

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

DEPT: Parks and Recreation *SMA*

BOARD AGENDA # *B-5

Urgent Routine

AGENDA DATE April 17, 2012

CEO Concurs with Recommendation YES NO
prt
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Enter into a Contract with Stueve's Dairy for the Harvesting of Grass and Hay from Woodward Reservoir Regional Park for Fire Prevention Purposes

STAFF RECOMMENDATIONS:

1. Approve a five-year contract with Stueve's Dairy for the harvesting of grass and hay of approximately 1,350 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, this contract would become effective as of April 17, 2012, and run through June 15, 2016. Beginning in Fiscal Year 2012-2013, it is estimated that 1,080 tons of grass and hay could be harvested annually on the 1,350 acres of parkland. This would generate \$18,360 revenue annually. Stueve's Dairy agrees to pay Stanislaus County \$17 per ton annually for harvested grass and hay from parklands at Woodward Reservoir Regional Park. Actual revenue will depend on the tonnage of grass and hay harvested.

(Continued on next page)

BOARD ACTION AS FOLLOWS:

No. 2012-160

On motion of Supervisor Chiesa, Seconded by Supervisor Withrow
and approved by the following vote,

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

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

- 1) Approved as recommended
- 2) Denied
- 3) Approved as amended
- 4) Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Enter into a Contract with Stueve's Dairy for the Harvesting of Grass and Hay from Woodward Reservoir Regional Park for Fire Prevention Purposes

FISCAL IMPACTS (Continued):

Revenue from this contract will be included annually in the Parks and Recreation operating budget.

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, approximately 2,150 acres for outdoor recreational activities, and approximately 1,350 acres of parkland filled with grass and hay. During the late spring and summer, this grass and hay dries and becomes an extreme fire hazard. The standard past practice for addressing this fire hazard was for Department staff to cut the grass creating firebreaks along the perimeter of the property and campgrounds.

In 2010, as a test, volunteers harvested portions of this grass and hay to reduce the number of Department of Parks and Recreation labor hours needed to cut fire breaks and determine if harvesting on this rocky, uneven ground was possible. In 2011, a contract for harvesting of grass and hay was issued which generated \$10,143 of revenue. In October 2011, University of California Cooperative Extension Farm Advisor Theresa Becchetti, who specializes in Livestock and Natural Resources for San Joaquin and Stanislaus Counties, visited Woodward Reservoir Regional Park to review the impacts of harvesting grass and hay from the parklands. Ms. Becchetti's opinion was that, "for the health of the range, and to minimize fire risk and water quality issues," the practice of harvesting grass and hay would not harm the parkland grass range at Woodward Reservoir Regional Park.

The Department communicated the need to pursue fire control efforts by the harvesting of parklands at Woodward Reservoir Regional Park to the Reservoir's neighbor: the South San Joaquin Irrigation District, and no concerns with this proposed plan were raised. On October 24, 2011, the General Services Agency Purchasing Division posted an invitation to bid for the harvesting of parklands at Woodward Reservoir Regional Park. Bids closed on December 13, 2011, with three responses received: Stueve's Dairy, bid \$17 per ton, J&B Dairy, bid \$16.50 per ton, and Wheeler and Sons bid \$8.10 per ton. Stueve's Dairy was determined to be the successful bidder with the highest responsive and responsible bid.

In conclusion, the harvesting of parklands at Woodward Reservoir Regional Park demonstrates a management practice that accounts for prudent fire management practices that reduce labor costs, creates a new revenue stream, and accounts for the health of the environment and the future of open range parklands.

POLICY ISSUE:

Approval of this agenda item to enter into a contract for the harvesting of parklands 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.

Approval to Enter into a Contract with Stueve's Dairy for the Harvesting of Grass and Hay from Woodward Reservoir Regional Park for Fire Prevention Purposes

STAFFING IMPACTS:

It is estimated that this contract will eliminate 120 labor hours of work annually spent cutting grass and hay to proactively manage the fire hazards at Woodward Reservoir Regional Park. This equates to an \$8,846 annual labor savings.

CONTACT PERSON:

Sonya K. Harrigfeld, Director of Parks and Recreation

Telephone: 209-525-6770

Approval to Enter into a Contract with Stueve's Dairy for the Harvesting of Grass and Hay from Woodward Reservoir Regional Park for Fire Prevention Purposes

List of Exhibits

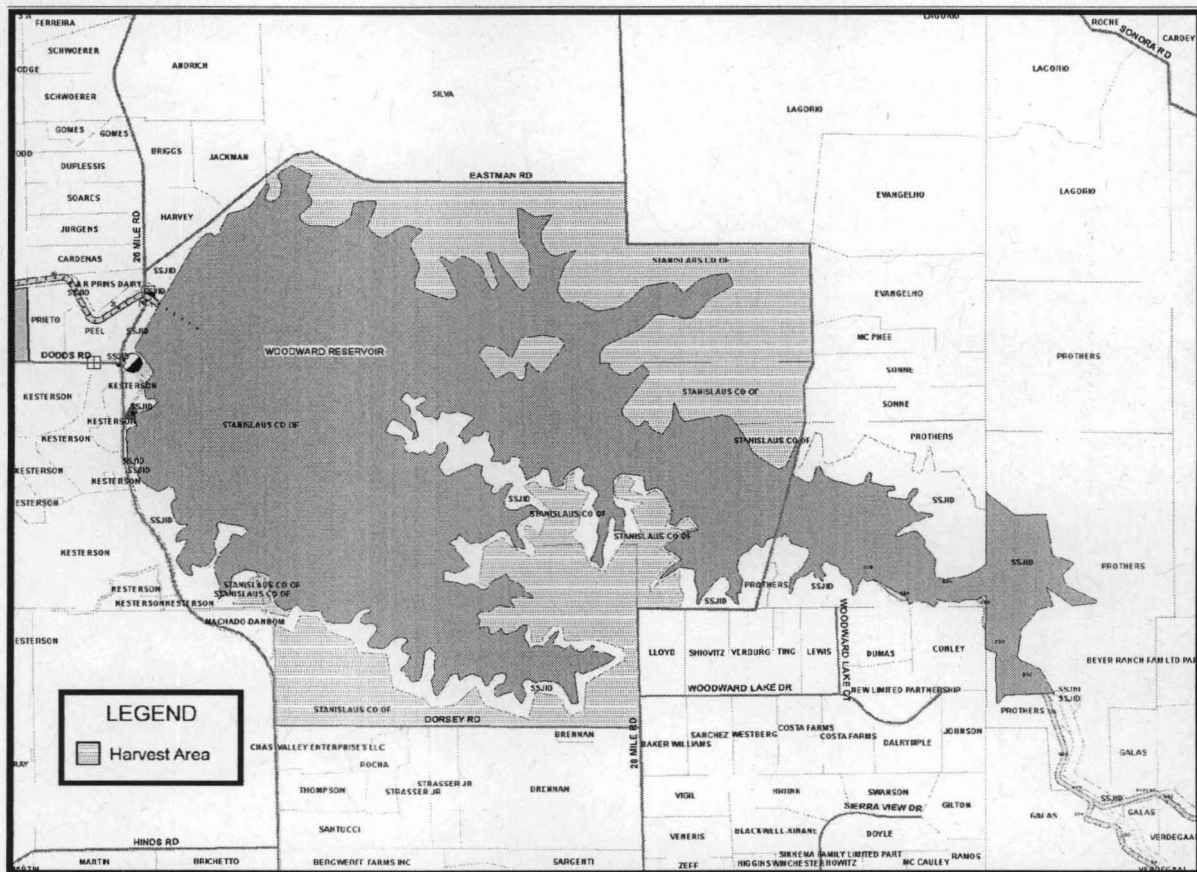
Exhibit 1 = Map of proposed fields to be harvested

Exhibit 2 = Harvesting agreement

EXHIBIT 1

Woodward Reservoir Regional Park

Map of Purposed Grass & Hay Fields to be Harvested



WOODWARD RESERVOIR



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 Stueve's Certified Organic Dairy ("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 2,150 acres of reservoir for outdoor recreations activities; and

WHEREAS, the County has a need to have approximately 1,350 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 use of artificial irrigation, herbicides, insecticides or fertilizer is forbidden for the purpose of increasing hay or grass yield. 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 1,350 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 commercial certified weight 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., between April 15 and May 10 each year, for Section 3. Harvester shall harvest the remaining areas in a time frame negotiated with the Department of Parks and Recreation Staff.

1.4 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.

1.5 Harvester shall contact the County Representative prior to cutting the grass and hay each year to identify if any sections identified in Exhibit 1 needs to be cut in a certain pattern.

1.6 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.

- 1.7 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.
- 1.8 The cut height shall not be less than what will cause damage to regrowth.
- 1.9 Harvester shall cut grass and hay up to the edge of all ditches or embankments in the Contract area.
- 1.10 Harvester's equipment not in use during the performance of the work shall be temporarily parked in a location approved by the Parks representative.
- 1.11 Harvester shall report to the County representative any damage to the property caused by the grass and hay cutting operations.
- 1.12 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.
- 1.13 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.
- 1.14 Harvester is responsible for obtaining all the necessary licenses and permits, if needed or required by law.
- 1.15 The County is not responsible for the quality or type of the grass and hay cut and removed by the Harvester.
- 1.16 No Bonding is required for this Project.
- 1.17 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.
- 1.18 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.
- 1.19 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 no later than seven (7) calendar days before Memorial Day each year. No exceptions.

2. Term of the Agreement

The term of this Agreement shall be for five (5) years. Commencing on the date of award and ending on June 15, 2016, 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 firm fixed price of Seventeen Dollars per ton (\$17.00 per ton)** harvested. Except as specifically identified in Section 3.5 of this Agreement, the firm fixed price will not be adjusted for any reason, including moisture content. The Harvester shall be responsible for submitting, weight tags from a commercial 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.

3.5 Harvesting involves a level of risk and the County does not warrant a Harvester from losses associated with Harvesting. In a year where the Harvester is concerned that harvesting would not be economically feasible and the County agrees that harvesting would not be economically feasible, the County would only require harvesting a reduced area of Section 3 on the attached map and some fence line fire breaks approved by County staff. If harvesting of a light crop produced less than 340 tons of grass and hay, the County will reduce its total compensation to \$1.00 for the year.

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 -	Stueve’s Certified Organic Dairy 4548 Bentley Road Oakdale, CA 95361

Attn: Mr. Guy Stueve

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.

23. Subcontracting

Subcontracting of the harvesting is allowed. The term "Subcontractor", where used herein, includes only those having a direct contract with the Harvester for the work or portion of the work described and specified herein.

Harvester shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional named insured under its insurance policies.

At least ten (10) days prior to the date the Harvester begins performance of its obligations under this Agreement, Harvester shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Harvester. The limits of insurance described in this Agreement shall not limit the liability of the Harvester and Harvester's officers, employees, agents, representatives, or subcontractors. Liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Harvester, including the insured's general supervision of its subcontractors.

EXECUTED ON April 19, 2012 at Modesto, California.

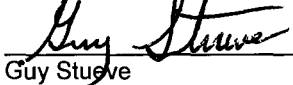
STANISLAUS COUNTY:

STUEVE'S CERTIFIED ORGANIC DAIRY

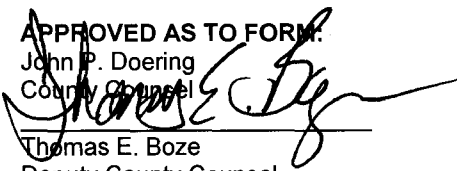
COUNTY:

HARVESTER:

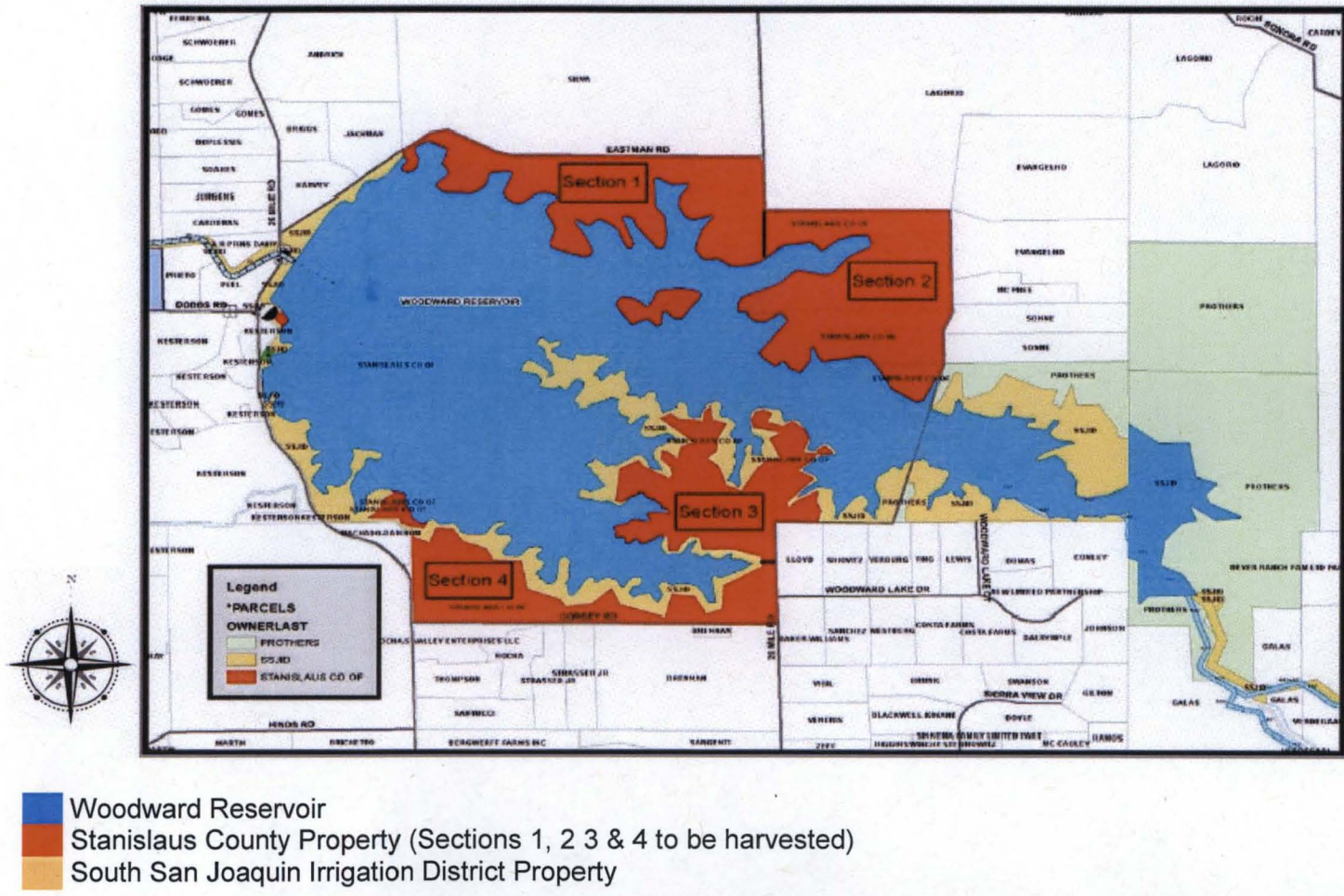

Sonya K. Harrigfeld
Department of Environmental Resources


Guy Stueve
Title: Partner, Owner

APPROVED AS TO FORM:


Thomas E. Boze
Deputy County Counsel

Map of Purposed Grass & Hay Fields to be Harvested



- Woodward Reservoir
- Stanislaus County Property (Sections 1, 2, 3 & 4 to be harvested)
- South San Joaquin Irrigation District Property