

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Parks and Recreation

BOARD AGENDA # *B-3

Urgent

Routine

AGENDA DATE May 10, 2011

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval to Enter into a Contract with Melvin T. Wheeler & Sons, LP, for the Harvesting of Grass and Hay from Approximately 639 Acres of Land at Woodward Reservoir Regional Park

STAFF RECOMMENDATIONS:

1. Approve a contract with Melvin T. Wheeler & Sons, LP, for the harvesting of grass and hay from approximately 639 acres of land at Woodward Reservoir Regional Park.
2. Authorize the Director of the Department of Parks and Recreation, or her designee, to sign the contract.

FISCAL IMPACT:

If approved, it is estimated this contract will generate \$12,000 in revenue for the Department of Parks and Recreation in Fiscal Year 2011-2012 based on approximately 1,600 tons of grass and hay being harvested. Melvin T. Wheeler & Sons, LP, agrees to pay Stanislaus County \$7.50 per ton for harvested grass and hay from roughly 639 acres of land at Woodward Reservoir Regional Park. Actual revenue will depend on the tonnage of grass and hay harvested and cannot be known until harvesting operations are complete. Revenue from this contract will be included in the Parks and Recreation budget.

BOARD ACTION AS FOLLOWS:

No. 2011-280

On motion of Supervisor O'Brien, Seconded by Supervisor DeMartini

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, DeMartini, and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

ATTEST:


CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Enter into a Contract with Melvin T. Wheeler & Sons, LP, for the Harvesting of Grass and Hay from Approximately 639 Acres of Land at Woodward Reservoir Regional Park

DISCUSSION:

Stanislaus County owns Woodward Reservoir Regional Park, which is located at 14528 26 Mile Road near the City of Oakdale. The Reservoir consists of 3,500 acres, including 2,500 acres of reservoir for recreational activities, and has approximately 639 acres of parkland that is filled with grass and hay. During the late spring and summer, this grass and hay dries and becomes an extreme fire hazard. In past years, Department staff has cut the grass creating firebreaks along the perimeter of the property near the roads and campgrounds.

As a test last year, volunteers harvested portions of the 639 acres of grass and hay. This demonstrated that harvesting of this grass and hay is practical and brings with it a potential for increased revenue to offset annual operations and maintenance costs at the regional facility. The County has determined that this grass and hay will be used as low quality animal feed. The harvesting of grass and hay in this location of Woodward Reservoir Regional Park is expected to effectively mitigate the potential fire hazard.

In order to be cost effective, the Department evaluated the benefit of harvesting grass and hay in 2011. On March 22, 2011, the General Services Agency (GSA) Purchasing Division posted an invitation to bid for the harvesting of grass and hay at Woodward Reservoir Regional Park. Bids closed on April 25, 2011, with two responses received. Black Rock Milling Co., Inc., bid \$2.85 per ton and Melvin T. Wheeler & Sons, LP, bid \$7.50 per ton. Melvin T. Wheeler & Sons, LP, was determined to be the successful bidder with the highest responsive and responsible bid. On April 26, 2011, GSA Purchasing Division issued a letter of intent to award a contract for grass and hay harvesting at Woodward Reservoir Regional Park to Melvin T. Wheeler & Sons, LP (Exhibit 1).

While it is unclear if harvesting will be pursued in the future, it is anticipated that additional annual harvests may be useful in high rainfall years as a fire management technique. This contract is for the period of one year without the option to renew so the department can evaluate its effectiveness annually based on staffing, rainfall, and management of the environment. Attached is a map defining the specific areas of the Park with grass or hay to be cleared as part of this contract (Exhibit 2).

POLICY ISSUE:

Approval of this agenda item to enter into a contract with Melvin T. Wheeler & Sons, LP, for the harvesting of grass and hay from approximately 639 acres of land at Woodward Reservoir Regional Park is consistent with the Board's priorities of A Strong Local Economy and a Well Planned Infrastructure System by promoting attractive and well-cared for regional recreational facilities.

STAFFING IMPACTS:

It is estimated that this contract will decrease the number of hours that existing Department staff will spend addressing fire hazards at Woodward Reservoir Regional Park. It is projected that this action will save 120 staff hours of work historically spent creating firebreaks along the perimeter of the property near the roads and campgrounds.

Approval to Enter into a Contract with Melvin T. Wheeler & Sons, LP, for the Harvesting of Grass and Hay from Approximately 639 Acres of Land at Woodward Reservoir Regional Park

CONTACT PERSON:

Sonya Harrigfeld, Director of Parks and Recreation Telephone 209-525-6770



DEPARTMENT OF PARKS AND RECREATION
3800 Comucopia Way, Suite C
Modesto, CA 95358
Phone: (209) 525-6700
Fax: (209) 525-6773

HARVESTING AGREEMENT

This Agreement is entered into between the County of Stanislaus ("County") and Melvin T. Wheeler & Sons, LP ("Harvester") for the provision of cutting, baling and removing grass and hay at Woodward Reservoir Regional Park, as further defined in the Scope of Services."

Recitals

WHEREAS, the County is the owner of Woodward Reservoir Regional Park, located at 14528 26 Mile Road, Oakdale, CA, which consists of 3500 acres of real property, including 2500 acres of reservoir for outdoor recreations activities; and

WHEREAS, the County has a need to have approximately 639 acres of Woodward Reservoir Regional Park land that is filled with grass and hay, cut, harvested and removed before the fire season; and

WHEREAS, the Harvester is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

1. Scope of Services

Definition: For the purpose of this Agreement Harvested is defined as, cut, gather, bale or otherwise process, remove and haul away the hay and grass.

The right granted to the Harvester herein is limited to the right to cut, harvest, remove and haul the hay and grass only, which may grow naturally on the property without irrigation of any kind. The Harvester shall cut, harvest, remove and haul the grass and hay as set forth below:

1.1 Harvester shall provide at his expense and in a good workmanlike manner, all the labor, supervision, material, transportation, and equipment necessary to properly cut, harvest, remove, and haul from the County premises, approximately 639 acres of grass and hay located in the areas identified in Exhibit 1. The County shall have no involvement with providing equipment or staff to the Harvester completes these services. The County shall not pay the Harvester for these services, nor reimburse the Harvester for expenses associated with these services.

1.2 Harvester shall remove the cut grass and hay from the County's premises and may keep the hay for Harvester's own use or may sell the removed grass and hay. Hay removed shall be weighed by a scale approved in advance by the County.

1.3 Harvester shall complete the services, which include cut, harvest and remove the grass and hay and all spoiled or broken bales, or otherwise processed hay and grass, etc., in Section 3 identified in Exhibit 1, by May 23, 2011.

1.4 Harvester shall complete the services, which include cut, harvest and remove the grass and hay and all spoiled or broken bales, or otherwise processed hay and grass, etc., in the remainder of the areas identified in Exhibit 1, (no exceptions) by June 30, 2011

1.5 Harvester, in cutting and removing the grass and hay from the County's premises, shall not leave any refuse or waste on the Property and shall ensure that all such items are removed from the premises.

1.6 Harvester shall contact the County Representative prior to cutting the grass and hay in Section 1, identified in Exhibit 1. The County has specific use for this section and it needs to be cut in a certain pattern.

- 1.7 The cutting and removal of the grass and hay, by the Harvester, from the premises shall at all times be conducted so that it does not interfere with Woodward Reservoir Regional Park operations or constitute a hazard to the operation of the Woodward Reservoir Regional Park.
- 1.8 The hay and grass shall not be cut by Harvester, any closer than 50 feet to any waterway. At no time shall the cut hay or equipment be left closer than 100 feet to the waterway.
- 1.9 The cut height shall not be less than what will cause damage to regrowth.
- 1.10 Harvester shall cut grass and hay up to the edge of all ditches or embankments in the Contract area.
- 1.11 Harvester's equipment not in use during the performance of the work shall be temporarily parked in a location approved by the Parks representative.
- 1.12 Harvester shall report to the County representative any damage to the property caused by the grass and hay cutting operations.
- 1.13 Harvester has use of the property for grass and hay cutting purposes only and shall not enter the property except to cut, haul, bale or otherwise process, or check land conditions.
- 1.14 Harvester shall work and communicate closely with the County's Department of Parks and Recreation and shall coordinate entry into the Property with County representative. Harvester shall only enter the Property through entry or access points designated by the County representative. Harvester shall maintain good communications with the County, including but is not limited to emergency responses concerning public concerns, contract needs, damage control and continuing good relations with staff.
- 1.15 Harvester is responsible for obtaining all the necessary licenses and permits, if needed or required by law.
- 1.16 The County is not responsible for the quality or type of the grass and hay cut and removed by the Harvester.
- 1.17 No Bonding is required for this Project.
- 1.18 Harvester is responsible for any and all rock damage caused during performance of these services, including but not limited to damage to guards or section breaks.
- 1.19 If there are areas of the grass that can not be cut with a swather because of rock or other physical barriers, the Harvester can go around and skip the area where there is rock or other physical barriers.
- 1.20 After a rain event, the cut grass or hay can be left by the Harvester for additional time in the fields to dry, however, all of the Work shall be completed as identified in Paragraph 1.3 and 1.4 of this Agreement. No exceptions.

2. **Term of the Agreement**

The term of this Agreement shall be from the date of award through July 11, 2011 unless sooner terminated as provided below.

2.1 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at the party's option, may terminate this Agreement by giving written notification to the other party.

2.3 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of Harvesters business, (c) cancellation of insurance required under the terms of this Agreement, and (d) if, for any reason, Harvester ceases to be licensed or otherwise authorized to do business in the State of California, and the Harvester fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

3. **Payment:**

3.1 Harvester agrees to pay the County for the right to cut, harvest, bale or otherwise process, and remove grass and hay from said Property, and County agrees to accept as payment a fixed price of **\$7.50 per ton** harvested. The Harvester shall be responsible for submitting, weight tags from a certified weight scale to the County.

3.2 Harvester shall submit payment to the office of the Stanislaus County Department of Parks and

Recreation, 3800 Cornucopia Way, Suite C, Modesto, California 95358. Payment shall be based on tonnage receipts provided by the Harvester.

3.3 If monies are not paid when due, Harvester agrees to pay interest on the amount of unpaid monies at the rate of 10% of the remaining balance per month.

3.4 Harvester shall pay the County no later than two (2) weeks from the date the grass and hay is removed from the Property.

Standard Terms and Conditions

4. Termination for Convenience

The County may terminate this contract, in whole or in part, without cause upon giving written notice to the Harvester. The Harvester may not be reimbursed for any anticipatory profits which have not been earned up to the date of termination.

5. No Partnership

This Agreement shall not be deemed nor is it intended to give rise to a partnership relationship between the County and Harvester.

6. Use of Premises

The use of Property granted to the Harvester is for the purpose of harvesting of hay and grass in the areas identified in Exhibit 1 and for no other purpose. Harvester shall not enter the Property except to cut, haul, bale or otherwise process, or check land conditions.

7. Condition of the Property

Harvester hereby accepts the grass and hay "as is" and in the condition existing as of the Commencement Date of this Agreement or the date the Harvester takes possession of the grass and hay, whichever is earlier. Harvester has determined that the grass and hay is acceptable for Harvester's use and Harvester acknowledges that neither County nor any agent of County has made any representation or warranty with respect to the grass and hay; the condition of the grass and hay; the soil; the productivity of the grass and hay; the number of acres in production; its suitability or fitness for the conduct of Harvester's business or for any other purpose. The County is not responsible for the quality or type of the grass and hay cut and removed by the Harvester.

8. Harvesting Practices

Harvester shall follow the Harvesting practices that are generally recommended for and that are the best adapted to this type of property and appropriate for the locality. Throughout the term of this Agreement, Harvester shall keep and maintain the Property in approximately the same condition as it is at the commencement of the term of this Agreement.

9. Costs of Operations

Harvester shall pay for all costs associated with the harvesting the grass and hay, including but not limited to labor, machinery, and equipment necessary and appropriate to harvest the grass and hay.

10. Compliance with Laws and Regulations

Harvester, at Harvester's expense shall comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements (including but not limited to any requirements of the Americans with Disabilities Act) in effect during the term or any part of the term hereof, regulating the use by Harvester of the Property.

11. Waste or Nuisance

11.1 Harvester shall not during any time during the term of the Agreement, use, store, treat, transport, manufacture, handle or produce any hazardous substances without obtaining all necessary governmental approvals and permits and thereafter, complying with the terms thereof, as well as, with the provisions of the laws, regulations and policies pertaining thereto, which are now herein in effect.

11.2 Harvester shall not use or occupy the Property or suffer the use or occupancy of the Property in violation of any environmental laws. Harvester shall not dispose of or allow the disposal of any hazardous substance on the Property. Harvester shall not permit, create or suffer the existence of any condition which could subject the County to a "remedial", or "clean-up" action as those terms may be defined in any environmental law.

The term "hazardous substance" shall mean any substance deemed hazardous under any of the following statutes or any other statutes or regulations of any governmental authority: The Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601 et.seq., The Resource Conservation and Recovery Act, 42 USC § 6901 et.seq., The Hazardous Material Transportation Material Act, 49 USC § 1801 et.seq., and the Toxic Substance Control Act, 15 USC § 2601 et.seq.

The term "environmental law" shall mean any federal, state, municipal, EEIDD, or local laws or regulation which governs or relates to the environment, land, use, zoning, public health, chemical use, public safety, sanitation, water, air, fish, wildlife and natural resources.

11.3 Harvester shall not commit or permit the commission by others of any waste on the Property; Harvester shall not maintain, commit or permit the maintenance or commission of any nuisance as defined in Section 3479 of the California Civil code; and Harvester shall not use or permit the use of the Property for any unlawful purpose.

12. Insurance

Harvester shall obtain the following insurance:

a. GENERAL LIABILITY: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project, or the general aggregate limit shall be twice the required occurrence limit.

b. AUTO LIABILITY: Owned/Nonowned automobile liability insurance providing combined single limits covering bodily injury liability with limits or no less than \$100,000 per accident, and providing property damage liability of no less than \$100,000 per accident.

c. WORKERS COMPENSATION: Workers' Compensation insurance as required by the Labor Code of the State of California.

d. DEDUCTIBLES: Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds; or the Harvester shall provide a bond, cash or letter of credit guaranteeing payment of the self-insured retention, deductible, or payment of any and all costs, losses, related investigations, claim administration and defense expenses.

e. ENDORSEMENTS: The insurance policies are to contain, or be endorsed to contain, the following provisions:

i. GENERAL LIABILITY: Harvester shall provide a separate endorsement naming County and County's officers, officials, employees, and volunteers as additional insureds. The

coverage shall contain no special limitations on the scope of protection afforded to the County or County's officers, officials, employees, or volunteers.

ii. PRIMARY COVERAGE: The Harvester's insurance coverage shall be primary insurance over and other insurance held by the County and County's officers, officials, employees and agents. Any insurance or self-insurance maintained by the County or County's officers, officials, employees, or agents shall be excess of the Harvester's insurance and shall not contribute with Harvester's insurance.

iii. WORKERS COMPENSATION – SUBROGATION: The Harvester's insurer shall agree to waiver all rights of subrogation against the County and County's officers, officials, employees, and volunteers for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Harvester.

f. ALL INSURANCE:

i. Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) day's prior written notice by certified mail, return receipt requested, has been given to County.

ii. Insurance shall be placed with a California admitted insurers (licensed to do business in California) or other insurer as approved by the County. All insurance policies shall have a Best's rating of no less than B+VII or as approved by the County.

iii. Prior to the effective date of the Agreement, Harvester shall furnish County with certificates of insurance and with original endorsements effecting coverage required by this section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements shall be received and in County's sole and absolute discretion, approved by County before any other term or condition of this Agreement is performed by Harvester. County the right to require complete copies of all required insurance policies and endorsements, at any time.

13. Indemnification

Harvester shall indemnify, defend and hold harmless the County, its officers, employees and agents, from any claims liability, causes of action or costs arising from or related to the negligence or wrongful acts or omissions of Harvester, its officers, employees and agents.

14. Damages

At the termination of the Agreement, Harvester shall pay to County reasonable compensation for any damages to the property caused by Harvester or its invitees, agents, or employees, excepting ordinary wear and tear or depreciation.

15. Assignment

Harvester shall not assign, sublet, encumber or otherwise transfer this Agreement or any right or interest in the Property, without the prior written consent of County. Without the consent of County, any attempted assignment or transfer of this Agreement or any interest therein, either by voluntary or involuntary act of Harvester, or by operation of law or otherwise, shall, at the option of County, terminate this Agreement. The Stanislaus County Department of Environmental Resources Director is authorized to grant the consent of County, as required by this paragraph.

16. Default by Harvester

All covenants and agreements contained in this Agreement are declared to be conditions to this Agreement. Should Harvester default in the performance of any condition or agreement contained in this Agreement, County may terminate and re-enter and regain possession of the Property in the manner then provided by the laws of unlawful detainer of the State of California then in effect.

17. Notices

All notices required or permitted by this Agreement or by law to be served on or given to either party hereto by the other party, shall be in writing and personally delivered to the party to whom it is directed, or in lieu of personal service when deposited in the United States mail address as follows:

County - Stanislaus County
Department of Parks and Recreation
3800 Cornucopia Way, Suite C
Modesto, CA 95358
Attn: Susan M. Garcia, C.P.M.

Harvester - Melvin T. Wheeler & Sons, LP
5301 Woodland Avenue
Modesto, CA 95358
Attn: Dan Wheeler

18. Time of Essence

Time is expressly declared to be the essence of this Agreement.

19. Waiver

The waiver of any breach of any of the provisions of this Agreement by County shall not constitute continuing waiver or a waiver of any subsequent breach by Harvester either of the same or of another provision of this Agreement.

20. Hold Harmless

Harvester agrees to defend and indemnify and hold County harmless from any and all claims, liability, loss, damage or expense resulting from Harvester's occupation and use of the premises.

21. Attorney's Fees

Should any litigation be commenced between the parties to this Agreement concerning the premises, this Agreement or the rights and duties in relation thereto, the party, County or Harvester, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for the attorney's fees in such litigation which shall be determined by the court in such litigation or in separate action brought for that purpose.

22. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by the construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

EXECUTED ON _____ at Modesto, California.

STANISLAUS COUNTY:

MELVIN T. WHEELER & SONS, LP

COUNTY:

HARVESTER:

Sonya K. Harrigfeld
Department of Environmental Resources

David Wheeler D.P.

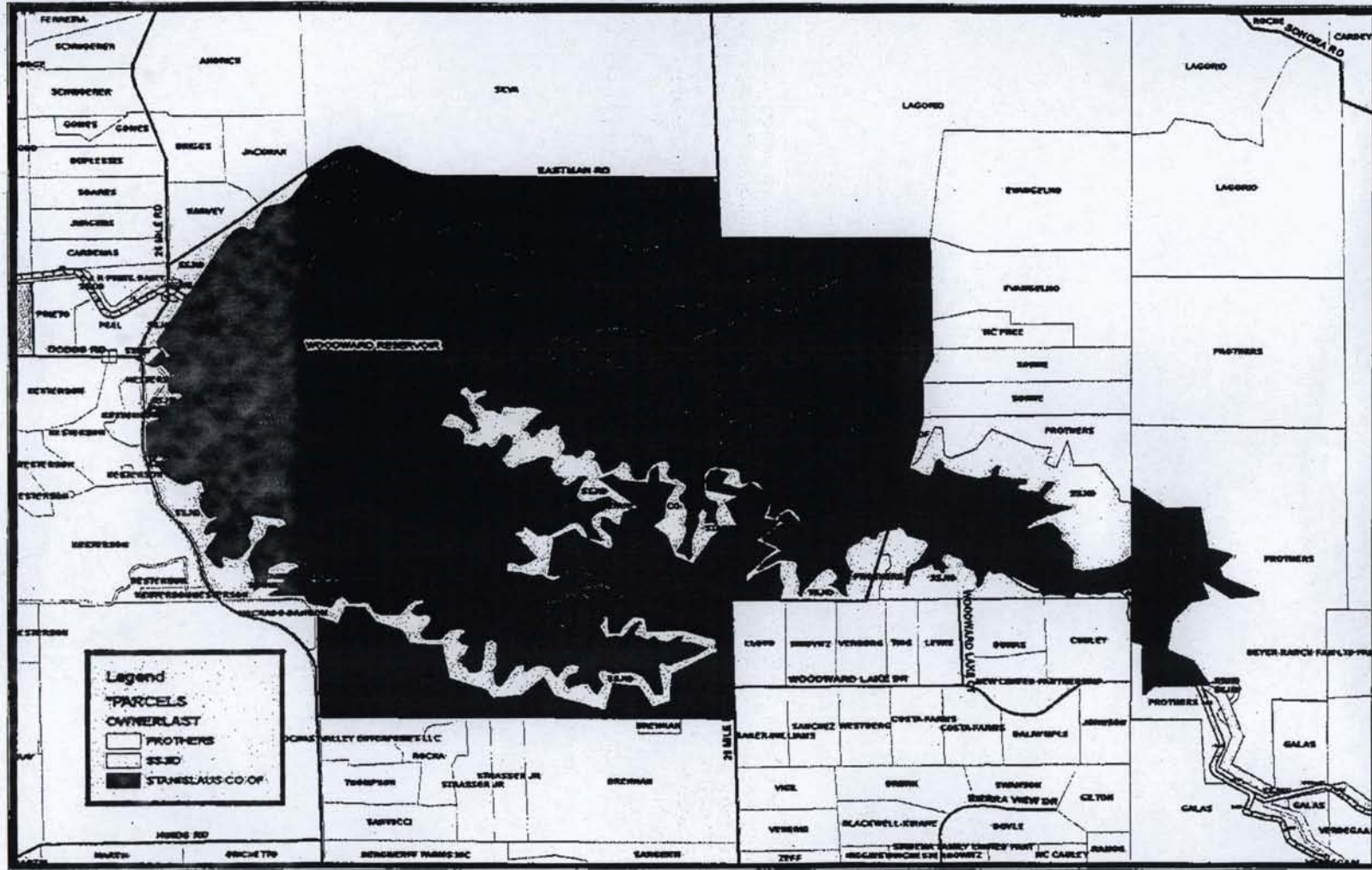
Name:
Title:

APPROVED AS TO FORM:

John P. Doering
County Counsel

Thomas E. Boze

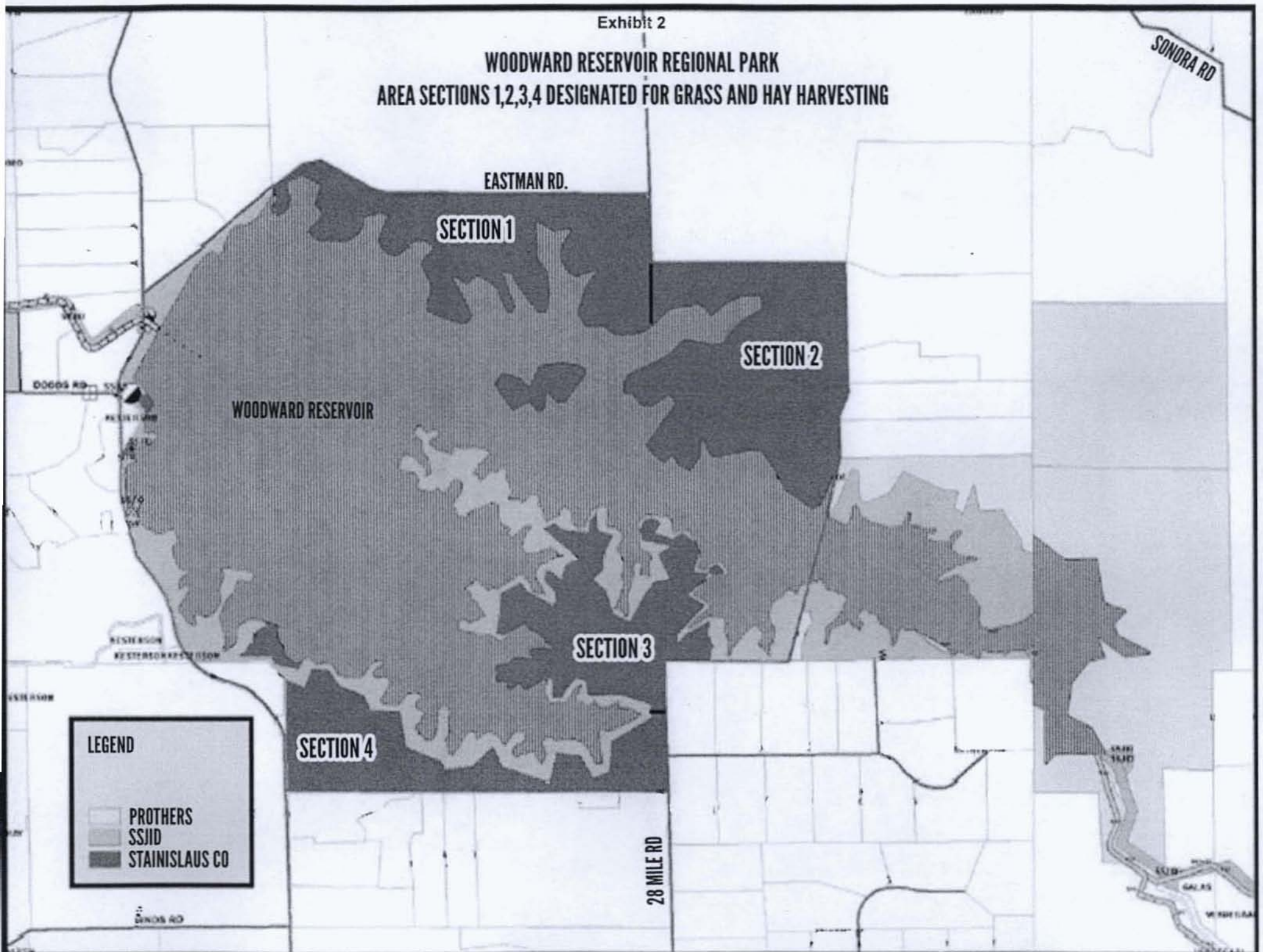
Thomas E. Boze
Deputy County Counsel



Map of Proposed Hay Fields To Be Harvested *WOODWARD LAKE*

1 inch = 2,500 feet ↑

WOODWARD RESERVOIR REGIONAL PARK AREA SECTIONS 1,2,3,4 DESIGNATED FOR GRASS AND HAY HARVESTING



SONORA RD

EASTMAN RD.

SECTION 1

SECTION 2

WOODWARD RESERVOIR

SECTION 3

SECTION 4

28 MILE RD

LEGEND

- PROTHERS
- SSJD
- STAINISLAUS CO

DODDS RD



DEPARTMENT OF PARKS AND RECREATION
3800 Cornucopia Way, Suite C
Modesto, CA 95358
Phone: (209) 525-6700
Fax: (209) 525-6773

HARVESTING AGREEMENT

This Agreement is entered into between the County of Stanislaus ("County") and Melvin T. Wheeler & Sons, LP ("Harvester") for the provision of cutting, baling and removing grass and hay at Woodward Reservoir Regional Park, as further defined in the Scope of Services."

Recitals

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WHEREAS, the County has a need to have approximately 639 acres of Woodward Reservoir Regional Park land that is filled with grass and hay, cut, harvested and removed before the fire season; and

WHEREAS, the Harvester is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

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2. Term of the Agreement

The term of this Agreement shall be from the date of award through July 11, 2011 unless sooner terminated as provided below.

2.1 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at the party's option, may terminate this Agreement by giving written notification to the other party.

2.3 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of Harvester's business, (c) cancellation of insurance required under the terms of this Agreement, and (d) if, for any reason, Harvester ceases to be licensed or otherwise authorized to do business in the State of California, and the Harvester fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

3. Payment:

3.1 Harvester agrees to pay the County for the right to cut, harvest, bale or otherwise process, and remove grass and hay from said Property, and County agrees to accept as **payment a fixed price of \$7.50 per ton** harvested. The Harvester shall be responsible for submitting, weight tags from a certified weight scale to the County.

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Recreation, 3800 Cornucopia Way, Suite C, Modesto, California 95358. Payment shall be based on tonnage receipts provided by the Harvester.

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This Agreement shall not be deemed nor is it intended to give rise to a partnership relationship between the County and Harvester.

6. Use of Premises

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7. Condition of the Property

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10. Compliance with Laws and Regulations

Harvester, at Harvester's expense shall comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements (including but not limited to any requirements of the Americans with Disabilities Act) in effect during the term or any part of the term hereof, regulating the use by Harvester of the Property.

11. Waste or Nuisance

11.1 Harvester shall not during any time during the term of the Agreement, use, store, treat, transport, manufacture, handle or produce any hazardous substances without obtaining all necessary governmental approvals and permits and thereafter, complying with the terms thereof, as well as, with the provisions of the laws, regulations and policies pertaining thereto, which are now herein in effect.

11.2 Harvester shall not use or occupy the Property or suffer the use or occupancy of the Property in violation of any environmental laws. Harvester shall not dispose of or allow the disposal of any hazardous substance on the Property. Harvester shall not permit, create or suffer the existence of any condition which could subject the County to a "remedial", or "clean-up" action as those terms may be defined in any environmental law.

The term "hazardous substance" shall mean any substance deemed hazardous under any of the following statutes or any other statutes or regulations of any governmental authority: The Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601 et.seq., The Resource Conservation and Recovery Act, 42 USC § 6901 et.seq., The Hazardous Material Transportation Material Act, 49 USC § 1801 et.seq., and the Toxic Substance Control Act, 15 USC § 2601 et.seq.

The term "environmental law" shall mean any federal, state, municipal, EEIDD, or local laws or regulation which governs or relates to the environment, land, use, zoning, public health, chemical use, public safety, sanitation, water, air, fish, wildlife and natural resources.

11.3 Harvester shall not commit or permit the commission by others of any waste on the Property; Harvester shall not maintain, commit or permit the maintenance or commission of any nuisance as defined in Section 3479 of the California Civil code; and Harvester shall not use or permit the use of the Property for any unlawful purpose.

12. Insurance

Harvester shall obtain the following insurance:

a. GENERAL LIABILITY: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project, or the general aggregate limit shall be twice the required occurrence limit.

b. AUTO LIABILITY: Owned/Nonowned automobile liability insurance providing combined single limits covering bodily injury liability with limits or no less than \$100,000 per accident, and providing property damage liability of no less than \$100,000 per accident.

c. WORKERS COMPENSATION: Workers' Compensation insurance as required by the Labor Code of the State of California.

d. DEDUCTIBLES: Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds; or the Harvester shall provide a bond, cash or letter of credit guaranteeing payment of the self-insured retention, deductible, or payment of any and all costs, losses, related investigations, claim administration and defense expenses.

e. ENDORSEMENTS: The insurance policies are to contain, or be endorsed to contain, the following provisions:

i. GENERAL LIABILITY: Harvester shall provide a separate endorsement naming County and County's officers, officials, employees, and volunteers as additional insureds. The

coverage shall contain no special limitations on the scope of protection afforded to the County or County's officers, officials, employees, or volunteers.

ii. PRIMARY COVERAGE: The Harvester's insurance coverage shall be primary insurance over and other insurance held by the County and County's officers, officials, employees and agents. Any insurance or self-insurance maintained by the County or County's officers, officials, employees, or agents shall be excess of the Harvester's insurance and shall not contribute with Harvester's insurance.

iii. WORKERS COMPENSATION – SUBROGATION: The Harvester's insurer shall agree to waive all rights of subrogation against the County and County's officers, officials, employees, and volunteers for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Harvester.

f. ALL INSURANCE:

i. Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) day's prior written notice by certified mail, return receipt requested, has been given to County.

ii. Insurance shall be placed with a California admitted insurers (licensed to do business in California) or other insurer as approved by the County. All insurance policies shall have a Best's rating of no less than B+:VII or as approved by the County.

iii. Prior to the effective date of the Agreement, Harvester shall furnish County with certificates of insurance and with original endorsements effecting coverage required by this section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements shall be received and in County's sole and absolute discretion, approved by County before any other term or condition of this Agreement is performed by Harvester. County the right to require complete copies of all required insurance policies and endorsements, at any time.

13. Indemnification

Harvester shall indemnify, defend and hold harmless the County, its officers, employees and agents, from any claims liability, causes of action or costs arising from or related to the negligence or wrongful acts or omissions of Harvester, its officers, employees and agents.

14. Damages

At the termination of the Agreement, Harvester shall pay to County reasonable compensation for any damages to the property caused by Harvester or its invitees, agents, or employees, excepting ordinary wear and tear or depreciation.

15. Assignment

Harvester shall not assign, sublet, encumber or otherwise transfer this Agreement or any right or interest in the Property, without the prior written consent of County. Without the consent of County, any attempted assignment or transfer of this Agreement or any interest therein, either by voluntary or involuntary act of Harvester, or by operation of law or otherwise, shall, at the option of County, terminate this Agreement. The Stanislaus County Department of Environmental Resources Director is authorized to grant the consent of County, as required by this paragraph.

16. Default by Harvester

All covenants and agreements contained in this Agreement are declared to be conditions to this Agreement. Should Harvester default in the performance of any condition or agreement contained in this Agreement, County may terminate and re-enter and regain possession of the Property in the manner then provided by the laws of unlawful detainer of the State of California then in effect.

17. Notices

All notices required or permitted by this Agreement or by law to be served on or given to either party hereto by the other party, shall be in writing and personally delivered to the party to whom it is directed, or in lieu of personal service when deposited in the United States mail address as follows:

County -	Stanislaus County Department of Parks and Recreation 3800 Cornucopia Way, Suite C Modesto, CA 95358 Attn: Susan M. Garcia, C.P.M.
Harvester -	Melvin T. Wheeler & Sons, LP 5301 Woodland Avenue Modesto, CA 95358 Attn: Dan Wheeler

18. Time of Essence

Time is expressly declared to be the essence of this Agreement.

19. **Waiver**

The waiver of any breach of any of the provisions of this Agreement by County shall not constitute continuing waiver or a waiver of any subsequent breach by Harvester either of the same or of another provision of this Agreement.

20. **Hold Harmless**

Harvester agrees to defend and indemnify and hold County harmless from any and all claims, liability, loss, damage or expense resulting from Harvester's occupation and use of the premises.

21. **Attorney's Fees**

Should any litigation be commenced between the parties to this Agreement concerning the premises, this Agreement or the rights and duties in relation thereto, the party, County or Harvester, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for the attorney's fees in such litigation which shall be determined by the court in such litigation or in separate action brought for that purpose.

22. **Governing Law and Venue**

This Agreement shall be deemed to be made under, and shall be governed by the construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

EXECUTED ON May 10, 2011 at Modesto, California.


STANISLAUS COUNTY:

MELVIN T. WHEELER & SONS, LP

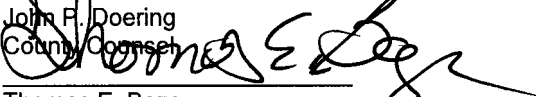
COUNTY:

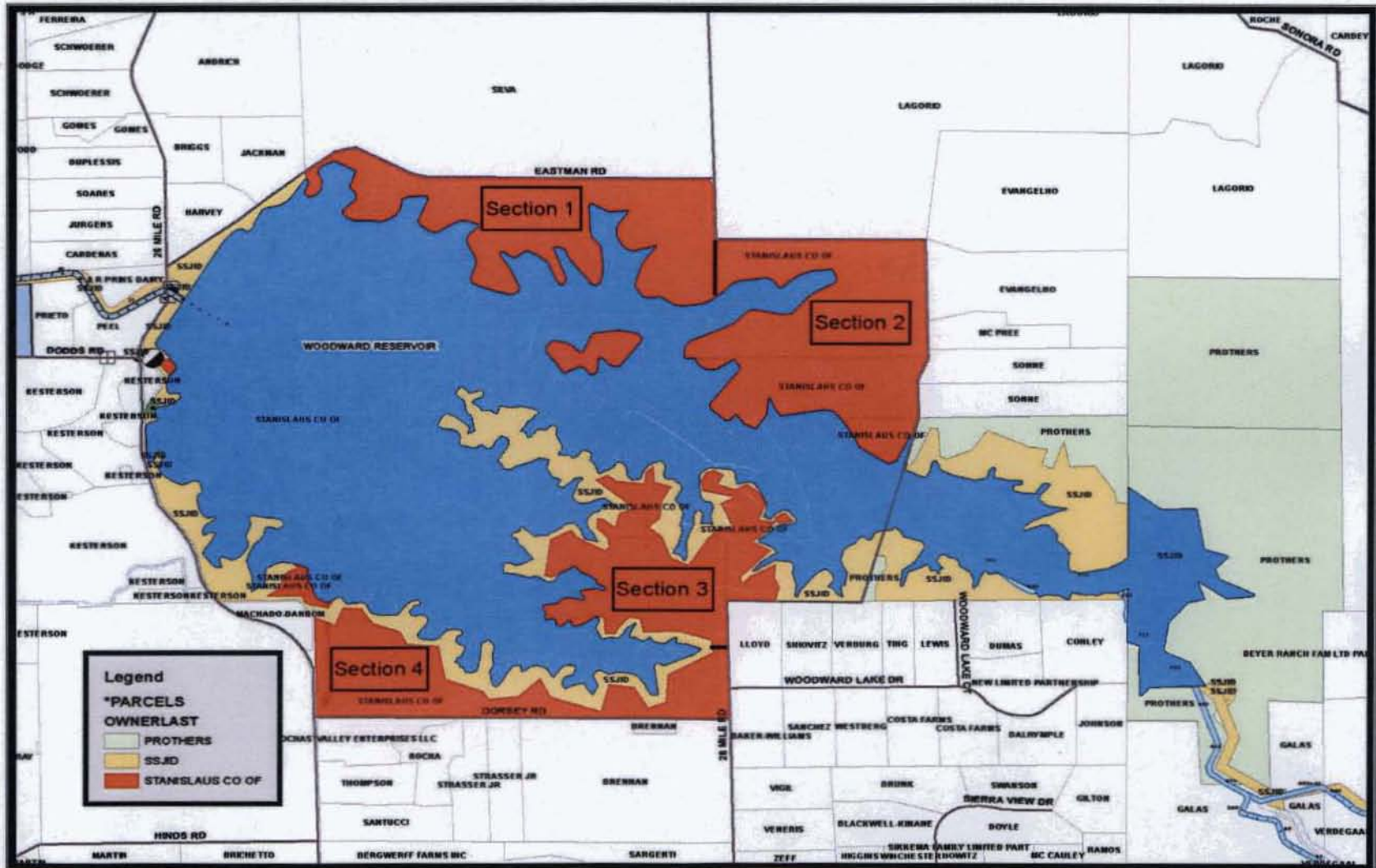
HARVESTER:


Sonya K. Harrigfeld
Department of Environmental Resources


Name:
Title: V.P.

APPROVED AS TO FORM:


John F. Doering
County Counsel
Thomas E. Boze
Deputy County Counsel



Map of Proposed Hay Fields To Be Harvested *WOODWARD LAKE*

1 inch = 2,500 feet

STATE OF CALIFORNIA
 DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
REIMBURSABLE LETTER OF AGREEMENT
 CHP 465 (Rev. 9-08) OPI 071

THIS AGREEMENT, Reimbursable Services Control Log # R-11-465-0001 made and entered into this 1st day of June, 2011, by and between the State of California, acting by and through the Department of California Highway Patrol, hereinafter called CHP, and Stanislaus County Department of Parks and Recreation, hereinafter called Stanislaus County Department of Parks and Recreation.

WITNESSETH: By and in consideration of the covenants and conditions herein contained, Stanislaus County Department of Parks and Recreation and CHP do hereby agree to the following terms and conditions:

1. When traffic control security services vehicle inspections other details for Woodward Reservoir July 4th Fireworks Show are required, CHP agrees to provide uniformed personnel with motorcycles and/or patrol vehicles to assist with the traffic control at the entrances of Woodward Reservoir and surrounding county roads.
2. The term of this agreement will be 07/04/2011 to 07/05/2011.
3. CHP Coordinator shall be Sergeant Ben Ashby, telephone number (209) 545-7440.
4. In the event of a disaster or unforeseen emergency, this agreement may be canceled without prior notice by CHP.
5. This agreement may be amended in writing by mutual consent of the parties hereto.
6. The hours and miles indicated in this agreement are for estimate purposes only. Actual time and vehicle mileage will be charged. This includes travel between the CHP Division or Area office and the service location.
7. The rates indicated in this agreement are for estimate purposes only. Any increases in overhead, mileage, damaged uniforms, privately-owned safety equipment, salaries and benefits are governed by collective bargaining agreement and/or statute. In the event of a rate increase, Stanislaus County Department of Parks and Recreation agrees to pay the increased rates.
8. In consideration for the above services and upon receipt of an itemized invoice, Stanislaus County Department of Parks and Recreation agrees to reimburse CHP for the actual costs incurred at the time services are provided. Rates charged to Stanislaus County Department of Parks and Recreation shall in no event exceed the actual costs to the CHP to perform the requested services. The following cost information is for estimate purposes only:

Sergeant:	<u>14.5</u> hrs.	@	\$ <u>91.98</u>	\$ <u>1,333.71</u>
Officer:	<u>59.5</u> hrs.	@	\$ <u>75.64</u>	\$ <u>4,500.58</u>
Vehicle mileage:	<u>600</u> miles	@	\$ <u>0.63</u>	\$ <u>378.00</u>
Motorcycle mileage:	_____ miles	@	\$ _____	\$ _____
Other expenses:	_____			\$ _____
TOTAL ESTIMATED COSTS (Estimate exceeding \$50,000 shall be forwarded on a CHP 78, Contract Request, to Business Services Section, Contract Services Unit):				\$ <u>6,212.29</u>

9. Payment/Deposit/Purchase Order shall be required before services can be performed.
 - a. Amount of Deposit collected: \$ _____
 - b. Check Number/Purchase Order Number: _____
 - c. Cash Receipt Number: _____

Stanislaus County Department of Parks and Recreation agrees that additional charges, which are directly related to the provided, may be assessed for CHP supplies, additional equipment utilized, damage to uniforms, or property or replaced at CHP's expense.

If the CHP uniformed employee has reported to the assigned location and has worked less than four (4) hours, Stanislaus County Department of Parks and Recreation agrees to pay every assigned uniform employee a minimum of four (4) hours overtime. Exception: This does not apply to those cases when the hours worked are part of an extended shift.

- 12. Stanislaus County Department of Parks and Recreation will not be charged for cancellations made more than 24 hours prior to the scheduled assignment.
- 13. Stanislaus County Department of Parks and Recreation agrees that if cancellation is made within 24 hours prior to the scheduled assignment and the assigned CHP uniformed employee(s) cannot be notified of such cancellation, a minimum of four (4) hours overtime will be charged for each assigned uniformed employee.
- 14. Stanislaus County Department of Parks and Recreation agrees that if cancellation is made within 24 hours prior to the scheduled assignment and the CHP employee is notified of such cancellation, Stanislaus County Department of Parks and Recreation will only be charged a short notice cancellation fee of \$50.00 per assigned CHP uniformed employee.
- 15. All cancellation notices to CHP must be made during normal CHP business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. Cancellation notices shall only be accepted by the appropriate CHP Division or Area office.
- 16. CHP agrees to make reasonable efforts to notify those CHP uniformed employees of the cancellation.
- 17. No additional gifts, donations, or gratuities may be accepted by the California Highway Patrol employees on their behalf or on behalf of the Department, informal squad fund or other local funds.
- 18. A county, city, district, or other local public body must provide the state with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

STATE OF CALIFORNIA
Department of California Highway Patrol

REQUESTOR'S NAME

[Signature] / for FR 4/25/2011
Commander's Signature Date

[Signature]
Signature Date

L. C. Duncan
Printed Name

Ms. Sonya Harrigfeld
Printed Name

Captain
Title

Director, Stanislaus Co. Dept. of Parks & Recreation
Title

465 - Modesto Area
Location Code

3800 Conucopia Way, Suite C
Address

For use by City/County Clerk	
Approved as to form by	Date

Modesto CA 95358
City State Zip Code

(209) 525-6783
Telephone Number

This agreement under \$50,000 is exempt from Department of General Services' approval in accordance with the State Administrative Manual.

STATE OF CALIFORNIA
 DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
BILLING MEMORANDUM - Reimbursable Services
 CHP 467 (Rev. 1-08) OPI 071

DATE	LOCATION CODE
07/14/2010	465

TO	FROM (DIVISION OR AREA NAME)
Fiscal Management Section - Reimbursable Services Unit	Modesto Area

REQUESTOR INFORMATION

STATE/LOCAL PERMIT NUMBER	REIMBURSABLE SERVICES CONTROL LOG NUMBER (IF UNDER \$50,000)
N/A	R-10-465-0001
REIMBURSABLE SPECIAL PROJECT CODE NUMBER	INTERAGENCY AGREEMENT/CONTRACT NUMBER (IF OVER \$50,000)
63	N/A
REQUESTOR/AGENCY NAME	DGS BILLING CODE (IF APPLICABLE)
Stanislaus County Department of Parks and Recreation	N/A
BILLING ADDRESS	TELEPHONE NUMBER
3800 Cornucopia Way, Modesto, CA, 95358	(209) 525-6783
NAME OF PERSON IN CHARGE AND TITLE	
Sonya Harrigfield - Director	
SERVICE DATE(S)	SERVICE TYPE (SECURITY STANDBY, BAILIFF, MOVIE DETAIL, ETC.)
07/04/2010 to 07/05/2010	Traffic Control
NAME OF MOVIE, COMMERCIAL OR EVENT	LOCATION WHERE SERVICES WERE PERFORMED
Woodward Reservoir Fireworks Show	Woodward Reservoir

BILLING INFORMATION - Personnel assigned

Check if motor officer/Sgt. ↓

Check if officer drove motorcycle ↓

Name	I.D. Number	Rank	<input type="checkbox"/>	Reg. Hrs.	OT Hrs.	Miles	<input type="checkbox"/>
Benjamin Ashby (07/04/10)	16213	Sergeant	<input checked="" type="checkbox"/>		14.50	106	
Scott McFarlane (07/04/10)	17273	Officer	<input type="checkbox"/>		4.00	0	
Eldon Sousa (07/04/10)	12351	Officer	<input type="checkbox"/>		4.00	0	
Sharon Milne (07/04/10)	11339	Officer	<input type="checkbox"/>		14.50	108	

Continued on next page

CANCELLATION INFORMATION - Personnel assigned

Check if motor officer/Sgt. ↓

Check if officer drove motorcycle ↓

Name	I.D. Number	Rank	<input type="checkbox"/>	OT Hrs.	Miles	\$50	<input type="checkbox"/>

TRAVEL EXPENSES INCURRED (ATTACH COPY OF TRAVEL CLAIMS)	DEPOSIT COLLECTED
N/A	\$ 6,372.62
REASON WHY ADVANCED DEPOSIT WAS NOT COLLECTED:	
N/A	

DAMAGE TO EQUIPMENT:
N/A

ANY OTHER EXPENSES:
N/A

COMMANDER'S SIGNATURE	DATE

Sergeant (0900 hrs to 2330 hours)	shift hours	total hours	Cost per hour	Subtotal
1	14.5	14.5	\$91.98	\$1,333.71
Officer (0900 hrs to 2330 hours)				
3	14.5	43.5	\$75.64	\$3,290.34
Officer (0730 hrs to 2330 hours)				
4	4	16	\$75.64	\$1,210.24
Cars	Miles	Total miles	cost per mile	
8	75	600	\$0.63	\$378.00

Grand Total \$6,212.29