another Party's failure or refusal to comply with a written notice to attend shall have the burden of showing to the satisfaction of the Hearing Officer that the written notice to attend was properly issued and timely served and that the testimony or evidence sought was necessary to prove or disprove a significant claim or defense in the proceeding.
NOTE: Authority cited: 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1987, Code of Civil Procedure; sections 11450.50 through 11455.30, Government Code; and section 1742(b), Labor Code.

17237. Depositions and Other Discovery.

(a) There shall be no right to take oral depositions or obtain any other form of discovery that is not expressly authorized under these Rules.
(b) Oral depositions may be conducted only by stipulation of all Parties to the proceedings or by order of the appointed Hearing Officer upon a showing of substantial good cause. Oral depositions will be permitted only for purposes of obtaining the testimony of witnesses who are likely to be unavailable to testify at the hearing.
(c) Nothing in this Rule shall preclude the use of deposition testimony or other evidence obtained in separate proceedings, if such evidence is otherwise relevant and admissible.
NOTE: Authority cited: 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1987, Code of Civil Procedure; sections 11450.50 through 11455.30, Government Code; and section 1742(b), Labor Code.

ARTICLE 4. HEARINGS

17240. Notice of Appointment of Hearing Officer; Objections.

(a) Notice of the Appointment of a Hearing Officer under Rule 04 [Section 17204] above shall be provided to the Parties as soon as practicable and no later than when the matter is noticed for a prehearing conference or hearing.
(b) The Director may appoint a different Hearing Officer to conduct and hear the review or to conduct and dispose of any preliminary or procedural matter in a given case.
(c) A Party wishing to object to the appointment of a particular Hearing Officer, including for any one or more of the grounds specified in sections 11425.30 and 11425.40 of the Government Code or section 1742(b) of the Labor Code, shall within 10 days after receiving notice of the appointment and no later than the start of any hearing on the merits, whichever is earlier, file a motion to disqualify the appointed Hearing Officer together with a supporting affidavit or declaration. The motion shall be filed with the Chief Counsel of the Office of the Director at the address indicated in Rule 23 [Section 17223] above. Notwithstanding the foregoing time limits, if a Party subsequently discovers facts constituting grounds for the disqualification of the appointed Hearing Officer, including but not limited to that the Hearing Officer has received a prohibited ex parte communication in the pending case, the motion shall be filed as soon as practicable after the facts constituting grounds for disqualification are discovered.

(d) Upon receipt of a motion to disqualify the appointed Hearing Officer, the Director may: (1) consider and decide the motion or appoint another Hearing Officer to consider and decide the motion, in which case the challenged Hearing Officer shall first be given an opportunity to respond to the motion, but no proceedings shall be conducted by the challenged Hearing Officer until the motion is determined; or (2) appoint another Hearing Officer to hear the Request for Review, in which case the motion shall be deemed moot.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code . Reference: sections 170.3(c)(1), Code of Civil Procedure; sections 11425.30 and 11425.40, Government Code; and section 1742(b), Labor Code.

17241. Time and Place of Hearing.

(a) A hearing on the merits of a timely Request for Review shall be commenced within 90 days after the date it is received by the Office of the Director. The hearing shall be conducted at a suitable location within the county where the appointed Hearing Officer maintains his or her regular office, unless the hearing is moved to a different county in accordance with subpart (b) below.
(b) Upon the agreement of the Parties or upon a showing of good cause by either the Party who filed the Request for Review or the Enforcing Agency, the hearing shall be conducted at a suitable location within either (1) the county where a majority of the subject public works employment was performed, or (2) any other county that is proximate to or convenient for the Parties and necessary witnesses.
(c) A suitable location under this section means one that is open and accessible to members of the public and which includes appropriate facilities for the recording of testimony. Any facility that is regularly used by any state agency or by the Awarding Body for public hearings and that will reasonably accommodate the anticipated number of Parties and witnesses involved in the proceeding, is presumed suitable in the absence of a contrary showing. Parties seeking to change the location of a hearing under subpart (b) shall make reasonable efforts to identify, agree upon, and arrange for the availability of a suitable location within a county specified in subpart (b)(1) or (b)(2).
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11425.20, Government Code; and section 1742(b), Labor Code.

17242. Open Hearing; Confidential Evidence and Proceedings; and Exclusion of Witnesses.

(a) Subject to the qualifications set forth below, the hearing shall be open to the public. If all or part of the hearing is conducted by telephone, television, or other electronic means, the Hearing Officer shall conduct the hearing from a location where members of the public may be physically present, and members of the public shall also have a reasonable right of access to the hearing record and any transcript of the proceedings.
(b) Notwithstanding the provisions of subpart (a), the Hearing Officer may order closure of a hearing or make other protective orders to the extent necessary to: (1) preserve the confidentiality of information that is privileged, confidential, or otherwise protected by law; (2) ensure a fair hearing in the circumstances of the particular case; or (3) protect a minor witness or a witness with a developmental disability from intimidation or other harm, taking into account the rights of all persons.
(c) Upon motion of any Party or upon his or her own motion, the Hearing Officer may exclude from the hearing room any witnesses not at the time under examination. However, a Party to the proceeding and the Party's Representative shall not be excluded.
(d) This section does not apply to any prehearing or settlement conference.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 777, Evidence Code, section 11425.20, Government Code, and section 1742(b), Labor Code.

17243. Conduct of Hearing.

(a) Testimony shall be taken only on oath or affirmation under penalty of perjury.
(b) Every Party shall have the right to call and examine witnesses; to introduce exhibits; to question opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which Party first called the witness to testify; and to rebut any opposing evidence. A Party may be called by an opposing Party and examined as if under cross-examination, whether or not the Party called has testified or intends to testify on his or her own behalf.
(c) The Hearing Officer may call and examine any Party or witness and may on his or her own motion introduce exhibits.
(d) The Hearing Officer shall control the taking of evidence and other course of proceedings in a hearing and shall exercise that control in a manner best suited to ascertain the facts and safeguard the rights of the Parties. Prior to taking evidence, the Hearing Officer shall define the issues and explain the order in which evidence will be presented; provided that, for good cause the Hearing Officer later may vary the order of presentation as circumstances warrant.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11513, Government Code; and section 1742(b), Labor Code.

17244. Evidence Rules; Hearsay.

(a) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.
(b) The rules of privilege shall be recognized to the same extent and applied in the same manner as in the courts of this state.
(c) The Hearing Officer may exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.
(d) Hearsay evidence is admissible but shall not be sufficient in itself to support a finding unless it either would be admissible over objection in a civil action or no Party raises an objection to such use. Unless previously waived, an objection or argument that evidence is insufficient in itself to support a finding because of its hearsay character shall be timely if presented at any time before submission of the case for decision.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section

11513, Government Code; and section 1742(b), Labor Code.

17245. Official Notice.

(a) A Hearing Officer may take official notice of (1) the Director's General Prevailing Wage Determinations, the Director's Precedential Coverage Decisions, and wage data, studies, and reports issued by the Division of Labor Statistics and Research; (2) any other generally accepted technical fact within the fields of labor and employment that are regulated by the Director under Divisions 1, 2, and 3 of the Labor Code; and (3) any fact which either must or may be judicially noticed by the courts of this state under Evidence Code sections 451 and 452.

(b) The Parties participating in a hearing shall be informed of those matters as to which official notice is proposed to be taken and given a reasonable opportunity to show why and the extent to which official notice should or should not be taken.
(c) The Hearing Officer or the Director shall state in a decision, order, or on the record the matters as to which official notice has been taken.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 451, 452 and 455, Evidence Code; section 11515, Government Code; and section 1742(b), Labor Code.

17246. Failure to Appear; Relief from Default.

(a) Upon the failure of any Party to appear at a duly noticed hearing, the Hearing Officer may proceed in that Party's absence and may recommend whatever decision is warranted by the available evidence, including any lawful inferences that can be drawn from an absence of proof by the non-appearing Party.
(b) For good cause and under such terms as are just, the appointed Hearing Officer or the Director may relieve a Party from the effects of any failure to appear and order that a review proceeding be reinstated or reheard. A Party seeking relief from non-appearance shall file a written motion at the earliest opportunity and no later than 10 days following a proceeding of which the Party had actual notice. Such application shall be supported by an affidavit or declaration based on the personal knowledge of the declarant, and copies of the application and any supporting materials shall be served on all other Parties to the proceeding. No application shall be granted unless and until the other Parties have been afforded a reasonable opportunity to make a showing in opposition. An Order reinstating a proceeding or granting a rehearing under this section may be conditioned upon providing reimbursement to the Department and the other Parties for the costs associated with the prior non-appearance.
(c) Notwithstanding any application or showing made under subpart (b) of this Rule, neither the Hearing Officer nor the Director may reinstate any Request for Review where the underlying Assessment or Withholding of Contract Payments has become final and entered as a court judgment.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 473, Code of Civil Procedure; and section 1742(b), Labor Code.

17247. Contempt and Monetary Sanctions.

(a) If any Person in proceedings before an appointed Hearing Officer disobeys or resists any lawful order or refuses, without substantial justification, to respond to a subpoena, subpoena duces tecum, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined or is guilty of misconduct during a hearing or so near the place thereof as to obstruct the proceedings, or violates the prohibition against ex parte communications under Rule 07 [Section 17207] above, the Hearing Officer may do any one or more of the following: (1) certify the facts to the Superior Court in and for the county where the proceedings are held for contempt proceedings pursuant to Government Code section 11455.20; (2) exclude the Person from the hearing room; (3) prohibit the Person from testifying or introducing certain matters in evidence; and/or (4) establish certain facts, claims, or defenses if the Person in contempt is a Party.
(b) Either the appointed Hearing Officer by separate order or the Director in his or her decision may order a Party, the Party's authorized Representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another Party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay as defined in section 128.5 of the Code of Civil Procedure. Such order or the denial of such an order shall be subject to judicial

review in the same manner as a decision of the Director on the merits. The order shall be enforceable in the same manner as a money judgment or by the contempt sanction.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 128.5, Code of Civil Procedure; sections 11455.10 through 11455.30, Government Code; and section 1742(b), Labor Code.

17248. Interpreters.

(a) Proceedings shall be conducted in the English language. The notice advising a Party of the hearing date shall also include notice of the Party's right to request an interpreter for a Party or witness who cannot speak or understand English, or who can do so only with difficulty, or who is deaf or hearing impaired as defined under Evidence Code section 754.
(b) A request for an interpreter for a Party or witness shall be submitted as soon as possible after the requesting Party becomes aware of the need for an interpreter and prior to the commencement of the hearing. The request should include information that (1) will enable the Hearing Officer and Department to obtain an interpreter with appropriate skills; and (2) will assist the Hearing Officer in determining whether the Department or the requesting Party should pay for the cost of the interpreter.
(c) Upon receipt of a timely request, the Hearing Officer shall direct the Department to provide an interpreter and shall also decide whether the Department or the requesting Party shall pay the cost of the interpreter, based upon an equitable consideration of all the circumstances, including the requesting Party's ability to pay.
(d) A person is qualified to serve as an interpreter if he or she (1) is on the current State Personnel Board List of Certified Administrative Hearing Interpreters maintained pursuant to Government Code section 11435.25; and (2) has also been examined and determined by the Department to be sufficiently knowledgeable of the terminology and procedures generally used in these proceedings.
(e) In the event that a qualified interpreter under subpart (d) is unavailable or if there are no certified interpreters for the language in which assistance is needed, the Hearing Officer may qualify and appoint another interpreter to serve as needed in a single hearing or case.
(f) Before appointment of an interpreter, the Hearing Officer or a Party may conduct a brief supplemental examination of the prospective interpreter to see if that person has the qualifications necessary to serve as an interpreter, including whether he or she understands terms and procedures generally used in these proceedings, can explain those terms and procedures in English and the other language being used, and can interpret those terms and procedures into the other language. An interpreter shall not have had any prior substantive involvement in the matter under review, and shall disclose to the Hearing Officer and the Parties any actual conflict of interest or appearance of conflict. Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest. A conflict may exist if an interpreter is an employee of, acquainted with, or related to a Party or witness to the proceeding, or if an interpreter has an interest in the outcome of the proceeding.
(g) The Hearing Officer shall disqualify an interpreter if the interpreter cannot understand and interpret the terms and procedures used in the hearing or prehearing conference, has disclosed privileged or confidential communications, or has engaged in conduct which, in the judgment of the Hearing Officer, creates an appearance of bias, prejudice, or partiality.
(h) Nothing in this section limits any further rights extended by Evidence Code section 754 to a Party or witness who is deaf or hard of hearing.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 754, Evidence Code; sections 11435.05 through 11435.65, and 68560 through 68566, Government Code; and section 1742(b), Labor Code.

17249. Hearing Record; Recording of Testimony and other Proceedings.

(a) The Hearing Officer and the Director shall maintain an official record of all proceedings conducted under these Rules. In the absence of a determination under subpart (b) below, all testimony and other proceedings at any hearing shall be recorded by audiotape. Recorded testimony or other proceedings need not be transcribed unless requested for purposes of further court review of a decision or order in the same case.
(b) Upon the application of any Party or upon his or her own motion, the Hearing Officer may authorize the use of a certified court reporter, videotape, or other appropriate means to record the testimony and other proceedings. Any application by a Party under this subpart shall be made at a prehearing conference or by prehearing motion filed no later than 10 days prior to the scheduled date of hearing. Upon the granting of any such application, it shall be the responsibility of the Party or Parties who made the application to procure and pay for the services of a qualified person and any additional equipment needed to record the testimony and proceedings by the requested means. Ordinarily the granting of such application will be conditioned on the applicant's paying for certified copies of the transcript for the official record and for the other Parties. The failure of a requesting Party to comply with this requirement shall not be cause for delaying the hearing on the merits, but instead shall result in the proceedings being tape recorded in accordance with subpart (a).
(c) The Parties may, at their own expense, arrange for the recording of testimony and other proceedings through a different means other than the one authorized by the Hearing Officer, provided that it does not in any way interfere with the Hearing Officer's control and conduct of the proceedings, and further provided that, it shall not be regarded as an official record for any purpose absent a stipulation by all of the Parties or order of the Hearing Officer.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

17250. Burdens of Proof on Wages and Penalties.

(a) The Enforcing Agency has the burden of coming forward with evidence that the Affected Contractor or Subcontractor (1) was served with an Assessment or Notice of Withholding of Contract Payments in accordance with Rule 20 [Section 17220]; (2) was provided a reasonable opportunity to review evidence to be utilized at the hearing in accordance with Rule 24 [Section 17224]; and (3) that such evidence provides prima facie support for the Assessment or Withholding of Contract Payments.
(b) If the Enforcing Agency meets its initial burden under (a), the Affected Contractor or Subcontractor has the burden of proving that the basis for the Civil Wage and Penalty Assessment or for the Withholding of Contract Payments is incorrect.
(c) With respect to any civil penalty established under Labor Code section 1775, the Affected Contractor or Subcontractor shall have the burden of proving that the Labor Commissioner abused his or her discretion in determining that a penalty was due or in determining the amount of the penalty.
(d) All burdens of proof and burdens of producing evidence shall be construed in a manner consistent with relevant sections of the Evidence Code, and the quantum of proof required to establish the existence or non-existence of any fact shall be by a preponderance of the evidence, unless a higher standard is prescribed by law.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 500, 502, and 550, Evidence Code; and sections 1742(b) and 1775, Labor Code. .

17251. Liquidated Damages.

(a) With respect to any liquidated damages for which an Affected Contractor, Subcontractor, or Surety on a bond becomes liable under Labor Code section 1742.1, the Enforcing Agency shall have a further burden of coming forward with evidence to show the amount of wages that remained unpaid as of 60 days following the service of the Assessment or Notice of Withholding of Contract Payments. The Affected Contractor or Subcontractor shall have the burden of demonstrating that he or she had substantial grounds for believing the Assessment or Notice to be in error.
(b) To demonstrate "substantial grounds for believing the Assessment or Notice to be in error," the Affected Contractor or Subcontractor must establish (1) that it had a reasonable subjective belief that the Assessment or Notice was in error; (2) that there is an objective basis in law and fact for the claimed error; and (3) that the claimed error is one that would have substantially reduced or eliminated any duty to pay additional wages under the Assessment or Notice.
NOTE: Authority cited: 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742(b), 1742.1, and 1773.5, Labor Code.

17252. Oral Argument and Briefs.

(a) Parties may submit prehearing briefs of reasonable length under such conditions as the appointed Hearing Officer shall prescribe. Parties shall also be permitted to present a closing oral argument of reasonable length at or following the conclusion of the hearing.

(b) There shall be no automatic right to file a post-hearing brief. However, the Hearing Officer may permit the Parties to submit written post-hearing briefs, under such terms as are just. The Hearing Officer shall have discretion to determine, among other things, the length and format of such briefs and whether they will be filed simultaneously or on a staggered (opening, response, and reply) basis.
(c) In addition to or as an alternative to post-hearing briefs, the Hearing Officer may also prepare proposed findings or a tentative decision or may designate a Party to prepare proposed findings and thereafter give the Parties a reasonable opportunity to present arguments in support of or opposition to any proposed findings or tentative decision prior to the issuance of a decision by the Director under Rule 60 [Section 17260] below.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

17253. Conclusion of Hearing; Time for Decision.

(a) The hearing shall be deemed concluded and the matter submitted either upon the completion of all testimony and post-hearing arguments or upon the expiration of the last day for filing any post-hearing brief or other authorized submission, whichever is later. Thereafter, the Director shall have 45 days within which to issue a written decision affirming, modifying, or dismissing the Assessment or the Withholding of Contract Wages.
(b) For good cause, the Hearing Officer may vacate the submission and reopen the hearing for the purpose of receiving additional evidence or argument, in which case the time for the Director to issue a written decision shall run from the date of resubmission.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

ARTICLE 6. DECISION OF THE DIRECTOR

17260. Decision.

(a) The appointed Hearing Officer shall prepare a recommended decision for the Director's review and approval. The decision shall consist of a notice of findings, findings, and an order, and shall be in writing and include a statement of the factual and legal basis for the decision, consistent with the requirements of Labor Code section 1742 and Government Code section 11425.50.
(b) A recommended decision shall have no status or effect unless and until approved by the Director and issued in accordance with subpart (c) below.
(c) A copy of the decision shall be served by first class mail on all Parties in accordance with the requirements of Code of Civil Procedure section 1013. If a Party has appeared through an authorized Representative, service shall be made on that Party at the last known address on file with the Enforcing Agency, in addition to service on the authorized Representative.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1013, Code of Civil Procedure; section 11425.50, Government Code; and section 1742(b), Labor Code.

17261. Reconsideration.

(a) Upon the application of any Party or upon his or her own motion, the Director may reconsider or modify a decision issued under Rule 60 [Section 17260] above for the purpose of correcting any error therein.
(b) The decision must be reconsidered or modified within 15 days after its date of issuance pursuant to Rule 60(c) [Section 17260(c)]. Thereafter, the decision may not be reconsidered or modified, except that a clerical error may be corrected at any time.
(c) The modified or reconsidered decision shall be served on the Parties in the same manner as a decision issued under Rule 60 [Section 17260].
(d) A Party is not required to apply for reconsideration before seeking judicial review of a decision of the Director. An application for reconsideration made by any Party shall not extend the time for seeking judicial review pursuant to Labor Code section 1742(c) unless the Director issues a modified or reconsidered decision within the 15-day time limit prescribed in subpart (b) of this section.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742, Labor Code.

17262. Final Decision; Time for Seeking Review.

(a) The decision of the Director issued pursuant to Section Rule 60 [Section 17260] above shall be the final decision of the Director from which any Party may seek judicial review pursuant to the provisions of Labor Code section 1742(c) and Code of Civil Procedure section 1094.5; provided however, that if the Director has issued a modified decision pursuant to and within the 15-day limit of the Director's reconsideration authority under Section Rule 61 [Section 17261] above and Labor Code section 1742(b), the right of review and time for seeking such review shall extend from the date of service of the modified decision rather than from the original decision.
(b) The modification of a decision to correct a clerical error after expiration of the 15-day time limit on the Director's reconsideration authority shall not extend the time for seeking judicial review.
(c) The time for seeking judicial review shall be determined from the date of service of the decision of the Director under Code of Civil Procedure section 1013, including any applicable extension of time provided in that statute.

(d) Any petition seeking judicial review of a decision under these Rules may be served (1) upon the Director by serving the Office of the Director – Legal Unit where the appointed Hearing Officer who conducted the hearing on the merits regularly maintains his or her office; and (2) upon the Labor Commissioner (in cases in which the Labor Commissioner was the Enforcing Agency) by the serving the regular office of the attorney who represented the Labor Commission at the hearing on the merits. The intent of this subpart is to authorize and designate a preferred method for giving the Director and the Labor Commissioner formal notice of a court action seeking review of a decision of the Director under these Rules; it does not preclude the use any other service method authorized by law.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5. Reference: sections 1013 and 1094.5, Code of Civil Procedure; and section 1742, Labor Code.

17263. Preparation of Record for Review.

(a) Upon notice that a Party intends to seek judicial review of a decision of the Director and the payment of any required deposit, the Department, under the direction of the appointed Hearing Officer, shall immediately prepare a hearing record consisting of all exhibits and other papers and a transcript of all testimony which the Party has designated for the inclusion in the record on review.
(b) The Party who has requested the record or any part thereof shall bear the cost of its preparation, including but not necessarily limited to any court reporter transcription fees and reasonable charges for the copying, binding, certification, and mailing of documents. Absent good cause, no record will be released to a Party or filed with a court until adequate funds to cover the cost of preparing the record have been paid by the requesting Party to the Department or to any third party designated to prepare the record. However, upon notice that a Party seeking judicial review has been granted in forma pauperis status under California Rule of Court 985, the Department shall bear the cost of preparing and filing the record where necessary for a proper review of the proceedings.
(c) The pendency of any request for the Department to prepare a hearing record shall not extend the time limits for filing a petition for review under Labor Code section 1742(c) and Code of Civil Procedure section 1094.5.
NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1094.5, Code of Civil Procedure; California Rule of Court 985; section 68511.3, Government Code; and section 1742(c), Labor Code.

17264. Request for Participation by Director in Judicial Review Proceeding.

Although the Director should be named as the Respondent in any action seeking judicial review of a final decision, the Director ordinarily will rely upon the Parties to the hearing (as Petitioner and Real Party in Interest) to litigate the correctness of the final decision in the writ proceeding and on any appeal. The Director may participate actively in proceedings raising issues that specifically concern the Director's authority under the statutes and regulations governing the payment of prevailing wages on public work contracts, or the validity of related laws, regulations, or the Director's decisions as to public works coverage or generally applicable prevailing wage rates. Any Party may request the Director to file a response in the action by including a separate written request with any court pleading being served on the Director in accordance with Rule 62(d) [Section 17262(d)]. Any such separate written request should specify briefly what issues are raised by the petition that extend beyond the facts of the case and warrant the Director's participation.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1094.5, Code of Civil Procedure and section 1742(c), Labor Code.

ARTICLE 7. TRANSITIONAL RULE.

17270. Applicability of these Rules to Notices Issued Between April 1, 2001 and June 30, 2001.

(a) These Rules shall apply to any notice issued by the Labor Commissioner or an Awarding Body with respect to the withholding or forfeiture of contract payments for unpaid wages or penalties under the prevailing wage laws in effect prior to July 1, 2001; *provided that*, the party seeking review has not commenced a civil action with respect to such notice under the provisions of Labor Code sections 1731-1733 [repealed effective July 1, 2001].

(b) An Affected Contractor or Subcontractor may appeal any such notice served between April 1, 2001 and June 30, 2001 by filing a Request for Review with the Enforcing Agency that issued the notice, in the manner and form specified in Rule 22 [Section 17222] above. Any such Request for Review shall be in writing and shall include a statement indicating the date upon which the contractor or subcontractor was served with the notice of withholding or forfeiture.

(c) This Rule shall *not* extend the time available to appeal the notice under the former law. A Request for Review of a notice issued prior to July 1, 2001 must be filed with the Enforcing Agency within ninety (90) days after service of the notice.

(d) A contractor or subcontractor who has sought review of a notice issued prior to July 1, 2001 by filing a court action under the repealed provisions of Labor Code sections 1731-1733 on or after July 1, 2001, shall, if said action would have been timely under those sections, be afforded the opportunity to dismiss the action without prejudice, after entering into a stipulation that the proceeding be transferred to the Director for hearing in accordance with these Rules. The stipulation shall also provide that the time for commencing a hearing under Rule 41 [Section 17241] shall not begin to run until the case has been formally transferred to and received by the Office of the Director.

(e) Any hearing request made pursuant to Labor Code section 1771.7 [repealed effective July 1, 2001] that has not been heard and decided by a Hearing Officer prior to July 1, 2001 shall be handled in accordance with these Rules.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

Section II

ZONE 7 WATER AGENCY
LABOR COMPLIANCE PROGRAM

LCP Implementation Plan

Section II. LCP IMPLEMENTATION PLAN

- Labor Compliance Officer receives construction contract awards/work schedules.
- Labor Compliance Officer participates in Kick-Off/Pre-Construction Meeting.
- Labor Compliance Officer provides Site Monitors/Project Inspectors with work schedules.
- Site Monitors/Project Inspectors, both District employees and/or others, conduct interviews and return interview sheets to Labor Compliance Officer.
- Labor Compliance Officer or Project Inspector enters information from interviews into database/spreadsheet.
- Labor Compliance Officer verifies information from certified payroll records.
- Labor Compliance Officer notifies contractor in writing of any discrepancies with certified payroll records.
- If clarification/correction is not received from the contractor within two weeks, Labor Compliance Officer will commence an investigation.
- Upon completion of the investigation, a report will be sent to the Department of Industrial Relations with recommendations for penalties to be applied to the contractor.
- Labor Compliance Officer prepares and submits public works violation reports to Labor Commissioner as required.
- Labor Compliance Officer receives Monthly Employment Utilization Report from the contractor and its subcontractors; Labor Compliance Officer maintains database of this information for year-end report to the Board of Directors.
- Labor Compliance Officer communicates on a regular basis with contractors, workers, building and trade organizations, and other community entities and in-service management to Zone 7 personnel.
- Labor Compliance Officer prepares and submits annual program reports to the Zone 7 Water Agency Board of Directors and the Director of the Department of Industrial Relations.

- Labor Compliance Officer manages all facets and is the primary contact for the Zone 7’s Labor Compliance Program.

- Labor Compliance Officer provides non-Zone 7 site monitors with site visitation training and assigns projects when applicable.

Section III

ZONE 7 WATER AGENCY
LABOR COMPLIANCE PROGRAM

Operational Manual

SECTION III. LCP OPERATIONAL MANUAL

Site Visits by Inspectors/ LCP Site Monitors

1. Safety is the paramount factor for any site visit to any Zone 7 Water Agency construction projects. Do not enter any area that appears unsafe. Inspectors and Site Monitors are expected to exercise reasonable caution at all times.

2. All authorized personnel visiting any Zone 7 Water Agency construction site are required to be properly identified as a Agency representative by wearing visible IDs, or identifying themselves as such. Additionally, all authorized personnel are required to wear hard hats and safety shoes on construction sites.

3. Authorized personnel shall visit all sites on a non-interference basis and take a minimum amount of the workers' time for interview purposes.

4. Upon arrival at a site, the inspector or Site Monitor will check in at the site superintendent's (contractor's) trailer prior to any interviewing. In the event there is not a construction trailer, you will check in at the site's administrative office or with the on-site foreman. Identify yourself and state the purpose of the visit. Sign in if required to do so. If the site superintendent or foreman cites some reason that denies access to the site, promptly and politely remove yourself. Make a note of this occurrence and include it in your report to the LCO.

5. Check to see that the following are displayed in the contractor's trailer or elsewhere on site:
   - Equal Employment Opportunity (EEO) Posters
   - Prevailing wage sheets posted
   - Sign-In Log
   - Listing of subcontractors on site

   If any of these items are not readily visible, remind the contractor that these postings are part of the contractual requirements. On subsequent visits, make sure that these items are posted, or the contractor will be found to be in noncompliance.

Interviewing by ZONE 7 Inspectors

1. Once you have checked in with the site superintendent and obtain access to the site, try to locate tradespersons working in clusters. For instance, several painters, electricians, roofers, etc. working in one area. Approach the workers individually in a non-threatening, professional manner. Identify yourself, indicate that you are an Agency representative, and that you need only a few seconds of their time to ask some very generic questions to ensure that they are receiving the proper rate of pay for the type of work they are doing. Again, do not endanger yourself or any tradesperson's safety in conducting these interviews. Do not insist that someone on a scaffold 40 feet in the air come down for an interview. Do not ask anyone to form a line until you can get to them; allow them to continue working until you can get to them individually.

These interviews are random; two or three tradespersons for each subcontractor are more than sufficient for one visit. Any persons missed are usually picked up on the next visit. If only one tradesperson is at the site, then interview that person if possible. If you are told that the rest of the crew will be there in an hour, do not wait, unless your total site interviewing will take that length of time. Thirty minutes of interviewing per site is typically sufficient, depending upon the site size and/or number of subcontractors present. Contractor tradespersons should also be interviewed.

2. Using the Labor Compliance Site Visitation Interview form, ask each person the following: name, social security number, employer, title (trade), rate of pay, and task being performed at the time of interview.

3. Should someone decline to speak with you, respect those wishes. If someone asks if this is union-related, tell them no. Zone 7 Water Agency works with both open and closed shop trades.

4. If you try to interview someone who does not speak English and you cannot communicate in the appropriate language, try to locate a coworker who can interpret for you. If you find an entire crew unable to speak English and no interpreter, include this in your report to the LCO.

5. If someone refuses to disclose his social security number to you, respect those wishes. However, assure that person that all information given is kept strictly confidential.

6. If someone does not know their rate of pay (most tradespersons don't know), ask for a guesstimate. If the response is, "whatever prevailing wage is", so indicate on the form.

7. If someone indicates that he is an apprentice, make sure that you ask him what period. These can be anywhere from 1st to 10th. If he's not sure, ask him how many years he's been apprenticed in the specific trade and/or to guesstimate and so indicate on the interview form.

8. ALWAYS thank them for their time.

9. Keep in mind that you are there to collect information only - do <u>not</u> give advice or tell them how to do their jobs. Should you witness what you consider a potentially unsafe or unwarranted condition, you are to contact the site inspector or job superintendent of your findings immediately and make a note on your site visitation log of what you observed. Upon your return to the office, report your findings to the LCO.

<u>Reporting</u>

1. All original interview forms shall be submitted to the LCO no later than the end of each workweek.

Section IV

ZONE 7 WATER AGENCY
LABOR COMPLIANCE PROGRAM

Procedures

SECTION IV. LCP PROCEDURES

Certified Payroll Verification Procedures

1. The Engineering Section and/or the Maintenance & Operation Section will provide the Labor Compliance Officer with construction work schedules.

2. Upon receipt of certified payroll reports from general/subcontractors once a week, compare information from the Labor Compliance visitation log to the contractors certified payroll and the prevailing wage schedule.

3. Compare name and social security number with trade classification listed.

4. Ensure prevailing wage listed is correct for the classification listed using the prevailing wage schedule

5. Check for employment of apprentices, correct rate of pay, and proper ratio to journey workers.

6. Contact the contractor in writing and send by certified mail any inaccuracies in the verification of its certified payroll.

7. If clarification/correction is not received within two weeks from the contractor, the Labor Compliance Officer will commence an investigation.

8. Upon completion of the investigation, a report will be sent to the Department of Industrial Relations with recommendations for penalties to be applied to the contractor.

9. Retain all original interview forms and annotate the database as applicable.

Site Monitor/Inspector Procedures

1. Receive construction site work schedule from Labor Compliance Officer.

2. Check in with site administrative office/site superintendent

3. Utilizing the Labor Compliance Site Visitation Interview form, conduct interviews with workers.

4. Note on your form any infractions you may observe while conducting the interview.

5. Return interview form to the Labor Compliance Officer.

6. Report any infractions you observed to the Labor Compliance Officer.

ZONE 7 WATER AGENCY
LABOR COMPLIANCE PROGRAM

Section V. LCP FORMS

ZONE 7 WATER AGENCY
LABOR COMPLIANCE PROGRAM

Prevailing Wage Handout

THE PUBLIC WORKS REQUIREMENTS ARE:

(A) the appropriate number of apprentices are on the job site, as set forth in Labor Code Section 1777.5.

(B) worker's compensation coverage, as set forth in Labor Code Sections 1860 and 1861.

(C) keep accurate records of the work performed on the public works project, as set forth in Labor Code Section 1812.

(D) inspection of payroll records pursuant to Labor Code Section 1776, and as set forth in 8 CCR Section 16400(e).

(E) other requirements imposed by law.

(1) Withhold monies. See Labor Code Section 1727.

(2) Ensure that public works projects are not split or separated into smaller work orders or projects for the purpose of evading the applicable provisions of Labor Code Section 1771.

(3) Deny the right to bid on public work contracts to contractors or subcontractors who have violated public work laws, as set forth in Labor Code Section 1777.7.

(4) Not permit workers on public works to work more than eight hours a day or 40 hours in any one calendar week, unless compensated at not less than time and a half as set forth in Labor Code Section 1815.

Exception: If the prevailing wage determination requires a higher rate of pay for overtime work than is required under Labor Code Section 1815, then that higher overtime rate must be paid [,as specified in 16200(a)(3)(F).]

(5) Not take or receive any portion of the workers' wages or accept a fee in connection with a public works project, as set forth in Labor Code Sections 1778 and 1779.

(6) Comply with those requirements as specified in Labor Code Sections 1776(g), 1777.5, 1810, 1813, and 1860.

THE CONTRACTOR AND SUBCONTRACTOR SHALL:

(A) Pay not less than the prevailing wage to all workers, as defined in CCR's section 16000(a), and as set forth in Labor Code Sections 1771 and 1774;

(B) Comply with the provisions of Labor Code Sections 1773.5, 1775, and 1777.5 regarding public works job sites;

(C) Provide workers' compensation coverage as set forth in Labor Code Section 1861;

(D) Comply with Labor Code Sections 1778 and 1779 regarding receiving a portion of wages or acceptance of a fee;

(E) Maintain and make available for inspection payroll records, as set forth in Labor Code Section 1776;

(F) Pay workers overtime pay, as set forth in Labor Code Section 1815 or as provided in the collective bargaining agreement adopted by the Director (DIR) as set forth in 8 CCR Section 16200(a)(3); and

(G) Comply with Section 16101 of these regulations regarding discrimination.

(H) Be subject to provisions of Labor Code Section 1777.7 which specifies the penalties imposed on a contractor who willfully fails to comply with provisions of Section 1777.5.

(I) Comply with those requirements as specified in Labor Code Sections 1810 and 1813.
(1J) Comply with other requirements imposed by law.

APPRENTICE TRAINING
SEE LABOR CODE SECTION 1777.5 (e)
(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program **that can supply apprentices to the site of the public work**. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body.

Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

APPRENTICE TRAINING CONTRIBUTION REQUIREMENTS
SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 4,
16200(G***)*** **Wage rates, training contributions and Apprenticeship contributions.**
Apprenticeship rates shall be determined by the Director of Industrial Relations using apprentice wage standards set forth in the collective bargaining agreement and/or approved by the California Apprenticeship Council. A contractor or subcontractor on a public works contract must pay training fund contributions or apprenticeship contributions in one of the following manners:
1. into the appropriate craft apprenticeship program in the area of the site of the public work; or
2. (if the trust fund is unable to accept such contributions) an equivalent amount shall be paid to the California Apprenticeship Council (CAC) administered by Division of Apprenticeship Standards (DAS).
3. If neither of the above will accept the funds, cash pay shall be as provided for in 8 CCR section 16200(a)(3)(I).

SEE ALSO CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 10, SECTION 230.2
§230.2. **Payment of Apprenticeship Training Contributions to the Council.**
(a) Contractors who are neither required nor wish to make apprenticeship training contributions to the applicable local training trust fund shall make their training contributions to the Council. Contractors may refer to the Director of the Department of Industrial Relations applicable prevailing wage determination for

the amount owed for each hour of work performed by journeymen and apprentices in each apprenticeable occupation.
(b) Training contributions to the Council are due and payable on the 15th day of each month for work performed during the preceding month.
(c) Training contributions to the Council shall be paid by check and shall be accompanied by a completed CAC-2 Form, Training Fund Contributions, (Rev. 10/91), or the following information:
(1) The name, address, and telephone number of the contractor making the contribution.
(2) The contractor's license number.
(3) The name and address of the public agency that awarded the contract.
(4) The jobsite location, including the county where the work was performed.
(5) The contract or project number.
(6) The time period covered by the enclosed contributions.
(7) The contribution rate and total hours worked by apprenticeable occupation.

CERTIFYING PERSON
SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, GROUP 3, ARTICLE 1,16000 DEFINITIONS.
A person with the authority to affirm under penalty of perjury that the records provided, depict truly, fully and correctly the type of work performed, the hours worked, days worked and amounts paid.

CHANGES TO PREVAILING RATE AFTER AWARD
SEE LABOR CODE SECTION: 1773.6
No effect once the contract notice to bidders is published.
1773.6. If during any quarterly period the Director of Industrial Relations shall determine that there has been a change in any prevailing rate of per diem wages in any locality he shall make such change available to the awarding body and his determination shall be final. Such determination by the Director of Industrial Relations shall not be effective as to any contract for which the notice to bidders has been published.
Exceptions; classifications marked as a double asterisks.

CREDITS, FOR FRINGE BENEFIT PAYMENTS
SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, GROUP 3, ARTICLE 4,
16200(i) Credit Available For Actual Payment of Fringe Benefit Costs up to the Prevailing Amount. The contractor obligated to pay the full prevailing rate of per diem wages may take credit for amounts up to the total of all fringe benefit amounts listed as prevailing in the appropriate wage determination. This credit may be taken only as to amounts which are actual payments under Employer Payments Section 16000(1)-(3). In the event the total of Employer Payments by a contractor for the fringe benefits listed as prevailing is less than the aggregate amount set out as prevailing in the wage determination, the contractor must pay the difference directly to the employee. No amount of credit for payments over the aggregate amount of employer payments shall be taken nor shall any credit decrease the amount of direct payment of hourly wages of those amounts found to be prevailing for straight time or overtime wages.

THE RULE:

The contractor can pay amounts for individual benefits different than the state shows in the wage reports so long as it is not more than the total amount permitted for all benefits. Any contractor paid amount less than the total benefit requirements listed in the state wage reports must be paid to the employee.

EMPLOYEES SUBJECT TO PREVAILING WAGES
SEE LABOR CODE SECTION 1771, 1772 & 1776

ZONE 7 general conditions: all workers on the project shall be paid the wage of the trade they are most closely related to. This includes: anyone on site and off site, even at remote manufacturing facilities.

1771. Except for public works projects of one thousand dollars ($1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to **all** workers employed on public works. This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

1772. Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work.

1776. (a) Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.

EMPLOYER PAYMENTS:
SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 1, SECTION 16000 DEFINITIONS

(1) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program for the benefit of employees, their families and dependents, or retirees;

(2) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to employees, their families and dependents or to retirees pursuant to an enforceable commitment or agreement to carry out a financially responsible plan or program which was communicated in writing to the workers affected; and

(3) The rate of contribution irrevocably made by the contractor or subcontractor for apprenticeship or other training programs authorized by Section 3071 and/or 3093 of the Labor Code.

FRINGE BENEFIT PAYMENT REQUIREMENTS:

SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, GROUP 3, ARTICLE 1, 16000 DEFINITIONS
All fringe benefits must be irrevocably paid to an authorized fund or to the employee.
No unpaid amounts are allowed.

<u>FRINGE BENEFITS INCLUDE:</u>
SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 1, SECTION 16000. DEFINITIONS
3) The prevailing rate of employer payments for any or all programs or benefits for employees, their families and dependents, and retirees which are of the types enumerated below:
(A) medical and hospital care, prescription drugs, dental care, vision care, diagnostic services, and other health and welfare benefits;
(B) retirement plan benefits;
(C) vacations and holidays with pay, or cash payments in lieu thereof;
(D) compensation for injuries or illnesses resulting from occupational activity;
(E) life, accidental death and dismemberment, and disability or sickness and accident insurance;
(F) supplemental unemployment benefits;
(G) thrift, security savings, supplemental trust, and beneficial trust funds otherwise designated, provided all of the money except that used for reasonable administrative expenses is returned to the employees;
(H) occupational health and safety research, safety training, monitoring job hazards, and the like, as specified in the applicable collective bargaining agreement;
(I) See definition of “Employer Payments,” (3).
(J) other bona fide benefits for employees, their families and dependents, or retirees as the Director may determine; and
(4) travel time and subsistence pay as provided for in Labor Code Section 1773.8.

<u>FRINGE BENEFITS DO NOT INCLUDE</u>:
SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 1, SECTION 16000. DEFINITIONS
(b) The term “general prevailing rate of per diem wages”
does not include any employer payments for:
(1) Job related expenses other than travel time and subsistence pay;
(2) Contract administration, operation of hiring halls, grievance processing, or similar purposes except for those amounts specifically earmarked and actually used for administration of those types of employee or retiree benefit plans enumerated above;
(3) Union, organizational, professional or other dues except as they may be included in and withheld from the basic taxable hourly wage rate;
(4) Industry or trade promotion;
(5) Political contributions or activities;

(6) Any benefit for employees, their families and dependents, or retirees including any benefit enumerated above where the contractor or subcontractor is required by Federal, State, or local law to provide such benefit; or
(7) Such other payments as the Director may determine to exclude interested Party. When used with reference to a particular prevailing wage determination made by the Director, includes:

PAYROLL RECORDS INCLUDE:
SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 1, SECTION 16000. DEFINITIONS
All time cards, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check, or in whatever form or manner, of funds to a person(s) by job classification and/or skill pursuant to a public works project.

PERSONS REQUIRED TO RECEIVE PREVAILING WAGES:
SEE LABOR CODE SECTIONS:
1771**…………………**, shall be paid to all workers employed on public works.
1774. The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.
ZONE 7 General Conditions require all workers not in a prevailing wage classification to be paid the wage most closely related to the craft or trade they are involved with.

WITHHOLDING PAYMENTS, JUSTIFICATION:
SEE LABOR CODE SECTION: 1727 & 1771.5(b),(5)
SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 5, SECTION 16435(a) "Withhold" means to cease payments by the awarding body, or others who pay on its behalf, or agents, to the general contractor. Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.
(b) "Contracts." Except as otherwise provided by agreement, only contracts under a single master contract, or contracts entered into as stages of a single project, may be the subject of withholding.
(c) "Delinquent payroll records" means those not submitted on the date set in the contract.
(d) "Inadequate payroll records" are any one of the following:
(1) A record lacking the information required by Labor Code Section 1776;
(2) A record which contains the required information but not certified, or certified by someone not an agent of the contractor or subcontractor;
(3) A record remaining uncorrected for one payroll period, after the awarding body has given the contractor notice of inaccuracies detected by audit or record review. Provided, however, that prompt correction will stop any duty to withhold if such inaccuracies do not amount to 1 percent of the entire Certified Weekly Payroll in dollar value and do not affect more than half the persons listed as

workers employed on that Certified Weekly Payroll, as defined in Labor Code Section 1776 and Title 8 CCR Section 16401.

<u>CalDIR PRECEDENTIAL DECISIONS WHICH REQUIRE PREVAILING WAGES</u>:

Decision 92-036: stands for the payment of out of state workers if they are working on California "Public Works"

Decision 93-019: stands for the payment of truck drivers removing, delivering or relocating material on a "Public Works"

Decision 94-017: stands for the payment of waste processors off site if the waste is exclusively from a "Public Works"

<u>COURT DECISIONS</u>:

Standard Traffic Services v. Department of Transportation (case 132667) Shasta: partners are due prevailing wages if working on a "Public Works" project.

QUESTIONS? CalDIR will respond to requests for information. These are encouraged to be in writing and either mailed or faxed to: DIR, Labor Compliance Programs; , 455 Golden Gate Ave – 10th Floor, San Francisco, CA 94102; 415/703-5050

Pre-Bid Conference Checklist/Sign-Off Form

APPENDIX A: Suggested checklist of Labor law requirements to review at Pre-Bid Conference. Section 16430 (a)(2). The federal and state labor law requirements applicable to the contract are composed of but not limited to the following items.

Project ______________________________

Contractor's Signature ______________________________ Date ______________

	Initials of Awarding Body's Representative	Initials of awarded Contractors Representative
(1)The contractor's duty to pay prevailing wages under Labor Code Section 1770 et seq., should the project exceed the exemption amounts;		
(2) The contractor's duty to employ registered apprentices on the public works project under Labor Code Section 1777.5;		
(3) The penalties for failure to pay prevailing wages (for non-exempt projects) and employ apprentices including forfeitures and debarment under Labor Code Sections 1775 and 1777.7;		
(4)The requirement to keep and submit copies upon request of certified payroll records under Labor Code Section 1776, and penalties for failure to do so under Labor Code Section 1776(g);		
(5 The prohibition against employment discrimination under Labor Code Section 1777.6; the Government Code, and Title VII of the Civil Rights Act of 1964; (6)The prohibition against accepting or extracting kickback from employee wages under Labor Code Section 1778;		
(7) The prohibition against accepting fees for registering any person for public work under Labor Code Section 1779; or for filling work orders on public works under Labor Code Section 1780; (8) The requirement to list all subcontractors under Public Contracts Code Section 4104;		
(9) The requirement to be properly licensed and to require all subcontractors to be properly licensed and the penalty for employing workers while unlicensed under Labor Code Section 1021 and under the California Contractors License Law, found at Business and Professions Code Section 7000 et sea;		

(10) The prohibition against unfair competition under Business and Professions Code Sections 17200-17208;

(11) The requirement that the contractor be properly

insured for Workers Compensation under Labor Code Section 1861;

(12) The requirement that the contractor abide by the Occupational, Safety and Health laws and regulations that apply to the particular construction project;

(13) The federal prohibition against hiring undocumented workers, and the requirement to secure proof of eligibility /citizenship from all workers.

(14) The requirement to provide itemized wage statements to employees under Labor Code Section 226.

ZONE 7 WATER AGENCY
LABOR COMPLIANCE PROGRAM

California Code Of Regulations - Checklist For Review, Discussion and Sign-Off

After the Zone 7 awards a public works contract, and prior to the commencement of work on that contract, a mandatory Kick-Off meeting (Pre-Job Conference or Job Start Meeting) shall be conducted by the LCO or Representative with the contractor and those subcontractors listed in its bid documents. The following is a listing of labor law requirements applicable to the public works contract:

1. Payment of Prevailing Wage Rates

a. All workers on the project are to be paid not less than the specified general prevailing wage rate by the contractor and its subcontractors, unless subject to exemption.

b. The contractor is responsible for complying with all applicable general prevailing wage rates for tradesworkers and any rate changes which may occur during term of the contract.

c. Prevailing wage rates and rate changes are to be posted at the job site for workers to view.

d. The LCO will provide contractors with copies of prevailing wage rates upon request as well as copies of any revisions to prevailing rate wages received from the Department of Labor.

2. Apprentices

a. It is the duty of the contractor and subcontractors to employ registered apprentices on public works projects.

4. Certified Payroll Records

a. Contractors and subcontractors are required to keep accurate payroll records which reflect the name, address, social security number, and work classification of each employee; the straight time and overtime hours worked each day and each week; the fringe benefits; and the actual per diem wages paid to each journeyperson, apprentice, worker, or other employee hired in connection with a public works project.

b. Employee payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor/subcontractor, or shall be furnished to any employee, or to his or her authorized representative on request.

c. Contractors and subcontractors shall maintain their certified payrolls on a weekly basis and shall submit said payrolls to the LCO when requested to do so, but no less often than once a week. CONTRACTORS ARE RESPONSIBLE FOR SUBMITTAL OF THEIR PAYROLLS AND THOSE OF THEIR RESPECTIVE SUBCONTRACTORS AS ONE PACKAGE. In the event that there has been no work performed during a given week, the Certified Payroll Record shall be annotated with the words "No Work" for that week.

3. Penalties

a. Penalties, including forfeitures and debarment, shall be imposed for contractor/subcontractor failure to pay prevailing wages (for nonexempt projects) and for failure to employ apprentices.

b. Penalties shall also be imposed for failure to provide certified payroll records (and to provide them by the date requested), failure to provide Monthly Utilization Reports (CC-257) by the date requested, failure to pay workers for work in excess of 8 hrs/day and 40 hrs/week, and for failure to be a properly licensed contractor or subcontractor.

5. Nondiscrimination in Employment; Equal Opportunity

a. All contractors and subcontractors are required to avoid discrimination in employment.

6. Kickback Prohibited

Contractors and subcontractors are prohibited from accepting or extracting "kickbacks" from employee wages.

7. Acceptance of Fees Prohibited

Contractors and subcontractors are prohibited from exacting any type of fee for registering individuals for public work or for filling work orders on public works contracts.

8. Listing of Subcontractors

Contractors are required to list all subcontractors hired to perform work on public works project when that work is equivalent to more than one-half of one percent of the total effort.

9. Proper Licensing

All contractors and subcontractors are required to be properly licensed.

10. Unfair Competition

Contractors and subcontractors are prohibited from engaging in unfair competition.

11. Workers' Compensation Insurance

All contractors and subcontractors are required to be insured against liability for workers compensation, or to undertake self-insurance.

12. OSHA

Contractors and subcontractors are required to comply with the Occupational, Safety and Health laws and regulations applicable to the particular public works project.

In accordance with federal and state laws, and with Zone policy and contract documents, the undersigned contractor herein certifies that it will comply with the foregoing labor law requirements; and fully understands that failure to comply with these requirements will subject it to the penalties cited herein. The contractor also herein certifies that it has been provided with a copy of the Zone 7 Water Agency Labor Compliance Program Package which includes:

1. Labor Law Requirements Checklist (included herein)
2. Applicable General Prevailing Wage Rate Determinations
3. Blank Certified Payroll Record forms
4. Fringe Benefit Statements
5. Blank Monthly Employment Utilization (CC-257) forms
6. State apprenticeship requirements (DAS-140)
7. Copy of the Labor Code relating to Public Works and Public Agencies (Part 7, Chapter 1, Sections 1720-1861

IT IS THE CONTRACTOR'S RESPONSIBILITY TO PROVIDE COPIES OF THE DISTRICT'S LABOR COMPLIANCE PROGRAM PACKAGE TO ALL LISTED SUBCONTRACTORS AND TO ANY SUBSTITUTED SUBCONTRACTORS.

____ ______________

Contractor Date

____

Name/Title of Contractor Authorized Representative

____

Name/Title of ZONE 7 Labor Compliance Representative

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF APPRENTICESHIP STANDARDS
28 CIVIC CENTER PLAZA, ROOM 525
SANTA ANA, CA 92701

TO ALL PUBLIC WORKS CONTRACTORS

Congratulations on having been awarded a public works project.

The Division of Apprenticeship Standards wishes to bring to your attention your responsibilities under California Labor Code Section 1777.5 Apprentices on Public Works. (Excerpts from California Labor Code relating to apprentices on public works. DAS-10 is attached).

Compliance with California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

- Submit contract award information within 10 days of contract award, to the applicable Joint Apprenticeship Committee, which shall include an estimate of Journeymen hours to be performed under the contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. This information may be submitted on the attached form. DAS 140.

- Employ apprentices on the public work in a ratio to journeymen of no less than one hour of apprentices work for every five hours of labor performed by a journeyman.

- Pay the apprentice rate on public works projects only to those apprentices who are registered as defined in Labor Code Section 3077.

- Contribute to the training fund in the amount identified in the Prevailing Wage Rate publication for journeymen and apprentices. Contractors who choose not to contribute to the local training trust fund must make their contribution to the California Apprenticeship Council (CAC) at P.O. Box 420603, San Francisco, CA 94142.

- Training fund contributions to the CAC are due and payable on the 15th day of each month for work performed during the preceding month.

- Training fund contributions to the CAC shall be paid by check and shall be accompanied by a completed form CAC-2 (attached).

Failure to comply with the provisions of the Labor Code Section 1777.5 may result in the loss of the right to bid on all public works projects for a period of one to three years and the imposition of a civil penalty of

$100.00 for each calendar day of noncompliance. Contractors should provide a copy of this material to each subcontractor.

If the Division of Apprenticeship Standards can be of assistance to you, please contact our office at (415) 703-4920

EXCERPTS FROM THE CALIFORNIA LABOR CODE RELATING TO APPRENTICES ON PUBLIC WORKS

Chapter 1 of Division 2
APPRENTICES ON PUBLIC WORKS

1773.3. An awarding agency whose public works contract falls within the jurisdiction of Section 1777.5 shall, within five days of the award, send a copy of the award to the Division of Apprenticeship Standards. When specifically requested by a local joint apprenticeship committee, the division shall notify the local joint apprenticeship committee regarding all such awards applicable to the joint apprenticeship committee making the request. Within five days of a finding of any discrepancy regarding the ratio of apprentices to journeymen, pursuant to the certificated fixed number of apprentices to journeymen, the awarding agency shall notify the Division of Apprenticeship Standards.

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(i) The director shall adopt rules consistent with the California Public Records Act, (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1, Government Code) and the Information Practices Act of 1977, (Title 1.8 (commencing with Section 1798), Part 4, Division 3, Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

(j) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

1777.5. (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either (1) the apprenticeship standards and apprentice agreements under which he or she is training or (2) the rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval or denial of the apprenticeship program shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that the program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract. At the end of each fiscal year the California Apprenticeship Council shall make grants to each apprenticeship program in proportion to the number of hours of training provided by the program for which the program did not receive contributions, weighted by the regular rate of contribution for the program. These grants shall be made from funds collected by the California Apprenticeship Council during the fiscal year pursuant to this subdivision from contractors that employed registered apprentices but did not contribute to an approved apprenticeship program. All these funds received during the fiscal year shall be distributed as grants.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars ($30,000) or 20 working days.

(p) All decisions of an apprenticeship program under this section are subject to Section 3081.

1777.6. It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works, on the ground of the race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077, of such employee.

1777.7. (a) A contractor or subcontractor that knowingly violates Section 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars ($100) for each full calendar day of noncompliance. The amount of this penalty shall be based on consideration whether the violation was a good faith mistake due to inadvertence. A contractor or subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars ($300) for each full calendar day of noncompliance. Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed, the awarding body shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

(b) (1) In the event a contractor or subcontractor is determined by the Administrator of Apprenticeship to have knowingly violated any provision of Section 1777.5, the Administrator shall deny to the contractor or subcontractor, both individually and in the name of the business entity under which the contractor or subcontractor is doing business, the right to bid on or receive any public works contract for a period of up to one year for the first violation and for a period of up to three years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Administrator of Apprenticeship.

(2) An affected contractor or subcontractor may obtain a review of the debarment or civil penalty by transmitting a written request to the office of the Administrator within 30 days after service of the order of debarment or civil penalty. If the Administrator receives no request for review within 30 days after service, the order of debarment or civil penalty shall become final for the period authorized.

(3) Within 20 days of the timely receipt of a request for hearing, the Administrator shall provide the contractor or subcontractor the opportunity to review any evidence the Administrator may offer at the hearing. The Administrator shall also promptly disclose to the contractor or subcontractor any nonprivileged documents obtained after the 20-day time limit.

(4) Within 90 days of the timely receipt of the a request for hearing, a hearing shall be commenced before an impartial hearing officer designated by the Administrator and possessing the qualifications of an administrative law judge pursuant to Section 11502 of the Government Code. The contractor or subcontractor shall have the burden of showing compliance with Section 1777.5. The decision to debar shall be reviewed by a hearing officer or court only for abuse of discretion.

(5) Within 45 days of the conclusion of the hearing, the hearing officer shall issue a written decision affirming, modifying, or dismissing the debarment or civil penalty. The decision shall contain a notice of findings, findings, and an order. This decision shall be deemed the final decision of the Administrator and shall be served on all parties and the awarding body pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the Administrator. Within 15 days of issuance of the decision, the hearing officer may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

(6) An affected contractor or subcontractor may obtain review of the final decision of the Administrator by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the final decision to debar or to assess a civil penalty. If no petition for a writ of mandate is filed within 45 days after service of the final decision, the order shall become final. If the petitioner claims that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the entire record.

(7) The Administrator may file a certified copy of a final order with the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business.

(c) If a subcontractor is found to have violated Section 1777.5, the prime contractor of the project is not liable for any penalties under subdivision (a), unless the prime contractor had knowledge of the subcontractor's failure to comply with the provisions of Section 1777.5 or unless the prime contractor fails to comply with any of the following requirements:

(1) The contract executed between the contractor and the subcontractor or the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall continually monitor a subcontractor's use of apprentices required to be employed on the public works project pursuant to subdivision (d) of Section 1777.5, including, but not limited to, periodic review of the certified payroll of the subcontractor.

(3) Upon becoming aware of a failure of the subcontractor to employ the required number of apprentices, the contractor shall take corrective action, including, but not limited to, retaining funds due the subcontractor for work performed on the public works project until the failure is corrected.

(4) Prior to making the final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has employed the required number of apprentices on the public works project.

(d) In lieu of the penalty provided for in subdivision (a) or (b), the director may for a first-time violation and with the concurrence of the apprenticeship program, order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(e) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

(f) The interpretation and enforcement of Section 1777.5 and this section shall be in accordance with the rules and procedures of the California Apprenticeship Council

Division of Apprenticeship Standards

APPRENTICES ON PUBLIC WORKS - SUMMARY OF REQUIREMENTS

Compliance with California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

- Submit contract award information to the applicable joint apprenticeship committee, including an estimate of the journeyman hours to be performed under the contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed.

  The contract award information shall be in writing, and shall be provided to the applicable apprenticeship committee within 10 days of the date of the agreement or contract award, but in no event later than the first day in which the contractor has workers employed upon the public work. (California Code of Regulations, Title 8, Section 230.)

- Employ apprentices on the public work in a ratio to journeymen of no less than one hour of apprentice work for every five hours of labor performed by a journeyman.

- Contribute to the training fund in the amount identified in the Prevailing Wage Rate publication for journeymen and apprentices. Contractors who choose not to contribute to the local training trust fund must make their contributions to the California Apprenticeship Council, P.O. Box 420603, San Francisco, CA 94142. Training contributions to the Council are due and payable on the 15th of the month for work performed during the preceding month.

  Training contributions to the Council shall be paid by check and shall be accompanied by a completed CAC2 form, Training Fund Contributions, or the following information (California Code of Regulations, Title 8, Section 230.2 c):
  1. The name, address and telephone number of the contractor making the contribution.
  2. The contractor's license number.
  3. The name an address of the public agency that awarded the contract.
  4. The jobsite location, including the county where the work was performed.
  5. The contract or project number
  6. The time period covered by the enclosed contributions.
  7. The contribution rate and total hours worked by the apprenticable occupation(s).

- Pay the apprentice rate on public works projects only to those apprentices who are registered, as defined in Labor Code Section 3077:

> Sec. 3077 The term "apprentice" as used in this chapter, means a person at least 16 years of age who has entered into a written agreement, in this chapter called an "apprentice agreement", with an employer or program sponsor. The term of apprenticeship for each apprenticeable occupation shall be approved by the chief, and in no case shall provide for no less than 2,000 hours or reasonably continuous employment for such person for his or her participation in an approved program of training through employment and through education in related and supplemental subjects.

PUBLIC WORKS CONTRACT AWARD INFORMATION

Contract award information must be sent to your Apprenticeship Committee if you are approved to train. If you are not approved to train, you must send the information (which may be this form) to ALL applicable Apprenticeship Committees in your craft or trade in the area of the site of the public work. Go to: http://www.dir.ca.gov/das/PublicWorksForms.htm for information about programs in your area and trade. You may also consult your local Division of Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards.

Do not send this form to the Division of Apprenticeship Standards.

NAME OF YOUR COMPANY	CONTRACTOR'S STATE LICENSE NO
MAILING ADDRESS- NUMBER & STREET, CITY, ZIP CODE	AREA CODE & TELEPHONE NO.
NAME & ADDRESS OF PUBLIC WORKS PROJECT	DATE YOUR CONTRACT EXECUTED
	DATE OF EXPECTED OR ACTUAL START OF PROJECT
NAME & ADDRESS OF PUBLIC AGENCY AWARDING CONTRACT	ESTIMATED NUMBER OF JOURNEYMEN HOURS
	OCCUPATION OF APPRENTICE
THIS FORM IS BEING SENT TO: (NAME & ADDRESS OF APPRENTICESHIP PROGRAM(S))	ESTIMATED NUMBER OF APPRENTICE HOURS
	APPROXIMATE DATES TO BE EMPLOYED

This is not a request for dispatch of apprentices.

Contractors must make a separate request for actual dispatch, in accordance with Section 230.1(a) California Code of Regulations

Check One Of The Boxes Below

1. ☐ We are already approved to train apprentices by the ______________________ Apprenticeship Committee. We will employ and train under their Standards.
   Enter name of the Committee

2. ☐ We will comply with the standards of ______________________ Apprenticeship Committee for the duration of this job only.
   Enter name of the Committee

3. ☐ We will employ and train apprentices in accordance with the California Apprenticeship Council regulations, including § 230.1 (c) which requires that apprentices employed on public projects can only be assigned to perform work of the craft or trade to which the apprentice is registered and that the apprentices must at all times work with or under the direct supervision of journeyman/men.

Signature ______________________ *Date* __________

Typed Name ______________________

Title ______________________

DAS 140 (REV. 1/04)

State of California - Department of Industrial Relations DIVISION OF APPRENTICESHIP STANDARDS

State of California
Department of Industrial Relations
P.O. Bo 420603
San Francisco, CA 94142

Please use a separate form for each jobsite, listing the occupations for the jobsite. One check, payable to the California Apprenticeship Council, may be submitted for all jobsites and/or occupations. Training fund contributions are not accepted by the California Apprentice Council for federal public works projects, or for non-apprenticable occupations such as laborers, utility technicians, teamsters, etc.

TRAINING FUND CONTRIBUTIONS

California Apprenticeship Council

Name and Address of Contractor/Subcontractor making Contribution	Contractor's License Number
	Contract or Project Number
Name and Address of Public Agency Awarding Contract	Jobsite Location (Including County)
	Period Covered by Contribution

Classification(s) or Workers (Carpenter, Plumber, Electrician, Etc.)	Hours	Cont. Rate per Hour	Amount

Signature	Date
Title	Area Code & Telephone Number

CAC 2

ZONE 7 WATER AGENCY
CONTRACTOR FRINGE BENEFIT STATEMENT

Contract Number / Name:	Contract Location:	Today's Date:

Contractor / Subcontractor Name:	Business Address:

In order that the proper Fringe Benefit rates can be verified when checking payrolls on the above contract, the hourly rates for fringe benefits, subsistence and/or travel allowance payment made for employees on the various classes of work are tabulated below.

Classification:		Effective Date:		Subsistence or Travel Pay: $ ______________
FRINGE BENEFITS	Health & Welfare	$	PAID TO:	Name: Address:
	Pension	$	PAID TO:	Name: Address:
	Vacation/ Holiday	$	PAID TO:	Name: Address:
	Training And/or Other	$	PAID TO:	Name: Address:

Classification:		Effective Date:		Subsistence or Travel Pay: $ ____________
FRINGE BENEFITS	Health & Welfare	$	PAID TO:	Name: Address:
	Pension	$	PAID TO:	Name: Address:
	Vacation/ Holiday	$	PAID TO:	Name: Address:
	Training And/or Other	$	PAID TO:	Name: Address:

Classification:		Effective Date:		Subsistence or Travel Pay: $ ____________
FRINGE BENEFITS	Health & Welfare	$	PAID TO:	Name: Address:
	Pension	$	PAID TO:	Name: Address:
	Vacation/ Holiday	$	PAID TO:	Name: Address:
	Training And/or Other	$	PAID TO:	Name: Address:

Supplemental statements must be submitted during the progress of work should a change in rate of any of the classifications be made.

Submitted: [Contractor / Subcontractor]	By: [Name / Title]

Zone 7 Water Agency
Monthly Employment Utilization Report

Current Goals	Reporting Period	Name and Location of Contractor		Employers I.D. No.
Minority 24%	From 06-01-00	ABC Construction Company 232 Cass Street Livermore, Ca 94551	Zone 7 Water Agency DVWTP 115 Main Street Livermore, Ca 94551	90-2111100
Female 6.9%	To 06-30-00			

CONSTRUCTION TRADE	Classifications	Total All Employees By Trade		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		American Indian or Alaskan Native		Minority Percentage	Female Percentage	Total Number of Employees		Total Number of Minority Employees	
		M	F	M	F	M	F	M	F	M	F			M	F	M	F
Plumbers	Journey Worker	1500	200	140		60				100				8	2	3	
	Apprentice	120						120						1		1	
	Trainee		60									22%	13%		1		
Laborers	Journey Worker	3270	600		100			240		120				25	5	3	1
	Apprentice	735												5			
	Trainee	160										9%	12%	2			
Carpenters	Journey Worker	1625	240	125				100						12	2	2	
	Apprentice	200		100										2		1	
	Trainee											15%	11%				
Electricians	Journey Worker	810	120											6	1		
	Apprentice																
	Trainee	60				60						6%	12%	1		1	
Masons	Journey Worker	540												4			
	Apprentice																
	Trainee	80										0%	0%	1			
	Total Journey Workers	7745	1160	265	100	60		340		220				55	10	8	1
	Total Apprentices	1055		100				120						8		2	
	Total Trainees	300	60			60						12%	11%	3	2	1	
	Grand Total	10320		465		120		460		220				78		12	

Company Official's Signature and Title	Telephone Number Include area code	Date Signed	Page
C. T. Smith Controller	(619) 292-0000	6-30-00	1 of 1

ZONE 7 PUBLIC WORKS WEEKLY CERTIFIED PAYROLL REPORTING FORM

Name of Contractor: or Subcontractor: ABC Lighting Company
Business Address: 123 Main Street, Scotts Valley, CA 95066
Contractor's License#: 00-111-2222
Worker's Compensation Policy# 99-888-77

S = Straight Time O = Overtime SDI = State Disability Insurance
*Other = Any other deductions, contributions and/or payments whether or not included or required by prevailing wage determinations must be separately listed.

Employee's Name, Address and Social Security Number	# of withholding exemptions	Work Classification	Hours Worked Each Day / Day & Date: M	T	W	TH	F	S	S		Total Hours	Rate of Pay	Gross Amount Earned	
John Smith Scotts Valley Dr Livermore, CA 94551 444-55-6666	S-4	Fixture Cleaner	8	8						S	16	11.50	This Project:	184.00
										O			All Projects:	725.00

Net Wages Paid for Week: 168.63 | Check 12345

Deductions, Contributions and Payments

Federal Tax	FICA Soc Sec	State Tax	SDI	Vacation /Holiday	Health & Welfare	Pension	Training	Fund Admin	Dues	Travel/ Subs.	Savings	Other*	Total Deductions
0	14.08	0	1.29										15.37

Employee's Name, Address and Social Security Number	# of withholding exemptions	Work Classification	M	T	W	TH	F	S	S		Total Hours	Rate of Pay	Gross Amount Earned	
Juan Gomez 123 Main Street Livermore, CA 94551 555-66-9999	M-3	Fixture Cleaner	8	8	8		8			S	40	12.00	This Project:	480.00
										O			All Projects:	936.00

Net Wages Paid for Week: 409.58 | Check 12346

Deductions, Contributions and Payments

Federal Tax	FICA Soc Sec	State Tax	SDI	Vacation /Holiday	Health & Welfare	Pension	Training	Fund Admin	Dues	Travel/ Subs.	Savings	Other*	Total Deductions
29.00	36.72	1.34	3.36										70.42

Employee's Name, Address and Social Security Number	# of withholding exemptions	Work Classification	M	T	W	TH	F	S	S		Total Hours	Rate of Pay	Gross Amount Earned	
										S			This Project:	
										O			All Projects:	

Net Wages Paid for Week: | Check

Deductions, Contributions and Payments

Federal Tax	FICA Soc Sec	State Tax	SDI	Vacation /Holiday	Health & Welfare	Pension	Training	Fund Admin	Dues	Travel/ Subs.	Savings	Other*	Total Deductions

I, Mary Jones (Name -- print), the undersigned, am Payroll Clerk (position of business) with the authority to act for and on behalf of ABC Lighting (name of business and/or contractor), certify under penalty of perjury that the records or copies thereof submitted and consisting of (description, no. of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of the actual disbursements by way of cash, check, or whatever form to the individual or individuals named. Date: Signature:

California Department of Industrial Relations

(Reduced by Zone 7 Water Agency)

PUBLIC WORKS PAYROLL REPORTING FORM

Page   of

NAME OF CONTRACTOR OR SUB CONTRACTOR	CONTRACTORS LICENSE # SPECIALTY LICENSE #	ADDRESS
PAYROLL NO. / FOR WEEK ENDING	SELF-INSURED CERTIFICATE # / WORKERS' COMPENSATION POLICY #	PROJECT OR CONTRACT NO. / PROJECT AND LOCATION

(1) NAME, ADDRESS AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) NO. OF WITH- HOLDING EXEMPTIONS	(3) WORK CLASSIFICATION		(4) Day M	T	W	TH	F	S	S	(5) TOTAL HOURS	(6) HOURLY RATE OF PAY	(7) GROSS AMOUNT EARNED		(8) DEDUCTIONS, CONTRIBUTIONS AND PAYMENTS							(9) NET WGS PAID FOR WEEK	CHECK NO.
				Date																			
				Hours Worked Each Day																			
			S										THIS PROJECT	ALL PROJECTS	FED TAX	FICA (SOC SEC)	STATE TAX	SDI	VAC/ HOL	HEALTH & WELF	PENSION		
			O												TRAINING	FUND ADMIN	DUES	TRV/ SUBS	SAVINGS	OTHER*	TOTAL DED- UCTIONS		
			S										THIS PROJECT	ALL PROJECTS	FED TAX	FICA (SOC SEC)	STATE TAX	SDI	VAC/ HOL	HEALTH & WELF	PENSION		
			O												TRAINING	FUND ADMIN	DUES	TRV/ SUBS	SAVINGS	OTHER*	TOTAL DED- UCTIONS		
			S										THIS PROJECT	ALL PROJECTS	FED TAX	FICA (SOC SEC)	STATE TAX	SDI	VAC/ HOL	HEALTH & WELF	PENSION		
			O												TRAINING	FUND ADMIN	DUES	TRV/ SUBS	SAVINGS	OTHER*	TOTAL DED- UCTIONS		
			S										THIS PROJECT	ALL PROJECTS	FED TAX	FICA (SOC SEC)	STATE TAX	SDI	VAC/ HOL	HEALTH & WELF	PENSION		
			O												TRAINING	FUND ADMIN	DUES	TRV/ SUBS	SAVINGS	OTHER*	TOTAL DED- UCTIONS		

Form A 1-131 (New 2-80)
(form has been reduced to fit page)

S = Straight Time
O = Overtime
SDI = State Disability Insurance

*OTHER - Any other deductions, contributions and/or payment whether or not included or required by prevailing Wage determinations must be separately listed. Use extra sheet if necessary

CERTIFICATION must be completed

I, ______________________ (Name - Print), the undersigned, am ______________________ (position with business) with the authority to act for and on behalf of ______________________ (name of business and/or contractor), certify under penalty of perjury that the records or copies thereof submitted and consisting of ______________________ (description, no. of pages) are the originals or true, full and correct copies of the originals which depict the payroll record(s) of the actual disbursements by way of cash, check, or whatever form to the individual or individuals named.

Date: ______________ Signature: ______________________

A public entity may require a more strict and/or more extensive form of certification.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1
FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

CRAFT: # CARPENTER

DETERMINATION: SD-23-31-4-2000-1
ISSUE DATE: February 22, 2000
EXPIRATION DATE OF DETERMINATION: June 30, 2000** The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Division of Labor Statistics and Research for specific rates at (415) 703-4774.

LOCALITY: All localities within Alameda County

CLASSIFICATION (JOURNEYPERSON)	Basic Hourly Rate	Employer Payments: Health and Welfare	Pension	Vacation/ Holiday	Training	Straight-Time: Hours	Total Hourly Rate	Overtime Hourly Rate: Daily 1 1/2X	Saturday [a] 1 1/2X	Sunday and Holiday
ENGINEERING CONSTRUCTION										
Carpenter (Heavy and Highway work)	$25.25	2.30	1.01	2.72 b	.30	8	31.58	44.205	44.205	56.83
Light Commercial	20.40	2.30	1.01	2.72 b	.30	8	26.73	36.93	36.93	47.13
Bridge Carpenter (Highway work)	25.38	2.30	1.01	2.72 b	.30	8	31.71	44.40	44.40	57.09
Millwright	25.75	2.30	1.01	2.72 b	.30	8	32.08	44.955	44.955	57.83
Pile Driver	25.38	2.30	1.01	2.72 b	.30	8	31.71	44.40	44.40	57.09
Diver, Wet (up to 50 ft. depth)[c,d]	55.76	2.30	1.01	2.72 b	.30	8	62.09	89.97	89.97	117.85
Diver, Standby	28.38	2.30	1.01	2.72 b	.30	8	34.71	48.90	48.90	63.09
Diver's Tender	27.38	2.30	1.01	2.72 b .	30	8	33.71	47.40	47.40	61.09

DETERMINATION: SD-23-31-4-2000-1A
ISSUE DATE: February 22, 2000
EXPIRATION DATE OF DETERMINATION: July 1, 2000** The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Division of Labor Statistics and Research for specific rates at (415) 703-4774.

LOCALITY: All localities within Santa Cruz County
BUILDING CONSTRUCTION

Carpenter	$23.40	2.30	1.01	2.17 b	.30	8	29.18	40.88	40.88	52.58
Light Commercial	18.72	2.30	1.01	2.17 b	.30	8	24.50	33.86	33.86	43.22

DETERMINATION: SD-31-741-1-2000-1
ISSUE DATE: FEBRUARY 22, 2000
EXPIRATION DATE OF DETERMINATION: May 31, 2000* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Division of Labor Statistics and Research (415) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

LOCALITY: All localities within Santa Cruz County.

Classification (Journeyperson)	Basic Hourly Rate	Employer Payments: Health and Welfare	Pension	Vacation/ Holiday	Training	Straight-Time: Hours	Total Hourly Rate	Overtime Hourly Rate: Daily 1 1/2X	Saturday 1 1/2X	Sunday and Holiday
Terrazzo Installer	$29.55	2.30	1.01	1.72 b	-	8	34.58	49.355	49.355	64.13
Terrazzo Finisher	23.05	2.30	1.01	1.72 b	-	8	28.08	39.605	39.605	51.13

# Indicates an apprenticeable craft. Rates for apprentices are available in the General Prevailing Wage Apprentice Schedules. [a] Saturday in the same workweek may be worked at straight-time rate for the first 8 hours if the employee was unable to complete the 40 hours during the normal workweek. [b] Includes supplemental dues. [c] Shall receive a minimum of 8 hours pay for any day or part thereof. [d] For specific rates over 50 ft. depth, contact the Division of Labor Statistics and Research.

DESCRIPTION:
Engineering Construction
Refers to construction which requires a Class A license and includes bridges, highways, dams and also power plants and other heavy industrial type projects.
Building Construction
Requires a Class B license and includes non-residential buildings and commercial buildings (with the exception of industrial buildings).

RECOGNIZED HOLIDAYS: Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at http://www.dir.ca.gov/DLSR/PWD. Holiday provisions for current or superseded determinations may be obtained by contacting the Prevailing Wage Unit at (415) 703-4774.

TRAVEL AND/OR SUBSISTENCE PAYMENT: In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. Travel and/or subsistence requirements for each craft, classification or type of worker may be obtained from the Prevailing Wage Unit at (415) 703-4774.

ZONE 7 WATER AGENCY

LABOR COMPLIANCE SITE VISITATION INTERVIEW FORM

FORMA DE INTREVISTA DEL SITIO SOBRE CONDECENCIA LABORARIA

Labor Compliance Officer 925-454-5000

SITE NAME: ______________________________ **DATE:** ____________
SITIO: ______________________________ **FECHA:** ____________

PROJECT NAME:____

CONTRACT #:__________________________________ Interior / Exterior (circle)

CONTRACTOR:____
CONTRANTE:

SUBCONTRACTOR:____
SUBCONTRATANTE

Person Interviewed:____________________________________
Nombre de Persona Entrevistada

S/S Number __________/______/_________________
Numero de Seguro Social

Position Title:____
Possion O Titulo del Entrevistado

Task Being Performed at Time of This Interview:_______________________________________
Clase de Labor Desenpenando al Tiempo de Entrevista

Hourly Pay Rate: $______________
Salario Horario

OBSERVATIONS:

Site Inspector:____Telephone

Project Superintendent:____Telephone__________________

Total number of workers observed on the visit:__________

Type of work observed:____

Type of workers observed: ____________________________________

Was the worker believable? Yes No

Did the superintendent or foreman accompany you on the site? Yes No

Explain additional information received from the worker:________________________________
____
____

Interview Conducted by:____

SITE VISITATION LOG

SITE	VISIT DATE	PRIME CONTRACTOR	SUB CONTRACTOR	EMPLOYEE NAME	SOCIAL SECURITY #	POSITION TITLE	TASK PERFORMED AT INTERVIEW	PAY RATE	COMPLIANT / NON COMPLIANT	LABOR COMPLIANCE OFFICE COMMENTS
Hoover	9/1/99	Baker	Mills	John Doe	111-11-1111	Plumber	Repairing Plumbing	$34.19	Compliant	Certified Payroll Records check out
Hoover	9/1/00	Baker	Mills	Mark Baker	222-22-2222	Laborer	Painting	$10.40	Non	Certified Payroll does not check out with interview

ZONE 7 WATER AGENCY

Via Certified Mail

July 21, 2005

Mr. John Doe
ACME Painting
13414 Labor Street
Los Angeles, CA 90605

Sample Pre-Award Letter

Dear Mr. Doe:

The Zone 7 Water Agency has identified your firm as the apparent low bidder for Contract #90-225 Portable Contract Moving Services and has scheduled board approval of a contract requiring your compliance with Division 2 Part 7 of the California Labor Code. This will require the payment of prevailing wages to all workers employed on the project and the reporting of the certified weekly payroll to the LCO. The Labor Code requires, prior to the start of work that a person qualified to certify documents for your firm attend a review meeting with the awarding body concerning the Labor Code prevailing wage laws.

The LCO is formally requesting the appearance of the certifying person for the code review, the submittal of the required weekly certified payroll records or nonperformance reports, and the monthly submittal of employment utilization reports, all identified in the contract general conditions.

This request is made pursuant to, and authorized by, California State Labor Code Section 1776(b) (2), which states, "A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations" and California Code of Regulations section 16430 (a) (2).

The goal of the LCO is to provide the necessary information, assistance, forms and procedures to allow your project to move forward on schedule and in compliance with the State's Labor Code.

Please call the Zone 7 Water Agency's Labor Compliance Officer at (925) 454-5000 to set an appointment and receive the necessary forms prior to the start of your project.

Respectfully,

ZONE 7 WATER AGENCY

Labor Compliance Officer

ZONE 7 WATER AGENCY

Via Certified Mail

July 27, 2005

Jane Doe
ACME Flooring
1234 Scotts Valley Drive
Scotts Valley, CA 95066

Sample Post Award Letter

Dear Ms. Doe:

The Zone 7 Water Agency has awarded your firm a contract to perform work on [NAME OF PROJECT], which requires your compliance with Part 7, chapter 1 of the California Labor Code. This will require the payment of prevailing wages to all workers employed on the project and the reporting of the weekly payroll to the District's Labor Compliance Officer.

The Labor Code requires, prior to the start of work that a person qualified to sign and certify for your firm attend a review with the awarding body of the Labor Code prevailing wage laws.

The Labor Compliance Officer goal is to provide the necessary information, assistance, forms and procedures to allow your project to move forward on schedule and in compliance with the State's Labor Code.

Please call the Zone 7 Water Agency's Labor Compliance Officer at (925) 454-5000 to set an appointment and receive the necessary forms prior to the start of your project.

Respectfully,

ZONE 7 WATER AGENCY

Labor Compliance Officer

ZONE 7 WATER AGENCY

Via Certified Mail

March 23, 2005

John Doe
ACME Construction Co.
3170 Labor Street
Vista, CA 92083-8318

Sample First Request for Certified Payrolls

Mr. Doe:

The Zone 7 Water Agency's Labor Compliance Officer is formally requesting copies of Certified Payroll Records and Monthly Utilization Reports for the [PROJECT NAME]. We are requesting the records from the beginning of the project through project completion for your firm and all subcontractors.

This request is made pursuant to, and authorized by, California State Labor Code Section 1776 (b) (2) and Section 1776 (g) (3) and the contract general conditions requiring weekly employee payments and weekly certified payroll submittals.

Labor Code Section 1776 (b) (2) states: "A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations."

Labor Code 1776 (g) (3) states: "The contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the contractor must comply with this section. In the event that the contractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated."

Please forward all weekly Certified Payroll Records and Monthly Utilization Reports on the District and state approved forms previously provided to: Zone 7 Water Agency, Labor Compliance Officer, 100 North Canyons Parkway, Livermore CA 94551. If you have any questions, contact me at 925- 454-5000.

Respectfully,

ZONE 7 WATER AGENCY

Labor Compliance Officer

SAMPLE MISSING DOCUMENTS LIST
Prime Contractor:
Project:

Original Request: 02/08/00 This Request: 02/08/00

1. **Monthly Utilization Forms must be provided for:**

2. **Apprenticeship Training Agreement (similar to Form DAS 1) must be provided for:**

3. **Apprenticeship Training Agreement (similar to Form DAS 7) must be provided for:**

4. **Training Fund Contributions (Form CAC 2 or equivalent) must be provided for:**

5. **Public Works Contract Award Information (Form DAS 140) with the name, address and phone number of the training program notified by all project contractors must be provided for:**

6. **Fringe Benefits Statements must be provided for:**

7. **Signed certified Payroll report or statement of Non-Performance with <u>original signatures</u> must be provided for:**

   Contractors are responsible for submittal of their payrolls and those of their respective subcontractors as one package, which must be in the District's Labor Compliance Officer **<u>within one week of each weekly paycheck</u>**. In the event there has been no work performed during a given week, the certified payroll record shall be annotated with the words "No Work" for that week.

8. **To determine the required hours for apprentices on this project we will need the contractor to Identify all sub-contractors who will perform work in involving less than $30,000 or who will be on the project less than 20 calendar days or both.**

9. **Either the Public Works Payroll Reporting Form (Form A-1-131) or the Zone 7 Water Agency reporting form must be used.**

Attachment 2 **ZONE 7 BOOSTER STATION RE-ROOF**

PRIME CONTRACTOR: **ACME ROOFING CO., INC**

Original Issue date: 00-00-0000 Latest Issue: 00-00-0000

REPORTING CONTRACTOR :**COMMERCIAL AND INDUSTRIAL ROOFING CO., INC**								**Scotts Valley Water**		
CONTRACTOR PROVIDED INFORMATION								**District comments**		
Employee Name & Social Security Number	**Work Classification**	**Week Ending**	**Rate Paid**	**Fringes Paid**	**Gross Per Hour**	**Hours Worked**	**Gross Amount Paid**	**Prevailing Wage Rate**	**Amount they should have been paid**	**Difference**
					$0.00		$0.00		$0.00	$0.00
					$0.00		$0.00		$0.00	$0.00
					$0.00		$0.00		$0.00	$0.00
					$0.00		$0.00		$0.00	$0.00
					$0.00		$0.00		$0.00	$0.00
					$0.00		$0.00		$0.00	$0.00
					$0.00		$0.00		$0.00	$0.00
					$0.00		$0.00		$0.00	$0.00
					$0.00		$0.00		$0.00	$0.00
					$0.00		$0.00		$0.00	$0.00
					$0.00		$0.00		$0.00	$0.00
					$0.00		$0.00		$0.00	$0.00
					$0.00		$0.00		$0.00	$0.00
					$0.00		$0.00		$0.00	$0.00
								Total Contractor Difference:		**$0.00**

Total Project Difference $0.00

ZONE 7 WATER AGENCY

Via Certified Mail

March 1, 2005

Mr. Doe
ACME Construction Co.
115 Market Place, Suite A
Los Angeles, CA 92029-1353

Sample Certified Payroll Correction Letter

Dear Mr. Doe:

The Zone 7 Water Agency's Labor Compliance Officer has formally requested copies of Certified Payroll Records and Monthly Utilization Reports for Bid Project Portable Contract 82 - Phase 2. We have reviewed your submittal and require additional information.

This new request is made pursuant to, and authorized by, California State Labor Code Sections 1774, 1775, 1776, 1777.5, 1777.7, 1810, 1813 and 1815. Additionally, the contract general conditions require weekly certified payroll record submittals to the Districts Labor Compliance Officer and weekly payment of employee wages.

Labor Code §1776 (b) (2) states: "A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations."

Labor Code §1776 (g) states: "The contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the contractor must comply with this section. In the event that the contractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each calendar day, or portions thereof, for each worker, until strict compliance is effectuated."

Please correct and supply the data requested in the attachments and submit on approved forms to: Zone 7 Water Agency, Labor Compliance Officer, 100 North Canyons Parkway, Livermore, CA 94551

If you have any questions, please contact me at (925) 454-5000.

Respectfully,

ZONE 7 WATER AGENCY

Labor Compliance Officer

Enc. (2)

ZONE 7 WATER AGENCY

Report of Action for Prevailing Wage Violations

Name of Project:____

Contract Number:________________________ First Advertised Date: ____________

County Where Work Is Performed:____

Date Notice of Completion Filed:__________________

Date of Project Acceptance or Current Percent Complete:________________________

Name and Address of Prime Contractor:

____

____

____

Project's Scope of Work:____

____

Contractors in Violation of the Labor Code and their Scope of Work:______________________

____

Statement of the Issues Identified to the Contractor:_____________________________________

____

____

Summary of the Audit Investigation:
- CPR Spread Sheets
- Labor Code Sections Violated:

Summary of Penalty Assessment Justification:_____________________________________

____

____

Identify Labor Code 1775 and 1813 Penalties Requested with Calculated Totals:

____

Is the Violation Due to Mistake, Inadvertence or is it a Willful Failure to Pay the Correct Wages:

____

Previous Record in Meeting Prevailing Wage Obligations:__________________________________

____

Identify and Provide All Correspondence:____

Identify and Provide Any Contractor Response:_____________________________________

Recommend Penalty Assessment:____________________________

ORIGINATING SECTION: ENGINEERING
CONTACT: Kurt Arends

AGENDA DATE: August 18, 2010 ITEM NO.

SUBJECT: 2010 Cost Sharing Agreement for Invasive Mussel Inspection Program at Lake Del Valle

SUMMARY:

- Zebra and Quagga Mussels foul water delivery systems and pipes that divert, treat, or transmit raw surface water, which dramatically increases operation and maintenance costs.
- The Department of Water Resources (DWR) prepared a report estimating the vulnerability of the South Bay Aqueduct to these mussels; this report indicated that an infestation is likely, and that once it occurs, annual operation and maintenance costs to the State Water Project (SWP) would increase by approximately $40 million annually to deal with the infestation.
- The invasive mussel response plan developed and implemented in July 2008 has continued into 2010. The cost of the program is estimated at approximately $317,278 by EBRPD. EBRPD will be responsible for any costs in excess of $317,278
- The program is currently jointly funded by EBRPD, Santa Clara Valley Water District, Alameda County Water District, and Zone 7.
- Each agency could potentially fund up to one quarter of the total cost depending on funding, if any, provided by DWR.
- Zone 7's share of the costs of the program is not expected to exceed $79,320 for 2010.
- A $50,000 grant from the California Department of Fish and Game has been approved to offset the costs of vehicle inspections and reporting. Zone 7 will receive $12,500 of this grant to offset costs associated with this Cost Sharing Agreement.

FUNDING:

This contract is funded from Fund 72 – Renewal and Replacement/System-Wide Improvements.

RECOMMENDED ACTION: Adopt the attached resolution authorizing the General Manager to negotiate a four way funding agreement among EBRPD, ACWD, SCVWD, and Zone 7 to fund the Quagga and Zebra Mussel prevention program for Lake Del Valle through 2010, and execute such agreement for a not-to-exceed cost to Zone 7 of up to $79,320.

ATTACHMENTS:

- Zone 7 Board Resolution

ZONE 7
ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

BOARD OF DIRECTORS

RESOLUTION NO.

INTRODUCED BY
SECONDED BY

WHEREAS, the impact of Quagga and Zebra mussels have been well documented in the Great Lakes and Northeastern United States for the past twenty years and have resulted in hundreds of millions of dollars in annual costs to the power and water industry; and

WHEREAS, these mussels were found in Southern California in January 2007, and in San Justo Reservoir in San Benito County in January 2008; and

WHEREAS, an infestation of the South Bay Aqueduct facilities and/or Zone 7 facilities would result in significant financial and water supply impacts;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of Zone 7 of the Alameda County Flood Control and Water Conservation District does hereby authorize the General Manager to negotiate a four way funding agreement among EBRPD, ACWD, SCVWD, and Zone 7 to continue the Quagga and Zebra Mussel prevention program for Lake Del Valle through 2010, and to execute such agreement for a not-to-exceed cost to Zone 7 of $79,320.

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSENT:

ABSTAIN

I certify that the foregoing is a correct copy of a resolution Adopted by the Board of Directors of Zone 7 of Alameda County Flood Control and Water Conservation District on

August 18, 2008 ______________________

____
President, Board of Directors

ORIGINATING SECTION: ADMINISTRATION
CONTACT: JILL DUERIG

AGENDA DATE: August 18, 2010 ITEM NO.

SUBJECT: REQUEST BY DIRECTOR QUIGLEY FOR AUTHORIZATION TO ATTEND THE ELECTED OFFICIALS CONFERENCE

SUMMARY:

- On September 8-10, 2010, there will be a Utility Elected Officials Conference at the Marriott in Napa Valley.
- The Second Annual Conference will feature speakers and workshops designed for creative and innovative ideas to enhance an organization's performance. Some of the topics include Strategies for Change – Improving your organization's performance; economic turmoil – mitigation techniques; lack of principled and stable leadership and the related consequences; compensation and evaluation strategies for your Chief Executive; public relations – even more critical; and, on Friday Morning, "Making the Future Happen Now – Starting With Yourself" by Mr. Lou Tice, Chairman of The Pacific Institute in Seattle, Washington.
- This conference is being co-hosted by Cucamonga Valley Water District, Western Municipal District and the Mathis Group.
- Dr. Mathis invited Director Quigley to sit on one of the presentation panels.
- Director Quigley has expressed an interest in attending this conference.

FINANCIAL:

Registration costs for the annual conference is $275. There will also be miscellaneous expenses associated with attendance, i.e., mileage, parking, accommodations and meals. Total miscellaneous expenditures are estimated at an additional $750. Funds are available from Fund 52-Water Enterprise.

RECOMMEND ACTION:

Approve Director Quigley's request by adopting attached resolution.

ZONE 7
ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
BOARD OF DIRECTORS

RESOLUTION NO

INTRODUCED BY
SECONDED BY

WHEREAS, Director Dick Quigley has expressed an interest in attending the Utility Elected Officials' 2010 Conference at the Marriott in Napa Valley from September 8th through 10th;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of Zone 7 of Alameda County Flood Control & Water Conservation District does hereby authorize Director Dick Quigley's attendance at said conference;

BE IT FURTHER RESOLVED that Director Quigley be reimbursed for actual and necessary expenses associated with attendance at this event.

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSENT:

ABSTAIN:

I certify that the foregoing is a correct copy of a Resolution Adopted by the Board of Directors of Zone 7 of Alameda County Flood Control and Water Conservation District on

August 18, 2010

By:_______________________________________
President, Board of Directors

ORIGINATING SECTION: HUMAN RESOURCES
CONTACT PERSON: TOM HUGHES

AGENDA DATE: August 18, 2010 ITEM NO.

SUBJECT: New Employee Introduction

SUMMARY:

We are introducing one new employee to the Board of Directors who joined the Zone 7 team since our last Board meeting.

Joel Larson, Instrument Technician I

Joel Larson joined Zone 7 on August 9th as an Instrument Technician I in the Maintenance Section at Del Valle Water Treatment Plant, reporting to Barry Ivy and Gerald DeWitt. He has been working for Zone 7 through the Alameda County Temporary Assignment Pool (TAP) program since August of 2009. Prior to starting at Zone 7, Joel worked for several years as a Systems Repairman for USS-POSCO Industries in Pittsburg, California where he gained experience troubleshooting and repairing various kinds of electrical and instrumentation equipment. He also attended the Instrumentation Program at Perry Technical Institute in Yakima, Washington.

Please join us in welcoming Joel to the Zone 7 team!

RECOMMENDED ACTION:

Information only.

ORIGINATING SECTION: HUMAN RESOURCES
CONTACT PERSON: TOM HUGHES

AGENDA DATE: August 18, 2010 ITEM NO:

SUBJECT: Employee of the Month Recognition

SUMMARY:

The Employee Recognition Program Nomination Committee met in July and selected the Employee of the Month for June 2010 according to the established Program Guidelines. The individual chosen out of the submitted nominations is recommended to Management for approval and subsequent announcement to all Agency employees.

Dan Moy, Safety Technician I, has been chosen from among those nominated as the June 2010 Employee of the Month. Dan works in the Human Resources and Safety Section at the North Canyons Facility. According to the recommendation received by the committee, Dan has done an outstanding job reorganizing Zone 7's safety training programs. Dan is persistent, takes initiative, and is professional in the pursuit of his work. Dan is also recognized as being willing to assist other personnel in solving difficult problems that affect the Agency, which is most appreciated.

RECOMMENDED ACTION:

It is recommended that the Zone 7 Board of Directors recognize and congratulate Dan Moy as June 2010 Employee of the Month.

ORIGINATING SECTION: ADMINISTRATION
CONTACT: CHRIS MOORE

AGENDA DATE: August 18, 2010 ITEM NO.

SUBJECT: PRESENTATION ON EAST BAY REGIONAL COMMUNICATIONS

SUMMARY:

The East Bay Regional Communications System Authority (EBRCSA) was officially created on September 11, 2007 with the formation of a Joint Powers Authority (JPA). Under California State Statute, a JPA is viewed as an independent governmental agency with powers that accrue to one of the member agencies. Currently there are 35 member agencies consisting of both Alameda and Contra Costa Counties, along with 29 cities and four special districts within the two counties. The Board of Directors is made up of 23 representatives consisting of Elected Officials, Police Chiefs, Fire Chiefs, and City Managers who are responsible for the overall development, operations and funding of the system. Zone 7 is not a member of the JPA.

Representatives from both counties have been working together for over three years using Homeland Security grant funds from the Bay Area Super Urban Area Security Initiative (SUASI), Urban Area Security Initiative (UASI), and State Homeland Security (SHSGP) grant programs and COPS grant funds to fund infrastructure build out while the JPA formation process moved forward. The project is estimated to cost $67 million to build the infrastructure. To date, the EBRCSA has secured close to $33 million in Federal Homeland Security grants to build out the infrastructure.

William J. McCammon, EBRCSA's Executive Director and retired Alameda County Fire Chief, will make a presentation on the Authority's programs and efforts.

FINANCIAL:

None.

RECOMMEND ACTION:

Information, only.

ORIGINATING SECTION: ENGINEERING
CONTACT: AMPARO FLORES AND KURT ARENDS

AGENDA DATE: August 18, 2010 ITEM NO.

SUBJECT: Authorization to Negotiate and Execute the Agreement for Supplemental Funding with the Department of Water Resources (DWR) for the Delta Habitat Conservation and Conveyance Program (DHCCP)

SUMMARY:

- The purpose of the Delta Habitat Conservation and Conveyance Program (DHCCP) is to develop alternatives for reliably conveying State Water Project (SWP) and Central Valley Project (CVP) water across or around the Delta in an environmentally sound manner. The information produced by the DHCCP and the Environmental Impact Report/Statement (EIR/S) will be incorporated into the Bay Delta Conservation Plan (BDCP), a Habitat Conservation Plan/Natural Community Conservation Plan that provides a more flexible basis for endangered species protection.
- The Department of Water Resources (DWR) is the lead agency for implementing the DHCCP but funding of the effort is provided by SWP contractors.
- The original estimated cost of the DHCCP was $140 million, $70 million of which was paid by SWP contractors who agreed to participate in the DHCCP and the rest paid by participating CVP contractors. As approved by the Board in December 2008, Zone 7 agreed to be a participating SWP contractor and committed approximately $1.5 million towards DHCCP work to be completed in 2009 and 2010.
- DWR has determined that an additional $100 million is needed to complete the work, including $14 million for the cost of the BDCP. The increased BDCP costs are already authorized to be included in the 2011 SWP Statement of Charges. The remaining $86 million needs to be funded by participating SWP and CVP contractors.
- Zone 7's share of the supplemental DHCCP funding would range between $876,000 and $923,000 based on the anticipated level of SWP contractor participation.
- The Agreement for Supplemental Funding will allow DWR to consult with Zone 7 on decisions related to budget, scope, schedule, and activities of the DHCCP and includes a clause giving Zone 7 the opportunity to review the Administrative Draft EIR/EIS and to make a decision to participate, or not, in the recommended conveyance and mitigation projects at that stage.

FUNDING:
This project is funded 75% from Fund 52 – Water Enterprise and 25% from Fund 73 – Expansion.

RECOMMENDED ACTION:
Adopt the attached resolution to authorize the General Manager to negotiate and execute the DHCCP Agreement for Supplemental Funding.

ATTACHMENTS: 1) Zone 7 Board Resolution, 2) Memo providing additional background and discussion on agenda item, and 3) DRAFT Agreement for Supplemental Funding Between the Department of Water Resources and Zone 7

ZONE 7
ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
BOARD OF DIRECTORS
RESOLUTION NO.

INTRODUCED BY
SECONDED BY

Authorization to Negotiate and Execute Agreement for Supplemental Funding with the Department of Water Resources (DWR) for the Delta Habitat Conservation and Conveyance Program (DHCCP)

WHEREAS, on December 17, 2008, the Board of Directors of Zone 7 of the Alameda County Flood Control and Water Conservation District adopted Resolution 09-3265 approving a Funding Agreement with the State Department of Water Resources (DWR) to participate in the funding of a $140 million program for environmental analysis, planning, and design of Delta conservation measures (including Delta conveyance options), more commonly known as the Delta Habitat Conservation and Conveyance Program ("DHCCP"); and

WHEREAS, DWR has determined that additional funding of $86 million is required to complete the tasks in the DHCCP; and

WHEREAS, DWR is preparing an Agreement for Supplemental Funding for Zone 7 to continue to participate in the DHCCP for Zone 7's estimated cost share of up to $923,000; and

WHEREAS, under said Agreement DWR will consult with Zone 7 on decisions related to budget, scope, schedule, and activities of DHCCP to assure timely completion in a cost-effective manner;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of Zone 7 of the Alameda County Flood Control and Water Conservation District does hereby authorize the General Manager to negotiate and execute the Agreement for Supplemental Funding between the Department of Water Resources and Zone 7 for completing the DHCCP up to a Zone 7 cost share level of $923,000.

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSENT:

ABSTAIN:

I certify that the foregoing is a correct copy of a resolution Adopted by the Board of Directors of Zone 7 of Alameda County Flood Control and Water Conservation District on

August 18, 2010

By____
President, Board of Directors

Interoffice Memo

Date:	August18, 2010
To:	Jill Duerig, General Manager
From:	Amparo Flores, Associate Engineer, Water Supply Engineering
Subject:	Authorization to Execute Agreement for Supplemental Funding with the Department of Water Resources (DWR) for the Delta Habitat Conservation and Conveyance Program (DHCCP)

The following provides additional background information and discussion on the above-referenced agenda item:

BACKGROUND:

The State Water Project (SWP) currently provides water to Zone 7 and other south-of-Delta contractors by conveying water through the Sacramento-San Joaquin Delta (Delta) via the Banks Pumping Plant in the south Delta. Fresh Sierra snow-melt is stored in Lake Oroville then released to flow from the north to the south through the Delta to get to the pumps. This through-Delta conveyance is creating several concerns. First, the water quality degrades as the fresh water flows through the Delta, gaining salt and organics along the way. The flow of water to the pumps also creates reverse flow in the Delta channels pulling with it large numbers of fish which can be cannibalized by predator fish species or entrained in the pumps.

The Court's Biological Opinions (BOs) on the impacts of SWP operations in the Delta on Delta smelt and salmon have significantly impacted the amount of water the SWP can move through the Delta and deliver to contractors. Additional lawsuits, regulations, climate change, and other factors are likely to increase restrictions on pump operations in the Delta and reduce the reliability of SWP supplies. SWP contractors, the Department of Water Resources (DWR), Central Valley Project (CVP) users, resource agencies, and environmental organizations are developing a Bay-Delta Conservation Plan (BDCP), a Habitat Conservation Plan/Natural Community Conservation Plan that is intended to provide a more flexible basis for satisfying the federal and state Endangered Species Acts. The BDCP will replace the existing BOs and will likely include conservation measures such as habitat restoration, through-Delta improvements, and new around-Delta conveyance facilities.

The purpose of the Delta Habitat Conservation and Conveyance Program (DHCCP) is to develop alternatives for conveying SWP and CVP water across the Delta in an environmentally sound manner. The DHCCP will develop an Environmental Impact Report (EIR)/Environmental Impact Study (EIS), along with the preliminary design needed to support a decision and ultimately to construct alternative Delta Conveyance facilities. The EIR/EIS is expected to be completed by the end of 2010. The information and documents produced by the DHCCP will support the BDCP.

The DWR oversees the DHCCP effort. In 2008, the total cost of the DHCCP effort was estimated at $140 million to be shared equally between SWP and CVP contractors. Due to the magnitude of the effort, funding is a key element of its success. Because regular SWP billing charges would not provide the cash flow needed to fund the effort, a separate funding mechanism was needed.

In order to fund the SWP contractors' $70 million share of the original estimate, participating SWP contractors, including Zone 7, signed a DHCCP Funding Agreement in April 2009. Zone 7's participation in the DHCCP funding was authorized by Zone 7 Board Resolution 09-3265 on December 17, 2008. For Zone 7, this resulted in a total cost of approximately $1.5 million for calendar years 2009 and 2010. SWP contractors representing over 96% of the SWP Table A contract amounts are participants in the DHCCP. Zone 7's funding participation in the DHCCP allows us to have close involvement and influence over the direction and decisions made in the DHCCP.

DISCUSSION:

Recently, DWR identified the need to increase funding for the DHCCP in order to complete the required work. DWR has determined that an additional $100 million is needed to complete the work, including $14 million for the additional cost of the BDCP. The increased BDCP costs are already authorized to be included in the 2011 SWP Statement of Charges. The remaining $86 million needs to be funded by participating SWP and CVP contractors. Zone 7's share of the supplemental funding is estimated to range between $876,000 and $923,000, based on the likely range of SWP contractor participation of 90 to 96%; the 2011 Statement of Charges will reflect this additional cost. The "Agreement for Supplemental Funding with the Department of Water Resources (DWR) for the Delta Habitat Conservation and Conveyance Program (DHCCP)", which commits Zone 7 to the payment of the additional amount, is currently being prepared by DWR.

In addition, the Agreement for Supplemental Funding includes some important clauses designed to ensure that:

- Zone 7 (and the other participating SWP contractors) continue to have some influence over the direction and decisions made in the DHCCP,
- Zone 7 (and the other participating SWP contractors) have the opportunity to review the Administrative Draft EIR/EIS and to make a decision to participate, or not, in the recommended conveyance and mitigation projects at that stage (that is, before the Draft EIR/EIS is released to the public), and
- SWP contractors who choose not to participate—and therefore do not share the costs—do not benefit from the projects implemented under the DHCCP.

If the DHCCP leads to construction, the program funding included in the capitalization of the DHCCP facilities and the program costs would be repaid from long-term bond proceeds. The debt service for the bond proceeds would be spread over a longer term among the ultimate beneficiaries. If, however, the DHCCP does not lead to construction of facilities, the program funding would not be repaid.

DRAFT 5/3/2010
MWD EDITS 5/19/2010
COMBINED EDITS 5/28/10
KCWA EDITS 6/3/10
Cathy Crothers EDITS 07/15/10
KCWA EDITS 7/19/10
MWD EDITS 7/20/10
DRAFT Clean 8-5-10

State of California
California Natural Resources Agency
DEPARTMENT OF WATER RESOURCES

____

AGREEMENT FOR
SUPPLEMENTAL FUNDING BETWEEN
THE DEPARTMENT OF WATER RESOURCES
AND

____

FOR THE COSTS OF ENVIRONMENTAL ANALYSIS, PLANNING AND DESIGN OF DELTA CONSERVATION MEASURES, INCLUDING DELTA CONVEYANCE OPTIONS

____

THIS AGREEMENT is made this _____ day of ______, 2010, pursuant to the provisions of all applicable laws of the State of California, between the State of California, acting by and through its Department of Water Resources ("DWR"), and ________________________ ("Contractor"). DWR and the Contractor may also be referred to individually as "Party" or collectively as "Parties."

Recitals

A. **WHEREAS**, DWR and Contractor have entered into and subsequently amended a long-term water supply contract, herein referred to as the "Water Supply Contract," providing that DWR will supply certain quantities of water to Contractor, and providing that Contractor shall make certain payments to DWR, and setting forth the terms and conditions of such supply and such payment; and

B. **WHEREAS**, DWR and several State Water Project (SWP) Contractors are parties to a Memorandum of Agreement ("MOA"), providing that they will collaborate to develop the environmental documents, engineering designs, and other necessary information for possible conservation measures, particularly Delta water conveyance options; and

C. **WHEREAS**, subject to any adjustments provided for in the MOA, DWR will fund fifty percent (50%) of the total cost for the DHCCP Planning Phase; and

D. **WHEREAS**, DWR and a group of SWP Contractors, collectively known as the "Participating SWP Contractors," (listed on Attachment 1 hereto) previously entered into funding agreements to cover DWR's fifty percent share of the costs of environmental analysis, planning and design of Delta conservation measures, including Delta Conveyance options; and

E. **WHEREAS**, subject to any adjustments provided for in the MOA, certain federal Central Valley Project contractors (listed on Attachment 2 hereto) agreed to fund the remaining 50 percent of the total DHCCP Planning Phase costs and Reclamation, as allowed under federal appropriations law, via in-kind services and a financial assistance agreement, agreed to provide some portion of this 50 percent; and

F. **WHEREAS**, DWR has informed the Participating SWP Contractors that additional funding is required to complete the tasks listed in Recital B hereto and that fifty percent of that additional funding will need to be provided by DWR, with the other fifty percent being provided by the federal contractors and the United States Bureau of Reclamation; and

G. **WHEREAS**, Contractor and the other Contractors listed on Attachment 3 hereto (the "Supplemental Funding Contractors") have stated that they are willing to enter into this Agreement to pay a share of the DHCCP Planning Phase supplemental costs, and, in consideration therefore, DWR is willing to consult with Contractor, the Participating SWP Contractors, and the Supplemental Funding Contractors on decisions related to the budget, scope, schedule, and activities of the Program's Planning Phase to ensure its timely completion in a cost-efficient manner, and

H. **WHEREAS,** it is DWR's intent that all funds needed to meet DWR's Share of the Program's Costs, except for costs related to the Bay-Delta Conservation Plan (BDCP) performed by the consultant SAIC, in excess of those collected through the Agreements listed on Attachment 1 hereto will be collected through this Agreement and all other DHCCP Supplemental Funding Agreements.

AGREEMENT

NOW THEREFORE, it is mutually agreed by DWR and Contractor as follows:

1. <u>Definitions</u>

When used in this Agreement, the definitions in the Water Supply Contract shall apply. In addition, the following definitions shall apply:

a. “**DHCCP**” or **“Program**” means the proposed development of possible BDCP conservation measures, including Delta conveyance options as described in the MOA.

b. “**DHCCP Planning Phase**” or **“Program’s Planning Phase**” means the proposed development of environmental documents, planning, engineering designs, and other necessary information for possible BDCP conservation measures, including Delta conveyance options as described in the MOA. It does not include construction activity for any BDCP conservation measure, including any Delta Conveyance option.

c. “**MOA**” means the “Memorandum of Agreement Regarding Collaboration on the Planning, Preliminary Design and Environmental Compliance for the Delta Habitat Conservation and Conveyance Program in Connection with the Development of the Bay Delta Conservation Plan,” a copy of which was attached to the DHCCP SWP Funding Agreement.

d. "**SWP**" means the State Water Project operated by DWR. The SWP generally includes the State Water Facilities, as defined in California Water Code section 12934(d), and certain facilities found in the Central Valley Project Act at section 11100 et. seq.

e. “**Water Supply Contract**” means the long-term water supply contract between Contractor and DWR, and similar contracts entered into by DWR and other SWP Contractors.

f. “**Water Supply Contractor**” means one of the contractors that signed a Water Supply Contract which is still in effect.

g. “**DHCCP Planning Phase Supplemental Costs”** means the DHCCP Program costs in excess of the original budget of $140 million, as described in the MOA. At this time, the DHCCP Planning Phase Supplemental Costs are expected to be approximately $100 million.

h. “**DHCCP SWP Funding Agreement**” means the original DHCCP Funding Agreements between DWR and the Participating SWP Contractors listed on Attachment A hereto.

i. **DHCCP Supplemental Funding Agreement** means this Agreement and agreements substantially the same as this Agreement signed by the Supplemental Funding Contractors and DWR.

j. “**Participating SWP Contractor**” means an SWP Water Supply Contractor that has executed an original DHCCP SWP Funding Agreement.

k. “**Supplemental Funding Contractor”** means a Water Supply Contractor that has executed this Agreement or an agreement substantially the same as this Agreement. All Supplemental Funding Contractors are also Participating SWP Contractors.

l. “**Calendar Year**” means the period January 1 through December 31.

m. “**Supplemental Funding Table A Amount**” means, for Contractor, the maximum Table A amount as listed in its Water Supply Contract. The Supplemental Funding Table A Amount will be used, once all funds under the original DHCCP SWP Funding Agreements have been committed, to calculate the Contractor’s share of the DHCCP Planning Phase Supplemental Costs as a percentage of the sum of all the Supplemental Funding Table A Amounts of the Supplemental Funding Contractors.

n. “**Department’s Share of the Supplemental Program Costs**” means, except as specified in Section 2(c) of this Agreement, fifty percent (50%) of the total DHCCP Planning Phase Supplemental Costs.

o. “**DHCCP Supplemental Funding Pay-Go Charge**” means the charge to the Contractor pursuant to this Agreement included in its Annual Statement of Charges to recover the Contractor’s allocation of Department’s Share of the Program’s Supplemental Costs beginning in 2011 and continuing until the Program’s Planning Phase is completed or June 30, 2012, whichever is earlier.

p. “**Reclamation**” means the United States Department of the Interior, Bureau of Reclamation.

q. “**Central Valley Project Contractors**” means the Central Valley Project contractors that are involved in funding the DHCCP Planning Phase, which are a subset of the total Central Valley Project contractors group.

2. <u>Purposes of the Agreement</u>

a. The purposes of this Agreement are (i) to establish the terms and conditions under which Contractor will provide supplemental funding to DWR that, along with funding and supplemental funding from the Participating SWP Contractors and other Supplemental Funding Contractors, will provide all funds needed to pay the actual costs of the Department’s Share of the Supplemental Program’s costs, minus the costs related to the BDCP, and (ii) to state the intent of the Parties to establish, through future agreements, the terms and conditions for funding, financing and implementing the DHCCP and for allocating DHCCP costs and benefits among Water Supply Contactors..

b. Funding pursuant to this Agreement addresses only the DHCCP Planning Phase. After completing the DHCCP Planning Phase, if the Parties determine to proceed with actions beyond the DHCCP Planning Phase, including the implementation and construction phases of the DHCCP, the Parties may enter into additional funding agreements.

c. The Parties recognize that the total DHCCP Planning Phase Supplemental Costs required to complete the DHCCP Planning Process includes an estimated amount of $14 Million for BDCP related costs, including work to be performed by BDCP consultants, such as Science Applications International Corporation , public outreach consultants, and project oversight consultants. The Parties, however, also recognize and agree that the State share of the funding for work performed under such contracts will not be collected or allocated among the SWP contractors through this Agreement, but will be collected and allocated as a separate charge pursuant to the Water Supply Contracts and collected, as needed, through the State Water Project 2011 and 2012 Statement of Charges. All references to the Department's Share of Supplemental Program Costs in this Agreement shall not include costs related to the BDCP and incurred under the contracts referred to in this paragraph.

3. Term of Agreement

This Agreement will take effect upon execution of the Parties and except as provided in Section 9 hereof, will remain in effect until the earlier of (a) the date revenue bonds are issued pursuant to Section 8(a) of this Agreement, (b) completion of the DHCCP Planning Phase, or (c) June 30, 2012, whichever comes first, unless extended by written amendment. No charges will be made pursuant to the Agreement until the $140,000,000 made available through the Agreements listed on Attachments 1 and 2 and from Reclamation has been fully committed.

4. DHCCP Planning Phase Costs

Section 4 of the DHCCP SWP Funding Agreements shall be applicable to this Agreement. A withdrawal by any Participating SWP Contractor that is also a Supplemental Funding Contractor pursuant to Section 9(a) of the DHCCP SWP Funding Agreements shall also constitute a withdrawal from this Agreement.

5. Supplemental Funding Pay-Go Charge

a. Before DWR may implement this Agreement and obtain supplemental funding for the Department's Share of the DHCCP Supplemental Program Costs, the following conditions must be satisfied: (i) this Agreement is fully executed by the Parties; (ii) all other Supplemental Funding Agreements are fully executed by all Parties; (iii) the MOA and the original

DHCCP Funding Agreements are in full force and effect; and (iv) amended agreements with the federal water users have been fully executed by all parties in which they have agreed to pay the federal share of the DHCCP Supplemental Program Costs, and (v) the $140,000,000 made available through the original DHCCP SWP Funding Agreements, through the federal water users agreement, and from Reclamation has been fully committed.

b. DWR shall recover the Department's Share of the Supplemental Program Costs through the Supplemental Funding Pay-Go Charge. The Supplemental Funding Pay-Go Charge shall recover these costs incurred or to be incurred by DWR for the DHCCP Planning Phase beginning after the $140,000,000 has been committed and, unless terminated pursuant to Section 9 of the DHCCP SWP Funding Agreement, continuing until the Program's Planning Phase is completed or June 30, 2012, whichever is earlier.

c. To facilitate billing on a calendar year basis, the Supplemental Funding Pay-Go Charge will be computed and included in Contractor's and other Supplemental Funding Contractor's Annual Statements of Charges for 2011 and thereafter as long as this Agreement is in effect under the Transportation Minimum Component and shall be collected in equal monthly payments as described in Contractor's Water Supply Contract. The Supplemental Funding Pay-Go Charges shall initially be based on estimates of costs determined pursuant to Section 7 (Program Cost, Budgeting and Allocation). These charges shall be adjusted after the end of each Calendar Year to accurately reflect DWR's Share of Supplemental Program Costs during that Calendar Year. Such adjustments shall be reflected in the charges in the following calendar year. Notwithstanding the termination of this Agreement, the Parties recognize that any final adjustment will be made subsequent to this Agreement.

d. The Supplemental Funding Pay-Go Charge will be allocated to each Supplemental Funding Contractor in proportion to the ratio of its Supplemental Funding Table A Amount to the sum of all Supplemental Funding Contractors' Table A Amounts. Attached hereto as Attachments 4A and 4B are tables showing each Supplemental Funding Contractor's estimated share of the Supplemental DHCCP Planning Phase Charges for the term of this Agreement. As these charges are adjusted, or should there be a change in the ratio due to a withdrawal of a Contractor from the Program's Planning Phase, revised versions of Attachments 4A and 4B shall be attached hereto, without constituting an amendment of this Agreement.

7. Program Cost, Budget and Allocation

a. As described in the MOA, DWR will work collaboratively with the DHCCP Executive Committee to determine the budget, schedules, and activities of the DHCCP Planning Phase.

b. The total cost for the DHCCP Planning Phase is currently estimated at $240 million. This estimate may change in the future as more information is developed about the costs of planning and designing the potential BDCP conservation measures and water conveyance facilities.

c. DWR is responsible for formulating the DHCCP Planning Phase Budget with specific DHCCP Planning Phase elements and will work collaboratively through the MOA to develop the budget. A copy of the current budget through completion of the DHCCP Planning Phase is attached hereto as Attachment 6. DWR, in collaboration with the Executive Committee, will consider and approve revised budgets for work as necessary. Revised budget(s) shall be attached hereto as subsequent attachments, without constituting an amendment of this Agreement, provided they do not exceed the funding limit set forth in Section 7(b).

d. Section III.H of the MOA states that Contractor may withdraw from the MOA and shall not be responsible for costs related to any task orders approved by DWR within 60 days prior to the withdrawal. This provision regarding withdrawal shall apply to any costs related to task orders approved under this Supplemental Funding Agreement. DWR shall notify Contractor 30 days in advance of when DWR will begin expending funds made available under the Supplemental Funding Agreement. .

e. Notwithstanding anything set forth in this Agreement or decided through the MOA process, the maximum amount of Department's Share of Program Costs that shall be funded through this Agreement shall be Forty-Three Million Dollars ($43,000,000), and the maximum amount of the Department's Share of Program Costs that shall be funded through this Agreement and all other DHCCP SWP Funding Agreements shall not exceed One Hundred Thirteen Million Dollars ($113,000,000.).

8. Reimbursement for Supplemental Program Costs

a. If the DHCCP is approved to proceed with construction, DWR intends to issue Revenue Bonds to pay for such construction. DWR shall include in the first issue of Revenue Bonds, pursuant to and consistent with Treasury Regulation 1.150-2, an amount sufficient to reimburse the Contractor and all other Participating SWP Contractors for all planning costs paid through the DHCCP Supplemental Funding Pay-Go Charges. DWR has adopted the necessary documents to conform to the IRS requirements to allow such costs to be included in a future revenue bond issue. [NEED TO CONFIRM].

b. If the DHCCP is not approved to proceed with construction, no reimbursements of DHCCP Supplemental Program Costs will occur. Contractor recognizes that, should the DHCCP not be approved to proceed with construction, Contractor may pay costs for the DHCCP Planning Phase that are greater than the amount it would have paid if other means of funding the Program, including under the Water Supply Contract, had been utilized. Contractor waives any claims it may have with respect to the greater amount that may be paid by it under this Agreement.

c. The provisions of this Section 8 shall survive termination of this Agreement and/or the MOA.

9. <u>Withdrawal and Termination</u>

The parties recognize that all Supplemental Funding Contractors are also Participating SWP Contractors and are parties to DHCCP SWP Funding Agreements. The provisions of Section 9 of the DHCCP SWP Funding Agreement shall govern and be applicable to the Supplemental Funding Contractors' right to withdraw from and terminate this Agreement. Such withdrawal and termination shall only be effective if the Contractor withdraws from and terminates both this Agreement and the DHCCP SWP Funding Agreement. A notice to withdraw from a DHCCP SWP Funding Agreement shall conclusively be presumed to constitute a notice to withdraw from this Agreement.

10. <u>Recovery Of Contributed Funds If Contractor Withdraws And Future Processes</u>

a. In the event a Contractor provides a notice of withdrawal that terminates this Agreement, the Parties agree that such withdrawal shall not affect Contractor's rights or responsibilities under Section 8 of this Agreement or Section 8 of the DHCCP SWP Funding Agreement.

b. Subsequent to execution of this Agreement, the Parties agree to promptly commence discussions, in conjunction with all other Water Supply Contractors, regarding the terms and conditions for funding, financing, and implementing the DHCCP. The Parties intend that such discussions shall result in an agreement of principles for funding, financing and implementing the DHCCP ("Principles Agreement"). Among other things, the Principles Agreement shall establish how the costs and benefits of the DHCCP are to be determined and allocated, and shall provide that: (1) if the DHCCP is approved and implemented, then Parties to the DHCCP SWP Funding Agreements or the DHCCP Supplemental Funding Agreements (Funding Agreements) who do not participate in implementation of the DHCCP will be reimbursed the funds they contributed under these Funding Agreements and (2) if any Water Supply Contractor does not participate in implementation of the DHCCP, it shall not be entitled to any benefits provided by the DHCCP. All Water Supply Contractors, whether or not they were original parties to the DHCCP SWP Funding Agreements or the DHCCP Supplemental Funding Agreements and whether or not they have withdrawn from either of both of those agreements, shall be entitled to fully participate in the discussions and development of the Principles Agreement.

11. Invoices, Notices Or Other Communications

a. All invoices, notices, or other communications required under this Agreement will be in writing, and will be deemed to have been duly given upon the date of service, if: (i.) served personally on the Party to whom notice is to be given; (ii.) sent by electronic mail, and the Party to whom notice is to be given confirms receipt; or (iii.) on the third day after mailing, if mailed to the Party to whom invoice, notice or other communication is directed, by first-class mail, postage prepaid, and properly addressed to the designated representative(s) of the Party set forth below.

DWR: Chief, State Water Project Analysis Office
Department of Water Resources
State Water Project Analysis Office
Department of Water Resources
1416 Ninth Street, Room 1620
Post Office Box 942836
Sacramento, California 94236-0001

Contractor:

b. The time for providing any payments, notices, or other communications specified in this Agreement may be extended within the term of this Agreement with the consent of the Parties, confirmed in writing, without requiring an amendment to this Agreement.

12. No Amendment to Water Supply Contract

This Agreement does not amend, abridge, or modify the Water Supply Contract in any way.

13. Amendments

Except for the addition of exhibits as authorized herein, this Agreement may be amended or modified only by a subsequent written agreement approved and executed by the Parties.

14. Agreement Conformity

All Agreements to fund the DHCCP Planning Phase entered into by DWR and Supplemental Funding Contractors shall be substantially uniform.

15. Applicable Law

This Agreement will be construed under and will be deemed to be governed by the laws of the United States and the State of California.

16. Complete Contract

This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this Agreement among the Parties concerning the subject matter, and supersedes all prior negotiations, representations or agreement, either oral or written, that may be related to the subject matter of this Agreement, except as to those other agreements that are expressly referred to in this Agreement.

17. Execution in Counterparts

This Agreement may be executed in counterpart, each of which shall constitute an original, but all of which shall constitute one and the same agreement. Each signing Party shall have received a copy of the signature page signed by every other Party.

IN WITNESS WHEREOF, the Parties hereto, by their authorized representatives, have executed this Agreement on the last date set forth below.

Approved as to Legal Form and Sufficiency	State of California Department of Water Resources
______________________________	______________________________
Acting Chief Counsel	Director

[Contractor Signature Block]

939561.2

ORIGINATING SECTION: GROUNDWATER PROTECTION AND PROJECTS
CONTACT: CHERYL DIZON/TOM ROOZE/MATT KATEN

AGENDA DATE: August 18, 2010 **ITEM NO.**

SUBJECT: Hydrostratigraphic Investigation of Chain of Lakes Project - Monitoring Well Installation, Project Number 208-11

SUMMARY:

- In 2007, Zone 7 staff submitted a Local Groundwater Assistance Program grant proposal to the Department of Water Resources (DWR) for a project to investigate the potential for Lakes C and D, of the future Chain-of-Lakes (COL), to be effective aquifer recharge basins
- In May 2010, the Department of Water Resources (DWR) accepted a revised version of Zone 7's grant proposal.
- The results of this investigation will be used to evaluate the potential for surface water discharged to Lakes C and D to percolate and subsequently recharge the aquifers tapped by the down-gradient municipal supply wells.
- The project is designed to determine if Lakes C and D are capable of better deep aquifer recharge than Lake H which is currently proposed for recharge.
- The grant will provide Zone 7 with $250,000 of the estimated $278,000 for the investigation.
- The proposed project scope includes drilling and logging one 600-foot deep borehole south of Stanley Boulevard, constructing one multi-level piezometer cluster to monitor water levels, and conducting up to three aquifer pumping tests to assess aquifer connectivity.
- Zone 7 advertised the project for construction and on July 28, 2010 bids were received from two bidders.
- A bid protest was submitted by WDC Explorations, the second low bidder, but was denied by Zone 7.
- Staff recommends rejecting all bids.

FUNDING:

The total project cost is estimated at $278,000. The grant program will reimburse up to $250,000. The remainder (approximately $28,000) will be funded from Fund 73 – Expansion (Connection Fees).

RECOMMENDED ACTION:

Consider bids for the construction of the Monitoring Well Installation for Hydrostratigraphic Investigation of Chain of Lakes Project and adopt the attached resolution to: Authorize the project, approve plans, specifications, appendices and addenda, and reject all bids.

ATTACHMENTS:

- Memo providing addition background and discussion
- Figure 3: Project Map Showing Locations of Proposed and Existing Cross Sections
- Zone 7 Board Resolution

Interoffice Memo

Date: August 18, 2010
To: Jill Duerig, General Manager
From: Tom Rooze, Associate Geologist and Cheryl Dizon, Assistant Civil Engineer via Matt Katen, Principal Engineer
Subject: Hydrostratigraphic Investigation of Chain of Lakes Project - Monitoring Well Installation, Project Number 208-11

The following provides additional background and discussion of the above referenced Agenda Item.

BACKGROUND:

Zone 7's Chain of Lakes project, when complete, will consist of a series of abandoned gravel quarry pits, deeded to Zone 7 and converted into a chain of nine lakes (Lakes A through I), for use by Zone 7 for water resource purposes. Zone 7's current plan is to use Lakes H and I, at the west end of the "chain" to percolate imported water, thus augmenting the artificial recharge capacity that Zone 7 already provides for the Main Groundwater Basin using the arroyos.

In 2004, Norfleet Consultants completed a stratigraphic analysis of the subsurface area between Lake I and the Mocho Wellfield and presented the results to the Zone 7 Board. In their report, they concluded that there may be natural clay barriers below Lakes H and I that may impede the water percolated from these two lakes from reaching the deeper aquifers from which Zone 7's wells pump.

Lakes C and D may offer a unique opportunity for Zone 7 to increase its artificial recharge capacity:

1) These gravel pits are being dug to over 230 feet deep by the local gravel mining efforts, whereas Lakes H and I are only 130 feet deep;

2) The Norfleet study and other recently acquired data suggest that the clay barriers observed in the Lake I area may not be continuous beneath the future Lakes C and D; and

3) Since the lakes have not yet been completed, there may be an opportunity for Zone 7 to request certain reclamation plan changes that could enhance our use and maintenance of these lakes as recharge basins.

DISCUSSION:

In 2007, Zone 7 submitted a grant proposal to the Department of Water Resources' (DWR) Local Groundwater Assistance Program. The proposal was for a project to investigate the potential for Lakes C and D, of the future Chain-of-Lakes (COL), to be effective aquifer recharge basins. In November 2008, DWR approved the project for grant funding, however, due to State Budget delays, funds were not made available until September 2009. However, at that time, Zone 7 had its own budget concerns, and therefore, Zone 7 revised the project's scope of work to lower Zone 7's cost share from $100,000 to $28,000. Zone 7 resubmitted the proposal in January 2010, and it was finally approved and signed in May 2010.

The results of this investigation will be used to evaluate the potential for surface water discharged to Lakes C and D to percolate and subsequently recharge the aquifers tapped by the down-gradient municipal supply wells. The proposed project, which will build on the Norfleet study, will focus on determining the stratigraphic and hydrologic conditions that exist west of Lakes C and D. It is anticipated that the new data will allow staff to extend Norfleet's cross sections to Lakes C and D so that staff can provide a similar assessment of the deep percolation potential for these lakes.

The project scope includes:

- drilling one 600-foot deep borehole south of Stanley Boulevard,
- performing geophysical surveys in the borehole,
- constructing one multi-level piezometer cluster (i.e., three nested wells) to monitor water levels, and
- conducting up to three aquifer pumping tests to assess aquifer connectivity.

The grant, which will be provided by the State of California Proposition 50 funds administered by DWR, will provide Zone 7 with $250,000 of the estimated $278,000 for the investigation.

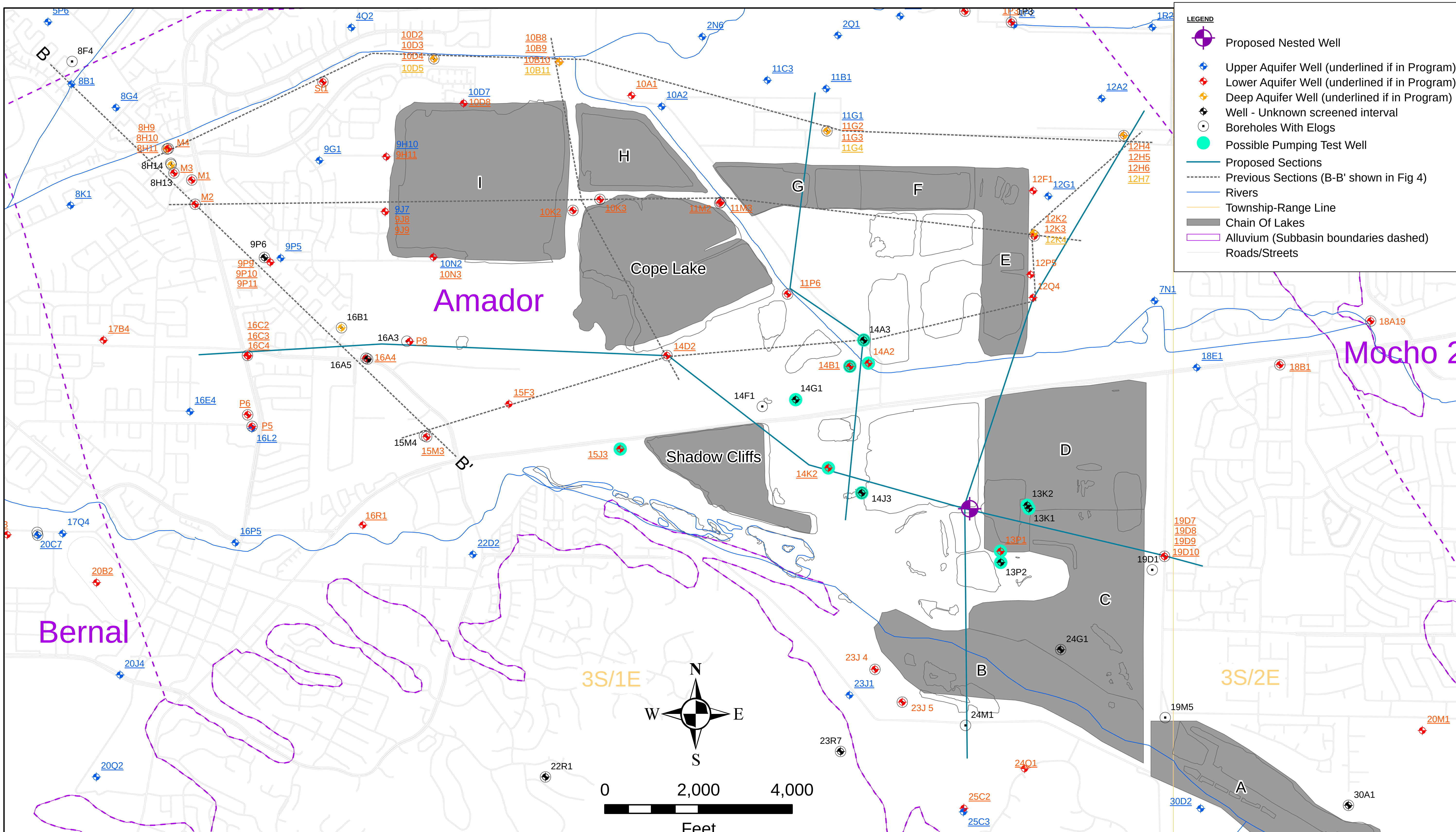
CONSTRUCTION BIDDING

In July 2010, Zone 7 advertised the project for the "Monitoring Well Installation for Hydrostratigraphic Investigation of Chain of Lakes Project" twice each in the *Valley Times* newspaper, the *Tri-Valley Herald* newspaper, and the *Onvia* online advertising service. On July 28, 2010 at 5:00 PM, Zone 7 opened bids, the results of which are shown below.

1.	Cascade Drilling, L.P.	$109,302.00
2.	WDC Exploration & Wells	$114,918.00

A bid protest was submitted by WDC Exploration and denied by staff.

Staff recommends rejecting all bids.



ZONE 7 WATER AGENCY
100 North Canyons Parkway
Livermore, CA

DRAWN: TR	SCALE: 1 in = 2,000 ft
REVIEWED: TR	DATE: Apr 20, 2010
FILE: E:\PROJECTS\LGAGrantGWStudy2010\ProjectMap.mxd	

Figure 3
Project Map Showing Locations of Proposed and Existing Cross Sections

ZONE 7
ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
BOARD OF DIRECTORS

RESOLUTION NO

INTRODUCED BY
SECONDED BY

RESOLUTION TO APPROVE PLANS, SPECIFICATIONS, APPENDICES AND ADDENDA AND TO REJECT ALL BIDS FOR THE MONITORING WELL INSTALLATION FOR THE HYDROSTRATIGRAPHIC INVESTIGATION OF CHAIN OF LAKES, PROJECT NUMBER 208-11

WHEREAS, Zone 7 of the Alameda County Flood Control and Water Conservation District has a project for the construction of the Monitoring Well Installation for Hydrostratigraphic Investigation of Chain of Lakes, Project Number 208-11; and

WHEREAS, the Monitoring Well Installation for Hydrostratigraphic Investigation of Chain of Lakes Project was advertised for proposals with bids to be received by the General Manager or her authorized representatives at the Zone 7 Administration Office, 100 North Canyons Parkway, Livermore, California 94551 on July 28, 2010 and said bids would be taken and opened and publicly read at 5:00 pm; and

WHEREAS, Staff recommends rejecting all bids;

NOW THEREFORE BE IT RESOLVED that the Zone 7 Board does hereby approve the Monitoring Well Installation for Hydrostratigraphic Investigation of Chain of Lakes Project and its associated Plans, Specifications, Appendices and Addenda; and

BE IT FURTHER RESOLVED that all bids be rejected and that Staff is authorized to re-bid the Project.

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSENT:

ABSTAIN:

I certify that the foregoing is a correct copy of a resolution Adopted by the Board of Directors of Zone 7 of Alameda County Flood Control and Water Conservation District on

August 18, 2010

By ________________________________
President, Board of Directors

8/ 18 /10 Board Written/narrative Comments By Dick Quigley
<u>Recent activity and involvement worth sharing.</u>

<u>Thursday 7 /29</u> Attended the California Water & Energy Sustainability Summit and Work Shop, at Metropolitan WD LA.

Water Energy Nexus and striving toward renewable energy solutions are being pushed hard and success stories are unfolding.

Partnership & grant funding cost savings opportunities.

Technology improvements i.e.) smart meters, longer lasting, more powerful solar and wind, and hydro options. IOU's are engaged to support and buy, PUC is approving new tariffs to make it easier for water utilities.

I heard comments on our solar contractor that are worrisome. One Bay Area water agency has opted out of a similar deal as ours due to non-performance. Was advised by several energy experts to think about a contingency plan.

<u>Sunday 8/8 & Monday 8/9</u> ACWA Region 5 meeting/tour workshop
quick brain dump of ACWA Region 5 event

<u>Sunday</u> Board & reception: attendance was super (about 70)
Board discussed work plan strategy changes for full board consideration.
Congressman Jerry McNerney, Assemblymember Joan Buchannan, Contra Costa Supervisor Mary Piepo & Congressman John Garamendi's staff rep were engaged!
Joan Buchanan did not want the water bond taken off the Nov Ballot!
Pointed out her constituency in the Delta primary zone.
Mary Piepo offered help through her new leadership role as Delta conservancy chair.
Jerry McNerney suggested the State must lead before the Fed's help.
I sensed an attitude change that I liked.

<u>Monday</u>
Pumping plant tours were educational.
Fish facilities received many questions on ongoing cost of fish protection since 1951 (at Fed facility)
Each had 20-25 FTE's Big time operations environmentally friendly that may get little notice or fan fair.
Just my observation as the audience was water professionals (both board and staff) from around Region 5.

Afternoon session was worth attending! Was glad to see and sit with Tom and Mike! A pleasant surprise!

As a side note: I learned that BBID was a part of a recent merger and consolidation (1994) with Planeview Water. Rick G picked up two additional board members (from 7-9) until the next election cycle.

Plainview had 20,000 ac ft which folded into BBID. I thanked Rick for the water they give us and asked if they might have any additional "extra" He led me to believe that there **may be about 6K af that might be worth discussing**.
Their conveyance to us makes perfect sense to me, and Rick pointed out where and how it happens. We might want to visit on this resource possibility.

The **BBID is also looking at Novel renewable energy opportunities**, even though they receive WAPA power.

Boni and I hobnobbed together Sunday evening and through the tour session.

As Eric, our DWR guide, spoke about the Dyer reservoir and pointed to its whereabouts mentioning Zone 7’s future treatment plant, I drove by and took pictures on the way home which I forwarded yesterday.

Great educational and outreach event! Honored to be a participant and board representative for Zone 7.

Thanks

If there are any questions on this report please give me a call.

Thanks!
Dick Quigley

ORIGINATING SECTION: ADMINISTRATION
CONTACT: Jill Duerig

AGENDA DATE: August 18, 2010 **ITEM NO.**

SUBJECT: GENERAL MANAGER'S REPORT

SUMMARY: The following highlights a few of the key activities which occurred during the month of July. Also attached is a list of the GM contracts executed during the month.

Operations and Maintenance:

- This year's final report was forwarded to the AWWA Partnership Program on July 16, 2010. Results reported for the Del Valle Water Treatment Plant, Patterson Pass Conventional Water Treatment Plant and Patterson Pass Ultra-Filtration Plant were all once again in the 99th percentile for finished water turbidity with less than 0.10 Nephelometric Turbidity Units (NTU)

- Geosmin, an algae-based compound that causes earthy, musty odors, was detected at increased levels in the plants so the geosmin monitoring frequency was increased to twice a week and both conventional plants initiated powdered activated carbon (PAC) feed for taste and odor control.

- The pipeline in the Mocho 1 yard was repaired as a warranty item under the Mocho Groundwater Demineralization Plant (MGDP) project.

- At the Del Valle Water Treatment Plant (DVWTP), Karl Needham Enterprises (KNE) replaced noisy bearings on the centrifuge which, in addition to the mechanical concerns, had been causing neighbors to complain. At Patterson Pass Water Treatment Plant, staff are talking to KNE about apparent over-dosing with the solids-thickening polymers as part of the centrifuge process that, in turn, have a negative impact on routine plant operations. In the meantime, sludge is being hauled from DVWTP to the landfill.

Environmental & External Affairs:

- There were two spill incidents last month involving Zone 7 flood control facilities. The first one occurred on July 1st when a paint-like substance was found at a storm drain outfall structure at the Arroyo Mocho behind the Gatewood Apartments. The City of Pleasanton responded to the spill which has since been cleaned up. The second incident on July 7th involved about 300 gallons of raw sewage overflow from a manhole near 7557 Amador Valley Boulevard in Dublin that got into the storm drain and from there into Line J-1. DSRSD cleaned that spill.

- Cleanup of the May 2009 gasoline spill in Dublin appears to be complete along those Line F-4 channel areas which were compromised during the initial emergency containment and clean-up effort. Recent sampling showed all levels to be at 30 mg/kg or less. Case closure is being sought, which seems reasonable to both RWQCB and Zone 7 staff.

Engineering and Flood Control:

- Zone 7's application for a time extension to perfect its water rights on the Arroyo Valle (since diversions will not be optimized until Chain of Lakes is completed) was recently published for comment by the State Water Resources Control Board. Staff have already received notice of several protests including the California Department of Fish & Game, the Alameda Creek Alliance, ACWD and SFPUC. The 45-day public comment period supposedly closes July 19th but NOAA-NMFS has already received a 30-day extension for their comments.

- DWR's work on the Del Valle Branch Pipeline continues. They are now expecting to have the surge tank in place by late August. Wente has hired a landscape architect to redesign and restore the damaged areas. The project continues to run behind schedule and over budget with the latest estimated project completion date at the end of September.

- Summer flood facility maintenance continues. The California Conservation Corps completed the tree pruning work along Tassajara Creek (Line K) in Dublin. Slide repair at the Chabot Canal in Pleasanton and storm drain pipe separation repair at Alamo Creek in Dublin are underway.

- Staff developed a surface water monitoring plan to comply with the Department of Public Health's (DPH) requirement for additional proof that the new Chain of Lakes wells are not "under the direct influence of surface water" (which would require significant additional treatment). The plan includes recommendations for water sampling equipment including a temperature/conductivity probe/data logger, as well as proposing locations for the biweekly surface water sampling and probe installation.

- Vulcan Materials intermittently discharged groundwater from their quarry pits into the Arroyo Mocho under their NPDES permit this week. Negotiations to allow them to discharge to one of Zone 7's lakes continue.

- Staff received a request from LARPD to shut down Arroyo Mocho flows for two weeks to accommodate fire hazard abatement efforts (using goats) in Robertson Park. This would have limited this year's groundwater recharge by as much as 600 AF. Staff discussed options with LARPD, the Department of Fish and Game and the goatherd and identified an alternative that allows recharge operations to continue uninterrupted while the goats graze.

- The new sodium hypochlorite tanks at the Del Valle Water Treatment Plant (DVWTP) are now in operation. Final punchlist items are being addressed

Finance & Administration

- End-of-the-year billings showed that, with conservation and the wet spring, actual usage between July 2009 and June 2010 was 19.9% below projections, for a total budget loss of approximately $3.6 million in treated water sales for the year. The untreated water sales were $20,000 below the budgeted projection for the year.

- Staff submitted the annual property tax override calculation and associated request to the Auditor-Controller's Office for FY 2010/11.

- The 9/80 schedule for unrepresented managers is in the implementation phase. Those who want to participate will have to submit applications for management approval. Individual participants will have schedules with alternating Fridays off.

Monthly List of GM Contracts

July 2010

Contracts:

Checkers Catering	$ 15,000	
Billy Ferguson	30,000	
TargetSafety.com	8,000	
Tetra Tech EM, Inc.	10,171	
Wunderlich-Malec	50,000	(A11-13-WUN for SCADA System Maintenance)
	$113,171	

Amendments:

Eco:Logic	$16,252	not to exceed $902,571
ICF Jones & Stokes	11,862	not to exceed $241,862
Wunderlich-Malec	33,500	not to exceed $368,500 (A10-17-WUN for professional services)
	$45,362	

Total July 2010 **$158,533**

ORIGINATING SECTION: OFFICE OF THE GENERAL MANAGER
CONTACT: BONI BREWER

AGENDA DATE: August 18, 2010 ITEM NO.

SUBJECT: Recent & Upcoming Public Outreach Activities

Recent Public Outreach Activities

Family Film Festival, June 15 – August 12
Zone 7 again got its water-conservation message out as a co-sponsor of the summer Family Film Festival at Regal Cinemas Hacienda Crossings 20 in Dublin. As a co-sponsor, some key Zone 7 materials promoting water conservation were viewed by all summer movie-goers -- not limited just to those attending the weekday film festival. In addition, we staffed (with our mascot "Drippy") a water-conservation table on Tuesday, June 22; Thursday, July 22; and Saturday, August 14 at which we distributed water-conservation information as well as 1) toothbrushes with a conservation message, 2) toilet-leak detection tabs and 3) sprinkler-head adjustment keys that help prevent overspray.

Upcoming Public Outreach Activities

California Coastal Cleanup, Sept. 25
Zone 7 will again assist the City of Pleasanton with this annual event in which dozens of volunteers pick up trash, old tires and other debris along local creeks. This is the 26th anniversary of the statewide event. Statewide in 2009, more than 80,600 volunteers collected more than 1.3 million pounds of trash and recyclables along beaches, lakes, arroyos and rivers. In Pleasanton, around 200 volunteers helped clean nearly 12 miles of local waterways, hauling 78 tires and 1,330 pounds of garbage from the creeks. Much of the mess begins as trash on local streets or parking lots and ends up washing down the storm drains. Clearing the creeks of debris at the end of summer helps prevent pollution and ensures our local waterways are ready to handle flows for the next season's storms. We are also in discussions with the City of Dublin, which plans to participate in Coastal Cleanup for the first time this year, about ways we can be of assistance.

ORIGINATING SECTION: Administration
CONTACT: Jill Duerig/Tim Hunt

AGENDA DATE: August 18, 2010. ITEM NO.

SUBJECT: Legislative Update

SUMMARY:

- Zone 7 staff, with the support of the agency's lobbying firm, The Gualco Group, Inc., and the agency's legislative support consultant, Tim Hunt, monitors legislation that is being considered in Sacramento.
- Staff, with recommendations of the agency's lobbying firm, determines a number of bills of interest to Zone 7 for the legislative session. Of particular interest to Zone 7 are bills regarding specific water issues, such as those related to the Delta.
- Proposition 18, the $11-billion water bond, was postponed until the November 2012 election. Two-thirds majorities of both houses supported the postponement, and the governor quickly signed it to meet the deadline set by the secretary of state for ballot issues.
- Gov. Schwarzenegger appointed Felicia Marcus to the Delta Stewardship Council to replace Richard Roos-Collins who resigned in July after some environmental groups strongly opposed his confirmation by the Senate. She is the western director of the Natural Resources Defense Council and previously worked for the Trust for Public Land and the Environmental Protection Agency. She is an attorney. With her appointment, the governor's four appointments now are likely to be considered by the Senate before the Aug. 31 deadline for adjournment.
- AB 2776 (Arambula) would have added a new section to the Water Code forbidding the transfer for State Water Project contracted rights from an agricultural user to a municipal contractor for more than 10 years. After failing twice in the Assembly, the language was amended and passed to the Senate appropriations committee. It failed once in committee and failed again on August 8th. Barring further amendments or incorporation into another bill, it is dead.
- AB 2092 (Huffman) concerning financing of the Delta Plan was amended on Aug. 2nd. Amendments clarify beneficiaries and the concept of "beneficiary pays" as well as specifying that the finance plan must be an open and transparent process that is based on economic, scientific and engineering principles. A minimum six-month review is required and entities that have previously paid into programs and projects that support the Delta Plan are eligible to be credited for that support against future funding requirement.

FUNDING: No funding necessary.

RECOMMENDED ACTION: Information only.

ATTACHMENT: Executive Summary of tracked bills

EXECUTIVE SUMMARY
State Legislation

9-Aug-10
Prepared for the Zone 7 Water Agency, Eastern Alameda County, Board of Directors
by The Gualco Group, Inc.

Bill	TOPIC	SYNOPSIS	STAFF-RECOMMENDED POSITION	STATUS OF THE BILL/COMMENTS
Delta Stewardship Council				
AB 2092	Fees: Delta Stewardship Council	As amended on August 2 would require the Delta Stewardship Council to, by January 1, 2013, develop a plan to finance the long-term costs of implementing the Delta Plan. This plan must "include all projects, programs, and related administrative costs identified in the Delta Plan and be based on the 'beneficiary pays principle', as defined, from implementation of measures in the Delta Plan and in approximate proportion to negative impacts caused to the Delta and the Delta watershed that the Delta Plan seeks to address". The plan must include, but not be limited to, six specified items of information, including "an analysis and description of the basis for allocating program and project costs among private and public entities". The plan must "identify and evaluate, pursuant to the beneficiary pays principle, the benefits to, and negative impacts caused by all entities , including (2) Urban and agricultural water users exporting water from the Delta and the Delta watershed, including, but not limited to, the state and federal water contractors" The bill prohibits the council from adopting new fees unless and until the Legislature	Watch	Pending before the Senate Committee on Appropriations.
AB 2336	Striped Bass	As amended on May 17, AB 2336 (Fuller) would declare it is the intent of the Legislature that the Delta Stewardship Council consider for inclusion in its final Delta Plan identification of effective and scientifically justified measures to reduce or eliminate the impact of other significant stressors on California's native fish population. The bill requires the Delta Stewardship Council to direct the Delta Independent Science Board to conduct an assessment of other stressors, including impacts of invasive species and non-native species, water quality impairments, and predation on native species	CO-SPONSOR and SUPPORT: Signatory to a coalition letter in support of the bill	Held indefinitely in the Senate Natural Resources and Water Committee as of June 29.
SB 1450	Delta Stewardship Council: Contracts	As amended on August 2, SB 1450 would allow the Delta Stewardship Council to use a streamlined competitive bid process, which exempts it from procedural requirements for contracting with private entities, to hire consultants, engineers or architects for: a) preparing the Delta Plan and associated environmental review; b) performing its responsibilities; c) determining consistency of state and local public agency actions with the Delta Plan; or, d) performing scientific review to inform water and environmental decision-making in the Sacramento-San Joaquin Delta.	Watch	Passed the Assembly Appropriations Committee on August 4 by a unanimous vote; Referred to the Assembly Floor

Bill	TOPIC	SYNOPSIS	STAFF-RECOMMENDED POSITION	STATUS OF THE BILL/COMMENTS
Water Conservation, Supply & Delivery				
SB 991	Water Supply	As amended on August 2, SB 991 would appropriate $30 million from the Disaster Preparedness and Flood Prevention Bond Fund of 2006 (Proposition 1E) to the Department of Water Resources (DWR) for flood protection projects that improve the sustainability of the Delta, including projects that reduce the risk of levee failure that would jeopardize water conveyance; 2)Directs DWR to expedite evaluation of nonurban levees on the west bank of the Sacramento River that protect unincorporated communities and consider a joint project with local governments for improving flood bypass facilities.	Watch	Pending action by the Assembly Committee on Appropriations
AB 1886	Delta	As amended on March 17, AB 1886 requires DWR, as part of its next update of the California Water Plan, to include a report on progress towards meeting the state's goal of reducing reliance on the Delta	Watch	Died on the Assembly Appropriations Committee's Suspense File on May 27
AB 1929	Quagga Mussels	As introduced on February 17, and after finding that up to forty thousand quagga mussels can colonize within one square meter, but “that implementation of the available measures to control mussel infestations and prevent the spread of the mussels to new water bodies is the most that can reasonably be required of water supply agencies", AB 1929 would amend existing law to permit Fish and Game to inspect their water supply systems and would not subject suppliers to liability IF the supplier is in full compliance with a plan to control and eradicate mussels	SUPPORT: Zone 7 letter dated March 10 was sent to the author	Pending action by the full Senate. Passed the Assembly by a vote of 74-0.
AB 2049	Water Delivery	As amended on May 28 AB 2049 would prohibit the State Water Resources Control Board (SWRCB) or the Department of Water Resources (DWR) from approving a transfer of surface water or water rights from agricultural use to municipal use for a period of twenty years or more unless certain stringent criteria are met.	OPPOSE	Defeated on the Assembly floor by a vote of 35 -33. The bill needed 41 votes to pass. AB 2049 is dead.
SB 1469	State Water Project	SB 1469 was amended for the second time on April 14. As amended, this bill would require the SWRCB, by January 1, 2012, to: (1) Identify all parties that both benefit from waters originating in the Delta watershed, and whose activities impact it; (2) Develop a process for determining the degree of responsibility attributable to the identified parties for physical and environmental impacts on the Delta; would require DWR, as a part of their next update of the CA. Water Plan (December 31, 2013), and every five years thereafter, to identify the infrastructure needs for the state, by hydrologic region over the next 30 years, estimate the expected costs for that period of time of environmental mitigation and restoration projects associated with the identified infrastructure needs, propose a beneficiary pays financing strategy for funding state resources	Watch	Died on the Senate Appropriations Committee's "Suspense File" on May 27.

Bill	TOPIC	SYNOPSIS	STAFF-RECOMMENDED POSITION	STATUS OF THE BILL/COMMENTS
AB 2776	Water Transfers [NEW BILL]	As amended on June 28, AB 2776 would prohibit the SWRCB or DWR from approving any transfer of surface water or water rights lasting 20 or more years, including transfers of SWP contract rights, from agricultural use to municipal use unless the water user provides to the board or the department a written evaluation of the economic, social, and environmental effects of the transfer upon the service area from which the water is to be transferred. The SWRCB and DWR would be required to charge the water user a reasonable fee to cover the agency's costs associated with implementing this bill, including costs incurred for reviewing the evaluation. The bill would prohibit a water user from replacing transferred surface water that is subject to this bill with groundwater, unless the groundwater basin of the service area from which the water is to be transferred is regularly, systematically, and logically monitored in accordance with SBx7 6.	OPPOSE	Has twice failed passage in the Senate Committee on Appropriations
Water Diversion and Use				
SB 565	Water resources	SB 565 would authorize the SWRCB, in fulfilling their statutory responsibilities, to order any users of water to submit "any technical or monitoring report related to the diversion or use of water" and conduct inspections to ascertain compliance, would increase the penalties for trespass, and a violation of a cease and desist order, but the increase in the amount of penalties would "not apply to violations that occurred prior to January 1, 2011, would create a rebuttable presumption that no use of water occurred UNLESS that use is "included in a statement submitted to any reporting or monitoring requirement established under any permit, license etc., and the statement is submitted within six months after it is required to be filed with the board," would authorize the SWRCB to impose an additional liability in the amount of 150 percent of any fees that have not been paid for material misstatements in a statement of diversion and use, established the Water Rights Protection Subaccount in the Water Rights Fund and declares that the moneys in this subaccount are available, upon appropriation by the Legislature, "to reduce fee	Watch	Pending action by the Assembly Committee on Appropriations
SB 1234	Water Use	As introduced on February 19, AB 1234 would new Section 188.7 to the Water Code to require the SWRCB, by January 1, 2012, to adopt regulations to identify unreasonable uses of water during shortages in water supply amounting to 10, 20 and 30 percent	Watch	The first hearing on this bill was set, and Senator Kehoe canceled it

Bill	TOPIC	SYNOPSIS	STAFF-RECOMMENDED POSITION	STATUS OF THE BILL/COMMENTS
Groundwater				
AB 2304	Groundwater	As amended on August 3, AB 2304 would require a local agency to include a map, or maps, of recharge areas in its groundwater management plan, upon request of state funds including current recharge areas that substantially contribute to the replenishment of the groundwater basin. Requires a description of how those areas substantially contribute; 2. Adds a notice requirement and allows interested persons to request copies about the plan and maps describing the recharge areas prior to the second hearing; 3. Allows a local agency to request state funds, administered by the department, to map groundwater recharge areas to the extent the request for state funds is consistent with the eligibility requirements that are applicable to those funds; 4. Authorizes an interested person to contact DWR for, and also authorizes DWR to provide, specified copies relating to groundwater management plans.	Watch	Pending action by the full Senate. COMMENTS: Sponsored by the California Groundwater Coalition and the Groundwater Resources Association of California.
Water Recycling				
SB 918	Water recycling	This bill was amended for the fourth time on June 1. As amended on June 1 SB 918: 1. makes various findings & declarations regarding the use and benefits of recycled water. 2. Defines "direct potable reuse," "indirect potable reuse for groundwater recharge" and "surface water augmentation." 3. Requires the Department of Health Services (DPH) to adopt uniform water recycling criteria for indirect potable reuse for groundwater recharge by December 31, 2013. 4. Requires DPH to develop and adopt uniform water recycling criteria for surface water augmentation by December 31, 2016. 5. Requires DPH to investigate and report to the Legislature on the feasibility of developing uniform water recycling criteria for direct potable reuse, and requires a public review draft report to the Legislature and public by June 30, 2016, and a final report by December 31, 2016; and 6. Requires DPH to convene an expert panel to advise on scientific and technical matters related to the development of the aforementioned criteria, comprised of specified experts.	Watch	Pending action by the Assembly Committee on Appropriations
SB 1173	Recycled Water	As amended on August 2, SB 1173 conditionally prohibits the use of raw water for nonpotable use if recycled water is available. Specifically, this bill: 1)Defines "raw water" as untreated surface water or groundwater; 2)Expands, to include the use of raw water for nonpotable use, the existing declaration that the use of potable domestic water for nonpotable use is a waste or unreasonable use if recycled water is available; and 3)Adds "reliability" to the criteria by which the State Water Resources Control Board (SWRCB) determines the availability of recycled water.	Watch	Pending action by the Assembly Committee on Appropriations.
Water Quality				
AB 2583	Water Quality	As introduced on February 19, AB 2583 would add a new Section 13003 to the Water Code to require water agencies, and their direct suppliers, "utilize raw material chemical products derived from Inherently Safer Technology or inherently safer production measures where the products derived from safer measures or technology are appropriate given the disinfection methodology used by the water agency, and are commercially available without being materially cost prohibitive to the water utilities or rate payers"	Watch	Died on the Assembly Appropriations Committee's Suspense File on May 27

Bill	TOPIC	SYNOPSIS	STAFF-RECOMMENDED POSITION	STATUS OF THE BILL/COMMENTS
Two-Gates Protection Demonstration Project				
AJR 38	Two-Gates Protection Demonstration Project	AJR 38 was amended for the fourth time on May 24 to add 51 Assembly Members as coauthors of the measure. AJR 38 would request the the U.S. Department of the Interior to priortize completion of its study of the Two-Gates Fish Protection Demonstration Project in the Sacramento-San Joaquin Delta	SUPPORT: Zone 7 letter dated May 10 was sent to the joint authors of the measure.	Passed the Assembly by a vote of of 63-4. Assembly Members Buchanan, Gaines, Niello and Yamada cast "No" votes. Pending in the Senate Rules Committee.
CESA				
AB 2420	CESA	As amended on March 24, would amend Fish and Game Code section 2080.1 to require a biological opinion be obtained along with the currently required incidental take statement, OR the obtaining of a conservation plan along with the currently required incidental take permit to take an endangered, threatened, or candidate species after doing, among other things, the following: (1) notifying the director in writing that the person has received a biological opinion and an incidental take statement or a conservation plan and an incidental take permit which includes references that "meet the minimization, full mitigation, funding, and compliance monitoring requirements of subdivision (b) of Section 2081 and the director determines based upon substantial evidence, makes a consistency determination with this chapter	Watch	On April 5, the author announced through staff that this bill would not be moving forward in 2010
Delta Levee Maintenance				
SB 808	Delta levee maintenance	As amended on January 25, 2010 SB 808 would declare the intent of the Legislature to reimburse local agencies for costs incurred to maintain and/or improve project or non-project levees in the Delta until July 1, 2013 in an amount not to exceed 75% of the costs in excess of one thousand dollars per levee mile and, thereafter, in an amount not to exceed 50% of those costs. Reimbursements made pursuant to this law must be consistent with the priorities of the Delta Plan	Watch	SIGNED by Governor Schwarzenegger on June 3 (Chapter 23, Statutes of 2010)
Peripheral Canal				
AB 1594	Sacramento-San Joaquin Delta: peripheral canal	As amended on April 15, AB 1594 would prohibit the construction of a peripheral canal, as defined, unless expressly authorized by the Legislature, would condition the Legislature's "enactment" of a bill on the Office of Legislative Analyst's completion of an economic feasibility analysis that must include (1) the total cost of the project and the methods for paying those costs (2) the expected impacts of the project on "taxpayers, water ratepayers, and the General Fund" (3) the "expected environmental and economic impacts of the project on existing public infrastructure in and around the Delta and the Delta watershed". Finally, the bill requires "the construction and operation of a peripheral canal shall not diminish or negatively affect the water supplies, water rights, or quality of water for water users within the Delta watershed, or impose any new burdens on infrastructure within, or financial burdens on persons residing in, the Delta or the Delta watershed."	OPPOSE: Zone 7 letter dated February 7 was sent to the author	"Died" in the Assembly Committee on Water, Parks and Wildlife on April 27. Senators DeSaulnier and Wolk and Assembly Members Chesbro, Fong, Gaines, Torlakson and Yamada are coauthors of the April 15 version of AB 1594

Bill	TOPIC	SYNOPSIS	STAFF-RECOMMENDED POSITION	STATUS OF THE BILL/COMMENTS
AB 1797	Delta Corridors Plan	As amended on April 7, AB 1797 would add a new Section 148 to the Water Code to require DWR to fast-track a study of “a through-Delta conveyance plan referred to as the Delta Corridors Plan” as that plan is “described in [the] Proposal to Reconnect the San Joaquin River to the Estuary, dated March 23, 2007”. As a part of this study, the April 7 amendments require DWR to "consult" with Fish and Game "to study the potential environmental and ecological impacts and benefits of the Delta Corridors Plan, including issues of water quality and include an evaluation of ways the Two-Gates Project can be incorporated into the Plan"; Requires this report to be submitted to the Legislature on or before January 1, 2012	Watch	Died on the Assembly Appropriations Committee's Suspense File on May 27
SB 1334	Natural Community Conservation Plans	As amended on May 10, SB 1334 would require DF & G, when finding that a NCCP has been developed consistent with a planning agreement, to make a finding that it has cooperated with a local agency that has land use permit authority over the activities proposed to be addressed in a NCCP.	Watch	Passed the Assembly Committee on Appropriations on a strict party-line vote on August 4; Referred to the full Assembly

ORIGINATING SECTION: ADMINISTRATION
CONTACT: Jill Duerig/John Yue/Tom Hughes

AGENDA DATE: August 18, 2010 **ITEM NO.**

SUBJECT: STATUS REPORT ON SEPARATION EFFORTS

SUMMARY: The following highlights a few of the key activities which have occurred during the last month as part of staff efforts to pursue separation from the county.

Business Administration:

- Finalized the professional services contract with Management Partners to complete the business-related scope (including purchasing, finance, accounting, risk management, etc.).

- Staff met with Management Partners (MP) to introduce MP's new team members and discuss progress on issues related to the separation efforts since consultant's last involvement in 2009. The team also discussed schedules and critical path items. Consultants will update and prepare a more detailed project schedule incorporating the updates and any necessary revisions to the work plan.

Human Resources:

- Held monthly joint LMT separation group meeting (draft minutes attached). Next joint LMT separation group meeting is scheduled for Tuesday August 24, 2010.

- Prepared and distributed working draft of separation agreement (attached) to joint LMT separation group for review and discussion at August meeting.

- Staff met with Management Partners to discuss refining a scope of work for addressing personnel-related separation issues not already being addressed by IEDA.

- Contract executed with consultant Patricia Ford of DeElla & Associates, LLC, to provide county-coordination services related to facilitating Zone 7's separation from Alameda County.

ACMEA, IFPTE, BCTC, SEIU, & Unrep
AND
ZONE 7 WATER AGENCY
Separation Study meeting notes

Follow up research **Information Requests** **Union Counters** **Tentative agreements**

Meeting #8
July 27, 2010

Start Time:	**10:10am**	
Present:	**Jill Duerig, General Manager**	**JD**
	Glenn Berkheimer	**GB**
	Tom Hughes	**THu**
	Tom Pico	**TP**
	Ginger Staton	**GS**
	Elena Scharnhorst	**ES**
	ACMEA	
	Alan Elnick, ACMEA	**AE**
	Dennis Gambs	**DGam**
	Matt Katen	**MK**
	IFPTE	
	Vickie Carson, IFPTE Local 21	**VC**
	Subha Varadarajan, IFPTE Local 21	**SV**
	Jaime Rios	**JR**
	Jeff Tang	**JT**
	Sal Segura	**SS**
	BCTC	
	Frank Torrian	**FT**
	Mary Helen Morman	**MM**
	SEIU	
	Tom Hempil	**THe**
	Gus Feldman	**GF**
	UNREP	
	Diana Gaines	**DGai**

--
(Passed sign-in sheet, agenda, minutes)
THu I have an apology, meant to get minutes out early, but didn't due to staff shortages. Glenn's back. Take a minute, look over minutes, any additions/changes. Anything?
(No comments)
(Gus arrived)
THu Good for now? New business. Short agenda. Management Partners' (MP) scope of work – we sent out RFP to see if anyone else could provide proposal to help us put plan in place for personnel aspect of separation, received no responses. Agency intends to discuss scope of work with MP. Sent out several emails asking for input, got email from Diana Gaines. Setting up meeting in a couple weeks, would like to incorporate comments you have. Plan to have them work with this group, not just Agency. Any comments on that?
GB Biggest reason IEDA didn't put forth proposal, our current contract involves 90% of content of that proposal. We wholeheartedly will participate in this.
THu Other comments? Turn over to Glenn to talk about draft separation document, next steps.
DGai You will just receive comments, not have open discussion on improvements to scope? That's it for scope?

THu Not my decision alone, we'll look at all comments, incorporate some, send scope back to group to review to finalize with MP. Involve everybody in whole process.
MK In light of what Glenn just said, is there need for MP?
THu Not in a position to answer. Board resolution and separation, Jill can speak to it. Thought better to have consultant prepare proposal and scope of work.
JD We'll have to see whether the 10% remaining work [Glenn referenced "90%" above] is possible.
GF Who would make that determination?
JD Here in this room – look at scope, what IEDA's services are and if difference is something we need done to be comfortable, if not, then IEDA can provide.
GB We have a service contract, covers negotiations, grievances, discipline, also our salary survey organization, IEDAsurvey.com - fairly broad and open to interpretation of what that may cover (LMT, etc.) I've interpreted it more broadly. We don't do full negotiations for Zone 7, salary only, a lot of work I would have dedicated to full negotiations. Our contract is an open document, I can give you a copy of the agreement.
THu If we can work together with IEDA to do this work, would save Agency money.
JD Cut to chase…if you say IEDA looked at RFP, certain items not included, send us a list?
GB I can go back and look, tell you what I don't think is included.
JD Would be great, see if we need to get those services from MP or if we don't need them. That's where answer lies.
GB Large part of RFP is negotiating transition document, steps I've already given drafts for. Input from group didn't change all of that. Part of what I consider under our current agreement. Part of negotiations/meet and confer aspect. A couple other things I don't remember.
AE I read the MP scope of work, impression I got, they were there in order to formulate ability to make transition. Then IEDA continue after that. MP act as an independent authority, etc. not a continuing operation, then consultant implementing would be in place.
THu Correct, road map for steps we need to follow. As Glenn says, if they can provide…
GB Certain steps we are not qualified for, personnel system, IT system, etc. You have already obtained legal advice as to formation of board, etc.
THu Maybe you can let us know what you can do, we can all discuss as a group.
GF Propose to discuss at next meeting.
JD Let's see what list is, discuss by email. If everyone says not a biggie, stick with IEDA, using MP only as needed.
GF Can't imagine we'll be insistent on an MP contract if not necessary.
THu Let you work on that Glenn.
MM Glenn, you work for Alameda County too?
GB Slowly but surely I'm being transitioned out of Alameda County duties. Used to be 50-75% of my time but I'm not doing as much, I suspect goal is only Fire Department eventually. Fire is very different than others, finishing the last of the reopeners, just one left I'm involved with. I might see a few meet and confers, but mostly they'll see more of Diana, Daryl, or Keith from our office.
MM I was concerned about possible conflict of interest.
GB I had that discussion with my boss too…I can't service both Zone 7 and Alameda County in certain aspects. When doing transition document my relation with Cynthia Baron, Mary Welch might help, may be able to ask questions. But I will get in a position where they understand I'm acting for Zone 7. Easier to move me out than switch someone else here. Moving on…
(Passed draft "Elements" document)
GB Originally put this together and we distributed at a previous meeting, not an end-all list certainly, things I felt at minimum need to be covered. When you start to talk about issues that will come up, these are all key elements to both sides. Recognition of union, lifeblood of bargaining units all wanting to have some protection, new employer grant recognition. Transition document needs to address in a nature

acceptable to unions involved. Rules and regulations depending on what ultimate configuration is, not same support aspects of Alameda County's government code, civil service rules, other rules…Something over long run, develop procedures, within a typical employer/employee ordinance. At the very least is recognition. Transition from one employer to another, what happens, how does that occur, probation? Seniority? Issues will be discussed.

AE Retention of merit system we are interested in that. As in with the county, you apply for a job, take a test, employment subject to appointment processes, want to see something like that.

GB Under hiring practices, didn't spell out exactly. How you hire new employees, process, if tests, exams, posting, appeals, etc. Interest of having that system needs to be talked about in that transition. Promotions, etc. need to be figured out until you have an official document in place. Probation periods, status of employees, etc. When transition of Medical Center, specific things written about provisional employees, benefits granted, part/full time, temporary, discussion of impacts on each type of employee when transitioning. Do you want to ask questions, or me continue through document?

(Continue through document)

GB Generalities captured…probationary periods, biggest thing, what happens if person fails probation, typically now no appeal rights, unless discrimination based on union activity. If performance, personality, employee decides, you can terminate without appeal. Some discussion about appellate rights, if any. Seniority, other than recognition/hiring, a big issue here. More about how do you treat Alameda County time/Zone 7 time, how to integrate those two when single employer? What relationship with Alameda County in future? Some places have allowed transition back to old employer for a period of time. Not sure if a possibility. Example was Port of Oakland/City of Oakland, return rights, layoffs can bump. Think about it, close door fully? Alameda County would have to agree. Solely independent, no ways to move back/forth? Immediately, or for a period of time?

GF Zone 7 has to work with Alameda County, can we have impact on that discussion?

GB Yes, ultimately, but if there wasn't an interest, Zone 7 shouldn't pursue…

VC Unique classes? All approved by Civil Service Commission?

THu Yes, bumping doesn't apply.

GB May be no need to have that discussion, already taken care of.

FT Layoffs/recalls, number 2, what are we talking about "specialty assignments"?

GB For example, for a position person to do something, have to be certified, may be discussed when layoff occurs, that person only holds that cert, how do you handle? Protected even though seniority?

THu Don't know this would apply.

GB Example is fire, paramedics, have to have so many to provide commitment, may not all have seniority, but need to keep certain number.

THu Can't think of any here.

GB Stimulate conversation. Not a proposal, might need to talk about.

AE Health care needs to be added.

GB I'm sure I didn't get everything in here, a lot not listed we need to figure out. Generic list.

(Sal Segura arrived)

GB Bigger issue…CALPERS, AC system, like Medical Center/Courts for a while, how do you do that? Do you transition, are there savings? Bigger issue for retirees particularly if outside of Alameda County benefits. Will be a lot of discussion on that. Transition document remains same, get permission. Other huge omissions?

GF Hard to look at this and not get ahead of ourselves. Vague, rough outline, definitely speaks to urge to want to know more. One thing that comes to mind, all things currently covered by CSC, how structured, oversight, what can be appealed, etc. Who would we be appealing to…personnel commission, BOD? Don't see anything to that effect.

GB Left open totally didn't want to influence any decisions. Next question who? You're right, one of central discussions. Medical Center went to binding arbitration, there are a number of different options -

appeal to General Manager, directly to BOD then hearing, fact finding panel, similar to adjustment board (person appointed by employer, person appointed by employee, and independent third officer), decide case or advise, CSC, Personnel Committee of board, many different ways of figuring out.

DGam If defined as "left open to discussion."

GF Good to have bullet point "Define."

JD Discussed several meetings ago. Didn't you say that some options are more/less successful?

GB My personal observations. Couple real ones that work. Binding arbitration works for most employers. Appealing directly to BOD has problems from labor, also from the board. Once they sit through an ugly discipline, never want to do it again.

VC Their role is oversight, brings them down into it too much.

GB Depends on board. Panel has some validity. Problem, just like arbitrator, is it advisory or not? Advisory has problems, if you do have a body comprised of professionals appointed to do it, does seem to work, but it's getting people who have background.

AE Bodies I represent that separated, they did binding arbitration.

JD Has that been successful?

AE Don't use often, when we do, it's easier for both parties, go by what judge says.

GB From labor relations professional standpoint I agree, it is the cleanest, both sides know "we're going to arbitration, it's going to cost me this much, etc." - equitable.

AE No CSC, arbitration provides due process mechanism, works best, if you don't have independent agent coming in.

GB Under termination cases, subject to court review.

THu Does SEIU have binding arbitration at Housing Authority?

GF Not positive, Medical Center has Skelly panel, consists of both labor/management.

AE Panel appointed by executive management.

GB Skelly has to have ability to amend, modify, has to be employer…i.e. department head/division manager level.

THu Review committee after Skelly.

VC Next step…

GB May be similar to adjustment board, another solution that private sector uses. 2 or 3 members of union/management, hears it similar to arbitration and makes determination. Problem when they deadlock, more common in public vs. private.

MM Housing Authority has binding arbitration.

THu Does it work?

MM Yes it does.

GB Thought process is never to have to use it, don't get there and have to. Incentive for both sides to settle at a lower level.

MM Adjustment boards work as well, like you said, unless deadlock.

GB Contra Costa County mostly deadlocks, 90%. However, 70-80% settle in private sector.

AE Expedited arbitration procedure, adjustment board with arbitrator in the middle.

GB ACA does same thing, make presentation once, if you sit on panel, arbitrator will give you a hint if it will settle. Works well in private sector.

MK Question on document, example from hospital is 4 pages, MOUs run 50-60 pages. Example from hospital references back to MOUs, when we separate is MOU still able to be referenced?

GB Yes you could, might want to be careful depending on expiration dates, if new agreement put in place might be in danger of new agreement applying to you without say/control.

MK Copy those MOUs, call those transition docs?

GB Appendix, date to date, take out areas of reference you want, attach separately. May need to do with Salary Ordinance, footnotes needed as attachments, etc. 30 different attachments…

TP Our footnotes are separate

MK Other procedural docs that have to be developed?
GB Not from labor relations standpoint, but yes from operational - personnel rules & regulations, employer/employee ordinance, MOUs, couple other things.
AE Unit modifications may need to be considered.
MK There was a document, Layoff Procedures, very thick document.
GB Would be very small here. County has 40-50 pages, process with benefit info that goes along with it. They've done so many layoffs. Contacts for Unemployment Insurance, health benefits, resume writing. New organization could develop something like that. Most organizations of this size do layoffs very seldom, don't have extensive documentation.
DGai Have we got a vision for unrepresented? Go into a union? Grouping? Thoughts?
GB Remain unrepresented. Employees determine if they want to be represented. You will have certain types of employees done by contract. Unrepresented employees are done by resolution, benefits, etc. covered by personnel rules & regulations where a labor agreement might talk about layoffs, etc. rules & regulations cover that for unrepresented.
DGai Where it says "union" would also be "and others"?
GB Not impact, benefits taken care of now by resolution, more likely the protections, might need to be a separate document, like transition document, much smaller, hiring/probation/seniority/discipline, etc.
THu Alameda County, unrepresented are covered by Admin Code, employee relations ordinance.
GB Will need for this group.
AE Salary Ordinance too.
DGai Separate document, with separate pieces.
AE A task to unravel parts that apply to Zone 7, work on that.
JD As we move forward, this is the kind of thing that we may have spin off work groups, maybe not everyone, maybe 2 or 3 that have common issues and want to work together. We have run against a wall before if suggesting limiting this group. A small group can develop a straw man then come back to big group. I've seen subgroups work successfully before. Could be good philosophically.
GB A number of things would make sense to have subcommittees. If we continue with large group to put together document for each group, will need to have smaller groups. No way we can all do everything. Subcommittees or Personnel Department produce draft and we'll review/discuss or consultant do it. Not a lot of options in a group of this size poring through Admin Code. Not able to write a transition document. Need a jumping off point, someone put together something the rest can look at, something to start with. As Jill suggested, might not be bad idea. Process to get those things done so we don't talk about same things.
THu How do we get to starting point?
GF You want a response now?
GB Open dialogue, don't want to control it. Think about how we do it.
DGai Based on what you have all seen in past, what would be a normal first step?
GB Employer puts draft together, supplies to union, union provides comments. Typical. Not the only/right way. Most common. Might not be a bad idea to have a few people draft it, work on it together, come back. Certainly enough who have enough knowledge, doesn't have to fall to one side or other
AE Not looking at payroll, etc. but structure.
JD Correct, that's being handled separately as part of the financial work. This group is handling personnel aspects.
GF On that note, just thought of something to include in this transition document. Make it clear the intent is reflection of resolution by BOD to maintain benefits. Beneficial to say explicitly, in a bullet point. For example, "Document ensures maintenance of all benefits…"
AE Multiparty agreement?
GB One body fits everyone, then specifics separately.
AE How about a multiparty document that empowers each unit to develop their own documents?

GB Either single documents or one large document with all parties and sections for each group. Some parts same for everyone. Most of benefits, except particular to bargaining unit, should be similar. Management benefits or operator pay element we need to capture, do a subsection on that. One huge document instead of five different ones.
AE I'm suggesting a large document signatory of all, that reflects goals of bargaining units and board, document would memorialize what is intended to be maintained leaving it to each unit how attained.
GB More of an overriding document?
AE Almost like an employee relations ordinance.
GB Then transition docs flow from that?
THu Would it help if we took on the task of creating some kind of draft/working initial document for us all to work on?
JD Transition MOU? Personnel Rules?
THu Transition agreement, take a month or so, come up with a draft working document. Something to look at. Better having these conversations if we had something more specific to discuss. We are busy now, but willing to take on task. Not a proposal, working document to discuss.
ALL Yes
MK And if the one Alan just described rather than transition document…
THu We work on something and we send it to you. You can say if we're going down wrong road, etc. I'm hearing what Alan is saying, going to get big/confusing. Have a starting point.
TP If we'll be doing this can we email it a week before?
THu Imperative we involve everyone and get it out as soon as we've got something.
GF Working draft imperative.
THu Not any kind of proposal. Get something solid we can work from.
FT Something we could discus in our LMTs? LMTs between meetings to discuss some of this.
THu We can discuss wherever you'd like.
FT Prefer getting together vs. email.
THu Don't think it's any issue if Building Trades needed release time to work on documents.
GB May need to look at as, "do you need working group from labor?" Frankly I don't know helpful if bargaining units going different directions, have check-ins to make sure going same direction. Review/discuss in LMTs makes sense. Overall, more integrated discussion. Step back, ask Alan, kinds of things in that, not talking specific, talking general.
AE Things we've committed to preserving, not going to memorialize every agreement, but set a pattern.
GB For example: "We've guaranteed your benefits, employer needs to establish following items: Personnel Rules, Employee Relations ordinance, full complete MOUs, transition doc, etc."
AE Setting out steps, etc.
GB Then transiton document.
JD Would there ultimately be an ordinance/resolution adopted by board?
GB Signatures from everyone.
THu Discussion, list of things we need to make sure we cover in a transition document. Pre-transition document? Don't see need if going to work as a group on developing transition document. Duplication of work.
AE Possibly, set up transition, goals, processes, then you actually transition.
THu Concern, creating another work load. Discussing developing document, my perception, this process will be ongoing, covering all elements, eventually all covered in transition document, not seeing need for pre-transition document.
AE Pre-transition work plan.
THu MP? IEDA?

AE Everyone has to be on board, some kind of blueprint which we've all committed to. Once we get into it with each other, go back to blueprint.

THu Transition document is blueprint.

GB More global, transition is one element of this. You have other things you need to accomplish, may not be in this arena, maybe tracking, political, personnel rules, employee relations ordinance, negotiations, benefits, elections, capturing overall…

Thu What MP was charged to do, create that roadmap. Using them? Who's going to do it?

GB A couple of us get together to do this.

DGam I look at this as, if you don't do goals/framework, we're going to do Groundhog Day on a lot of things with this group. May be saving time.

THu Road map first to get to this?

GB Simultaneously probably.

AE Transition document part of process, need to know what else involved, think it all through, what we need to preserve. Can't rely simply on MP, cost of contract extend, etc.

THu How develop?

AE Start with a working doc, each adds on our interests.

GB I think I understand, I can do outline. Steps, I have no idea. Something similar to this, go from there.

DGai Simultaneously?

THu Glenn can work on road map. Management here can create a draft working doc for this group that will be step after road map.

GB Will be one portion of road map, don't need road map done to start transition doc, back up to what else needs to be done in order to be ready to institute transition document. Personnel, business, benefits, board, etc. could be multi-faceted; part of that 10% where you need to have your staff or someone help with it. Great to have a checklist, so things are not forgotten. You've already thought of a lot. Service IT, checks, payroll, stuff in the back of your mind, may not be captured in one place. Try to as best as possible. I'll take a stab, bounce off Alan, then to group. I'll send to Tom Hughes.

JR Exactly what I envisioned consultant doing, not surprised to hear this.

MK I don't know that's what's needed vs. what needed for transition doc, transition of HR.

GB More global than HR, I will take a stab.

MK Transition document, many elements we'd like to remain same, part of plan identify those that we need to remain same, the ones that need more work i.e. benefits more options, someone needs to outline options, we have to talk about them. Lots of pre-steps, a plan, this other document perhaps.

THu We have no ability to change anything currently provided through a transition.

GB MOUs stipulated, board doesn't have authority yet, can't change until severed. Can't change benefits on the day you sever. New ones not in place yet, new negotiated MOUs with new board can potentially change. Transition document continues until MOU replaces it.

THu Thought I heard, in transition document putting "other options for benefits."

MK Plan would lay out how we would address that issue. After we agree how, then words get put down.

THu Transition document we will maintain without any change during transition discussions. Discussion is when we look at other options.

MK Can we just say that and make it happen, some agreement that County will maintain, some other org?

AE This document and eventually transition document, stipulate organization will continue with County benefits, all signatory parties will at such time as all agree to introduce new benefits. Not going to transition immediately.

MK County obligated to continue our benefits?

GB Negotiate with the county.

MK Can't just assume, do other work.
GB Perfect point, other agreements needed to make sure our transition document can be fulfilled.
JR What point do we negotiate that MOU and when does it start?
GB Not until after separation has occurred, could you negotiate before? Some elements depending on board. Until transition occurs, if board is different I have a problem with commitments made. Can't start to talk about until board in place to give authority to make commitments. Next board could tell me no longer recognized.
JR After transition and totally separate?
GB Things we can start on. Looking at systems available, costs, we can do, have set up, have recommendations, present to new board, don't want to get decision from old body, may not apply day of transition.
JD Whenever we begin negotiations, we go to the agency board and get authority. We don't start talking to anyone without that. Yes, we have the authority to talk. Or yes, we have the authority to talk and here are our limits. That board won't exist until a new agency in place.
GF Where would that happen within context?
GB Crystal ball? Existing MOUs, whether within term – could be 3 years from today, you'll be in a different labor contract, if year and a half, may be same. Transition document is key to bridge from MOU to MOU. It will take more than normal contract negotiation, doing an entire MOU. 6 months to a year, depending on hang-ups. Make sure transition document covers.
GF I understand within transition document, agency not able to augment benefits, don't see how that could prevent language, "willing to enhance benefits"…general terms.
GB Rather…"no guarantee for enhancements"
AE Next step, Glenn drawing up something up.
GB Yes, do my best. Not transition document, global road map. HR staff start on draft transition document.
TP Any problem with HR talking to stewards and asking for input with transition document?
JT Why not everyone?
SV Better to send to everyone.
TP Catch ahead of time.
FT Via email right? Might as well send to everyone?
DGai Sub group?
VC I have a problem with that.
FT Send it out to everyone, easier if everyone has same info.
MK Option, set up one of these meetings, list topics unsure about, could accomplish that with everyone.
TP Will email as originally intended.
GF Start off with a clause on the purposed intent of the transition document.
THu Good idea.
DGam Part of road map too, not sure how they'll work together. Dual system.
GB Needs to be there in one form or another.
JD Three action items, first – Glenn look at the scope of the RFP and what is within current contract and share with everyone, if outside, figure it out; second – document Glenn is drafting with input from others to put road map together; third – magic document from HR.
THu That captures it. Anything else?
JD I won't be there at next meeting, don't want to hold up progress.
THu Adjourned.
--
End Time: 11:40am
Next meeting: Tuesday, August 24th 10:00 a.m.

ADDENDUM TO THE MEMORANDUM OF UNDERSTANDING

BETWEEN

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7

AND

- ALAMEDA COUNTY MANAGEMENT EMPLOYEES ASSOCIATION
- ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL
- INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 21
- SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1021

September 23, 2010 through June 26, 2011

INDEX

ADDENDUM TO THE MEMORANDUM OF UNDERSTANDING

BETWEEN

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7

AND

- ALAMEDA COUNTY MANAGEMENT EMPLOYEES ASSOCIATION
- ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL
- INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 21
- SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1021

Article 1. <u>RECOGNITION</u>

The Alameda County Flood Control and Water Conservation District, Zone7 hereby recognizes the following unions:

- ALAMEDA COUNTY MANAGEMENT EMPLOYEES ASSOCIATION
- ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL
- INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 21
- SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1021

as the exclusive bargaining representative for those classes of employees listed in Appendix of the MOUs between County of Alameda and

- ACMEA – GENERAL GOVERNMENT December 29, 2008 – December 24, 2011 listed in Appendix C
- BUILDING & CONSTRUCTION TRADES COUNCIL DECEMBER 16, 2007 – DECEMBER 24, 2011 listed in Appendix C Extension through December 22, 2012
- IFPTE Local 21 September 12, 2004 – March 10, 2009 listed in Appendix D Extension through March 3, 2012
- SEIU Local 1021 December 31, 2006 – December 25, 2010 listed in Appendix F Extension through December 22, 2012

Effective upon the transition of Alameda County employees to Zone 7, the Agency shall adopt the provisions of the Memorandum of Understanding between Alameda County and the above-named unions as it pertains to the classifications utilized by the Agency.

Article 2. TRANSITION TO AGENCY

The parties agree that Alameda County employees who are laid off as a result of the transition from the Alameda County Civil Service System to the Agency shall immediately be rehired by the Agency and shall not be required to serve an additional probationary period as a result of the transition, provided they have completed the probationary period in the classification held at the time of the transfer. Those employees who have not completed said probationary period, shall complete the remaining portion of the probationary period as an employee of the Agency.

Article 3. STATUS OF EMPLOYEES

The parties agree that employees of Alameda County classified as Provisional employees shall be appointed to regular status at the Agency on the date of the transition, provided they have served six months in the position on or before the date of transfer of employees from Alameda County to the Agency. Those provisional employees who are in the initial six months of appointment will be placed on regular status and serve the remaining portion of the six-month period in a probationary status with the Agency. The seniority of said employees shall be calculated in the same manner as seniority for other regular employees.

Article 4. HIRING PRACTICES

4.1 Notification to Union of Vacancies

The parties agree that when vacancies occur, the Employer shall notify the Union and shall afford it an opportunity to send applicants for the position. All decisions on employment will be made solely on the individual's qualifications and bona fide occupational qualifications for the job in question. Selection procedures will be conducted in compliance with applicable federal, state and local employment laws. The Employer may employ the person who, in its judgment, will make the best employee.

4.2 Permanent Vacancies

The parties agree that notices of staff vacancies shall be posted at pre-designated locations at all Agency worksites, concurrent with advertising to the general public, for seven calendar days prior to interviews for the vacancy.

4.3 Transfer Within Classification

In the case of a permanent full-time vacancy, employees shall, upon written bid, be considered for the posted vacancy if they meet the qualifications of the posted job and if their work performance has been satisfactory on their current job. Special program requirements shall appear on position postings (such as certifications). Qualifications, experience and seniority of applicants will be considered by the hiring manager filling the position.

4.4 Promotional Opportunities

The Agency confirms its commitment to permit and encourage the filling of higher classes by promotion. Pursuant to this commitment, the Agency commits to consider internal candidates for all position vacancies and to provide opportunities for promotion of current employees to promotional positions, provided these employees possess adequate qualifications, experience, skills and abilities to satisfactorily perform the job. In addition, the Agency agrees to interview the three (3) most senior qualified applicants for any opening, along with other candidates selected by the Human Resources Section.

Article 5. PROBATIONARY PERIOD

The parties agree that newly hired employees of the Agency shall serve a probationary period of six months. During such probationary period, employees may be discharged without recourse to the grievance procedure, except where it is alleged that the Agency has violated the provisions of the Section Discrimination of the Memorandum of Understanding.

Article 6. SENIORITY

The parties agree that seniority shall be defined as the seniority date established by Alameda County at the point of transfer to the Agency. Accrual of seniority with the Agency shall remain the same as the accrual policies under the Alameda County system, and shall apply for the purposes of time-off accruals, layoff and recall from layoff.

Article 7. CLASSIFICATION AND RECLASSIFICATION

7.1 New or Revised Classifications

The Agency shall continue to use the classifications listed in Appendices of Article 1 listed above and agrees that any proposed changes in classifications, titles, job descriptions and proposed new classifications, for which a portion of the job duties are the same or similar in nature to those performed by employees in classifications listed in Appendix's of Article 1 listed above, shall be subject to the meet and confer process with the appropriate Union. In the event the parties reach impasse, the Union may appeal the matter to an adjustment panel composed of two representatives of the Union, two representatives of the Agency and a State mediator agreeable to both parties. The recommendation of the adjustment panel shall be referred to the General Manager of the Agency. The decision of the General Manager shall be final.

The parties agree that disputes involving matters of Reclassification and Out of Classification are subject to the grievance procedure:

7.2 Employee Request for Reclassification

An employee who believes that he/she is being worked out of classification, and who believes that there has been a substantial change in his/her duties, which are not covered by the classification, may first request a review and resolution by the Human Resources Section. The Human Resources Section agrees to respond to the request within forty-five days. If the issue remains unresolved, he/she may submit the matter for resolution through the grievance procedure.

7.3 Work Out of Classification
Temporary assignment to a higher level position claims may be addressed through the Memorandum of Understanding listed in Article 1 above.

Article 8. DISCIPLINE AND DISCHARGE

The Agency may discipline and discharge employees for just cause.

8.1 Appeal of Discipline
The Union or employee shall have seven (7) work days after receipt of the written Skelly decision, in which to file a written appeal of the decision. The appeal shall be filed at Binding Arbitration of the Grievance Procedure in the Memorandum of Understanding listed in Article 1 above. Informal Review of The Grievance Procedure is waived for appeals of discipline or discharge.

8.2 Appeal of Written Reprimand
A written reprimand may be appealed through the Grievance Procedure, in which cases, the decision rendered at Step 5. (Agency/Department Head) of the Grievance Procedure shall be final and binding. Employees may attach a rebuttal to any letter of reprimand to be placed in the employee's personnel file. Upon request of an employee, any such reprimand shall be removed after five years, pursuant to the Memorandum of Understanding.

For purposes of hearing discipline appeals and grievances, the General Manager or designee of the Agency shall serve as the Agency/Department Head listed in Step 5. of the Grievance Procedure.

Article 9. LAYOFF AND RECALL

The parties agree that in the event of a reduction in force the Agency shall review the reasons and necessity for layoff and consider Union suggestions regarding alternatives and shall meet and confer with the Unions over the impact of layoffs. Employees shall be laid off in the inverse order of seniority by classification or classification series. Employees shall be returned from layoff in the order of seniority. Recall rights following a layoff shall continue for one (1) year.

Article 10. VACATION LEAVE

10.1 Vacation Leave Transfer
The parties agree that Alameda County employees’ vacation leave balances will be transferred to the Agency on the date of the transition.

10.2 Vacation Accrual
The parties agree that Alameda County employees’ vacation accruals will remain the same as the Memorandum of Understanding listed in Article 1 above.

10.3 Cash Payment In Lieu Of Vacation Leave

The parties agree that Alameda County employees' cash payment in lieu of vacation leave will remain the same as the Memorandum of Understanding listed in Article 1 above.

10.4 Limitation On Unused Vacation Leave Balances

The parties agree that Alameda County employees' limitation on unused vacation leave balances will remain the same as the Memorandum of Understanding listed in Article 1 above.

Article 11. SICK LEAVE

The parties agree that Alameda County employees' sick leave balances will be transferred to the Agency on the date of the transition.

Article 12. FLOATING HOLIDAYS

The parties agree that Alameda County employees' floating holiday's balances will be transferred to the Agency on the date of the transition and will remain the same as the Memorandum of Understanding listed in Article 1 above.

Article 13. DEFERRED COMPENSATION PLANS

The parties agree that Alameda County employees continue to be eligible to participate in deferred compensation plans when transferred to the Agency on the date of the transition.

Article 14. COMPENSATING TIME OFF

The parties agree that Alameda County employees' compensation time balances will be transferred to the Agency on the date of the transition.

Article 15. RETIREMENT SYSTEM

The parties agree that Alameda County employees' retirement system membership will be transferred with no break in service or loss of service credit to the Agency on the date of the transition.

Article 15. WAGES

The parties agree that Alameda County employees' wages, salaries, and side-letters will continue to be as outlined in the Memorandum of Understanding between the Board of Directors of Zone 7 and unions.