



# THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

**DECEMBER 7, 2004**

**Yuba County Government Center  
Board of Supervisors' Chambers  
915 Eighth Street, Suite 109A  
Marysville, California**

**Unless otherwise indicated.**

3:30 P.M.

I **CALL TO ORDER**

II **ROLL CALL** – Directors Rick Brown, Mary Jane Griego, Dan Logue, Richard Webb

III **BOARD AND STAFF MEMBERS' REPORTS**

IV **ACTION ITEMS**

- A. **Minutes**: Approve minutes of the special meeting of November 16, 2004.
- B. **Invoices**: Authorize the Auditor-Controller to pay various invoices in the total amount of \$230,098.23.
- C. **Reclamation Board Levee Permit Special Conditions**: Direct staff as to position on the alternatives presented.
- D. **Engineering/Design for Pump Station No. 6**: Authorize preparation of an agreement with MHM Engineering to design Pump Station No. 6. (*No background material*)

V **PUBLIC COMMUNICATIONS**: Any person may speak about any subject of concern provided it is within the jurisdiction of the Levee Improvement Authority and is not already on today's agenda. The total amount of time allotted for receiving such public communication shall be limited to a total of 15 minutes and each individual or group will be limited to no more than 5 minutes.

VI **ADJOURN**

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

COUNTY OF YUBA

MINUTES – BOARD OF DIRECTORS

NOVEMBER 16, 2004 – SPECIAL MEETING

A meeting of the Board of Directors of the Three Rivers Levee Improvement Authority was held on the above date, commencing at 2:02 p.m., within the Government Center, Marysville, California, with a quorum being present as follows: Directors Rick Brown, Dan Logue, Richard Webb. Director Mary Jane Griego was absent. Also present were Executive Director Kent McClain, County Counsel Daniel Montgomery, and Clerk of the Board of Supervisors/Secretary Donna Stottlemeyer. Chairman Webb presided.

ACTION ITEMS

A. Minutes: Upon motion of Director Logue, seconded by Director Brown, and carried with Director Griego being absent, the Board approved the minutes of the regular meeting of November 9, 2004 as written. APPROVE MINUTES

B. Grant Application/Bear-Feather Rivers Setback Levee Design Project: Following presentation by Mr. Herb Greydanus, Bookman-Edmonton, Executive Director Kent McClain, Assistant County Administrator Randy Margo, and Board inquiries, upon motion of Director Logue, seconded by Director Brown, and carried with Director Griego being absent, the Board adopted Resolution No. 04-11 which is entitled: "RESOLUTION AUTHORIZING DEPARTMENT OF WATER RESOURCES DESIGN GRANT APPLICATION FOR THE FEATHER-BEAR RIVERS LEVEE SETBACK PROJECT." ADOPT RESOLUTION NO. 04-11

C. Environmental Impact Report/Bear-Feather Rivers Levee Setback Project: Following presentation by EDAW Project Manager Phil Dunn and Board inquiries, Chairman Webb inquired if anyone in the audience wished to address this issue. No one came forward.

Upon motion of Director Logue, seconded by Director Brown, and carried with Director Griego being absent, the Board adopted Resolution No. 04-12 which is entitled: "RESOLUTION CERTIFYING FINAL ENVIRONMENTAL IMPACT REPORT, ADOPTING FINDINGS OF FACT, STATEMENT OF OVERRIDING CONSIDERATIONS AND MITIGATION MONITORING AND REPORTING PROGRAM FOR THE FEATHER-BEAR RIVERS LEVEE SETBACK PROJECT." ADOPT RESOLUTION NO. 04-12

ADJOURNMENT

There being no further business to come before the Three Rivers Levee Improvement Authority the meeting was adjourned at 2:40 p.m. by Chairman Webb.

\_\_\_\_\_  
Chairman

ATTEST: DONNA STOTTLEMEYER  
CLERK OF THE BOARD OF SUPERVISORS  
AND SECRETARY OF THE PUBLIC AUTHORITY

\_\_\_\_\_  
Approved: \_\_\_\_\_



# THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

DATE: December 7, 2004  
TO: Three Rivers Levee Improvement Authority Board  
FROM: Randy Margo, Assistant County Administrator  
SUBJECT: Payment of Invoices

**Recommendation:**

Authorize the County of Yuba's Auditor/Controller to pay the attached invoices for services pertaining to levee improvements.

**Background:**

Engineering, design and environmental work pertaining to levee improvements as contracted for by Reclamation District 784 in January 2004. Those contracts have now been assigned to the Authority pursuant to action taken on April 6<sup>th</sup> by Reclamation Board 784 and the Authority. Therefore, the responsibility or administration and payment of these contracts now rests with the Authority.

As stated previously, the source of payments for these contracts is the developer fund established last fall by the County of Yuba. Those funds were put into a trust account for Reclamation District 784. Action taken by the Authority on April 6<sup>th</sup>, requested the Yuba County Board of Supervisors direct the Auditor/Controller to set up a separate trust fund for the Authority, under which these and subsequent invoices related to levee improvements would be paid. The invoices being submitted for payment are as follows:

EPS	\$ 70,640.74
FIELDMAN, ROLAPP & ASSOCIATES	6,480.35
HDR	62,390.57
MBK, ENGINEERS	90,586.57
TOTAL	\$230,098.23

**Fiscal Impact:**


Payment for all of these invoices will reduce available funding to \$2,124,985.62.



# THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

**DATE:** December 7, 2004

**TO:** Three Rivers Levee Improvement Authority Board of Directors

**FROM:**   
Charles K. McClain, Executive Director

**SUBJECT:** Reclamation Board Levee Permit Special Conditions

**RECOMMENDATION:** Direct Staff as to the Three Rivers Levee Improvement Authority (TRLIA) position.

**BACKGROUND:** The TRLIA has applied to the California Reclamation Board (CRB) for a permit to perform work on the Western Interceptor Canal, portions of the Bear River levees and to construct a "setback levee" on the Bear River from the Highway 70 Bridge westerly to the confluence with the Feather River. In discussions with CRB staff and Board Members, some special permit conditions have been proposed which fall into the County's area of responsibility not TRLIA's. (See the attached copy of the Board of Supervisors Agenda Report.)

**DISCUSSION:** The Board of Supervisors will be considering these issues at their meeting of December 7<sup>th</sup>. If the County and RD #784 do not agree to hold the State harmless and the County does not impose a moratorium and neither become the applicant, should TRLIA withdraw the application for the Set Back Levee Project and apply for the 100 Year Protection Project? In a discussion with Mr. Rabbon on December 2, he indicated the same permit conditions would be applied to the 100 Year Project as to the Setback Levee Project. If the County and RD #784 reject the conditions for the Setback Project it would follow, they would not accept them for the lesser project.

**OPTIONS:** 1) Accept the proposed permit conditions for the Setback Levee project if the County of Yuba or RD #784 accepts liability on Behalf of the State and imposes a building moratorium.

2) Withdraw the permit request if the County and RD #784 reject the permit conditions.

**FISCAL IMPACT:** If granted, the permit would authorize work potentially totaling in excess of \$60 million.

# The County of Yuba

OFFICE OF THE COUNTY ADMINISTRATOR

GOVERNMENT CENTER - 915 8<sup>TH</sup> STREET, SUITE 115  
MARYSVILLE, CALIFORNIA 95901-5273



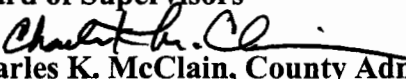
**CHARLES K. McCLAIN**  
COUNTY ADMINISTRATOR  
**RANDY MARGO**  
ASSISTANT COUNTY ADMINISTRATOR  
**JOHN FLEMING**  
ECONOMIC DEVELOPMENT COORDINATOR  
**GRACE M. MULL**  
ADMINISTRATIVE ANALYST  
**TEENA L. CARLQUIST**  
EXECUTIVE ASSISTANT

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(530) 749-7575  
FAX (530) 749-7312

**DATE:** December 7, 2004

**TO:** Board of Supervisors

**FROM:**   
Charles K. McClain, County Administrative Officer

**SUBJECT:** Reclamation Board Levee Permit Special Conditions

**RECOMMENDATION:** Direct Staff as to the County of Yuba's position on the alternatives presented.

**BACKGROUND:** At the end of May 2003, representatives of the Army Corps of Engineers (the Corps) and the Department of Water Resources (DWR) described deficiencies they believed existed in the levees along the Bear River and the Western Pacific Canal (WPIC) levee that rendered them incapable of providing 100 year flood protection as required by the State and Federal Emergency Management Agency (FEMA). Local agencies including the County of Yuba, the Yuba County Water Agency and Reclamation District #784 (RD #784), immediately set about to identify the specific deficiencies and began developing engineering solutions to those deficiencies.

The Three Rivers Levee Improvement Authority (TRLIA) was formed to perform the necessary construction work. The local development community was enlisted to fund the proposed solutions. Two projects were developed: 1) improvements to the levees along the WPIC and portions of the Bear River to restore the 100 year level of protection or 2) construction of a "setback levee" on the Bear River from the Highway 70 Bridge westerly to the confluence with the Feather River coupled with improvements to the WPIC levees that raise the level of protection to approximately a 200 years. Environmental assessments were performed for each project in compliance with CEQA provisions. Applications have been made to the California Reclamation Board (CRB) for permits necessary to perform work associated with both proposed project solutions. Application has been made to the Corps for the 404 permit necessary to perform work in the river channel.

In discussions with CRB staff and Board Members, certain special permit conditions have been proposed which fall into the County's area of responsibility, not TRLIA's. They are: 1) Yuba County agree to require insurance on all new construction in Reclamation District #784 until the issue of floodplain mapping has been resolved; 2) both Yuba County and RD #784 hold the State harmless or alternatively, the permit

application come from the County or RD #784 and 3) Yuba County stop issuing Building permits and tract maps from the date of issuance of the permit until the issue of floodplain mapping is resolved. (The Chief Engineer's "Response Comments" are attached.) TRLIA will be considering options at their regular meeting of December 7 (see staff report attached). The CRB will be considering the permit issuance at their December 17<sup>th</sup> meeting.

#### **DISCUSSION:**

Flood Insurance: The County required developers disclose the potential for flooding to buyers in the Plumas Lake Specific Plan Area. In addition, the developers were required to purchase one year of flood insurance for the new home buyer. Developers have actually purchased two years of insurance. The Reclamation Board permit will require the developers to provide insurance until a) FEMA agrees the RD #784 area is not subject to flooding or b) FEMA agrees the Corps study is correct and the area mapped into a new flood zone requiring insurance. **COMMENT:** This condition would require developers to provide insurance for an indeterminate period which could last for many years and places the decision in the hands of a Federal agency.

Hold Harmless: The County and RD #784 both hold the State harmless or the County or RD #784 becomes the permit applicant. **COMMENT:** This condition would place the County in the position of assuming liability, which until now has been the responsibility of the State. In evaluating this proposed special condition it is obvious the desire to shift monetary liability from the State to local agencies outweighs the desirability of providing levee improvements that improve the level of flood protection for the more than 22,000 current residents in Arboga, Linda, Olivehurst and Plumas Lake. It is the position of the Reclamation Board staff that RD #784 is currently liable for restoring and/or maintaining the 100 year level of protection. If true, the hold harmless requirement appears redundant.

Moratorium: The County will be required to impose a building moratorium from the date of the issuance of the permit until the issue of floodplain mapping for RD #784 is resolved. **COMMENT:** Until such time as a remapping occurs, or there is an eminent threat, there are no grounds for the imposition of a moratorium. DWR intends to declare the Army Corps of Engineers Report on floodplain mapping as a final report and request FEMA undertake a remapping of the area into the floodplain. Mr. Peter Rabbon, General Manager of the CRB, after discussions with FEMA, indicates FEMA could complete such a remapping by summer of 2005 if they deem the Corps report to be complete and in conformance with their regulatory guidelines. Upon completion of the remapping, a moratorium would exist as a practical matter because the provisions of the floodplain ordinance would require the building pads in the affected area to be set one foot above the anticipated flood water surface elevation which, in Plumas Lake, would require elevating the pads several feet. The effect of DWR's action to remove the "DRAFT" status from the Corps report is to place FEMA in the driver's seat. The local agencies' ability to fund either project is eliminated. Existing residents are left with inadequate flood protection.

There are ample reasons, consistent with various provisions of the Water Code, for the CRB not to impose the onerous special conditions they propose. The proposed

projects do not: 1) jeopardize directly or indirectly the physical integrity of levees or other works; 2) obstruct, divert, redirect or raise the surface level of design floods or flows, or the lesser flows for which protection is provided; 3) cause significant adverse changes in water velocity or flow regimen; 4) impair the inspection of floodways or project works; 5) interfere with maintenance of floodways or project works; 6) interfere with the ability to engage in flood fighting, patrolling, or other flood emergency activities; 7) increase the damaging effects of flood flows; or, 8) be injurious to, or interfere with, the successful execution, functioning, or operation of any adopted plan of flood control. In fact the proposed set back levee project, supported by adjacent flood agencies and environmental interest groups, basically achieves the self declared goal of the CRB of achieving a 200 year level of food protection for persons and property behind levees.

The State has neither plan nor timetable to restore the levees to the level of flood protection the current and future residents deserve. The local agencies do, unless the permit provisions preclude the locals from proceeding. The State has no funds to restore or improve the level of flood protection. The local agencies do, unless a construction moratorium is imposed as proposed by the CRB.

- OPTIONS:**
- 1) Accept the proposed permit conditions for the Setback Levee project.
  - 2) Press for revisions to the permit conditions pertaining to liability and moratorium.
  - 3) Ask RD #784 to become the permit applicant.
  - 4) Review and comment on the Corp flood plain mapping report.
  - 5) Reject the proposed permit conditions and initiate action to compel the State to restore the levees to the 100 year protection condition.

**COMMITTEE ACTION:** Because of the need for Board action before the CRB meeting of December 17<sup>th</sup>, committee direction was not sought.

**FISCAL IMPACT:** If the County agrees to accept the permit conditions, the potential liability could exceed \$1 billion. (Ironically, if the County were to face such losses, the only option open would be to declare bankruptcy in which case, the State would be required to step in and assume responsibility for the operation and obligations of the County.)





# THE RECLAMATION BOARD

## FAX TRANSMITTAL SHEET

TO: <b>Kent McClain</b>	FROM: <b>Steve Bradley, Chief Engineer</b>
COMPANY: <b>County of Yuba</b>	DATE: <b>12/2/2004</b>
FAX NUMBER: <b>(530) 749-7312</b>	TOTAL NO. OF PAGES INCLUDING COVER: <b>5</b>
PHONE NUMBER:	SENDER'S FAX NUMBER: <b>(916) 574-0682</b>
RE: <b>Response Comments</b>	SENDER'S PHONE NUMBER: <b>(916) 574-0608</b>

URGENT   
 FOR REVIEW   
 PLEASE COMMENT   
 PLEASE REPLY   
 PLEASE RECYCLE

NOTES/COMMENTS:

Kent,

Copy of the Rec Board's response comment to Yuba County's proposal of November 23, 2004.

## **PROPOSED MODIFICATIONS TO REC BOARD ENGINEER'S PROPOSAL**

### **1. Insurance**

The County of Yuba, as a condition for approval of building permits, shall require flood insurance for all new residential and commercial construction in Reclamation District No. 784 until the issue of floodplain mapping for RD 784 has been resolved by a) FEMA agreeing the area shown in the Department of Water Resources' *Draft Lower Feather River Floodplain Mapping Study* is incorrect and the area is not subject to flooding and, therefore, will remain as Zone X, or some other designation that indicates the area is protected to the 100-year flood level and does not require flood insurance be obtained, or b) FEMA agreeing the study is correct and issues preliminary maps showing new flood zone designations for the area that require flood insurance be obtained. ~~the Plumas Lake Specific Plan Area until the levee work is complete under this encroachment permit and the levee certification for this work is submitted to FEMA.~~ Further, to the extent permitted by law, the County shall require all discretionary land use and construction entitlements within the boundaries of Reclamation District #784 to acquire flood insurance as a condition of approval.

### **2. Hold Harmless**

The JPA shall hold the State harmless for the levee work authorized by this encroachment permit.

The above condition, as proposed, is unacceptable as it does not address the key issue of State liability and the associated financial burden that is, for all practical purposes, being entirely assumed by the State. Normally, the project applicant is required to hold the State harmless, but since the JPA in this case can disappear at any time, such assurances have little or no meaning. Therefore, either (a) both Yuba County and RD 784 hold the State harmless, along with the JPA, or (b) the application comes from only one responsible entity, either RD 784 or Yuba County, that will be required to hold the State harmless.

### **3.**

## **STATE RECLAMATION BOARD MORATORIUM/ENFORCEMENT ISSUE PROPOSAL**

The following proposed conditions are unacceptable to the Reclamation Board because they do not address the other key issue of public safety. The County of Yuba shall stop issuing building permits and tentative tract maps from the date of approval of Reclamation Board Permit No. 17782 until the issue of floodplain

mapping for RD 784 has been resolved by a) FEMA agreeing the area shown in the Department of Water Resources' *Draft Lower Feather River Floodplain Mapping Study* is incorrect and the area is not subject to flooding and, therefore, will remain as Zone X, or some other designation that indicates the area is protected to the 100-year flood level and does not require flood insurance be obtained, or b) FEMA agreeing the study is correct and issues preliminary maps showing new flood zone designations for the area that require flood insurance be obtained.

One request by the Board that has not been addressed is the need for a back-up financial plan for obtaining the necessary funds for completion of the project. The back-up plan should address how the project funding will be obtained if a) local Mello-Roos bonds provide less than the estimated amount, b) Proposition 13 bonds funds are not available or the amount is less than expected, c) the project cost increases beyond the estimated cost, and d) the total cost of the project exceeds the total funding available from all assumed funding sources.

1. The JPA will provide the State Board of Reclamation with the following information:

a. A list of all important project elements, such as acquisition of permits, approvals, contracts, and construction schedules of planned features;

b. The anticipated start and completion dates for each element, as well as significant milestones and dates; and

c. The anticipated date on which "as-built" drawings and certification for the completed restoration projects will be submitted to FEMA.

2. The JPA will provide the State Board of Reclamation a statement identifying all the sources of funds for the purpose of constructing the restoration project and a breakdown by percentage of the total funds contributed by each source. The statement shall include a schedule of dates by which the JPA anticipates such funding will be in place.

3. During the restoration period, the JPA must report on a quarterly basis the restoration will be completed in accordance with the Restoration Plan and within the time period specified by the Plan. In addition, the JPA will update the Restoration Plan and will identify any permitting or construction problems that could delay the project completion beyond the date specified in the Restoration Plan previously submitted to the State Board of Reclamation. The Executive Officer of the State Board of Reclamation may make quarterly assessments and recommendations to the State Board as to the viability of the Restoration Plan and may conduct periodic on-site inspections of the protection system under restoration.

4. At any time during the restoration process should the executive officer of the State Board of Reclamation determine the restoration will not be completed in accordance with the time frame specified in the Restoration Plan, said executive officer shall notify the JPA in writing of the determination and the reasons for such determination and further state that the executive officer intends to ask the State Board of Reclamation to request FEMA to map the subject area with the appropriate flood plain designation pursuant to 44 Code of Federal Regulations, Chapter 1, part 65. Within 30 days of such notice, the JPA may submit written information that provides assurance the restoration will be completed within the time frame specified in the Restoration Plan, or that satisfactory progress is being made to restore complete protection in accordance with the Restoration Plan, or that with reasonable certainty the restoration will be completed within the maximum allowable restoration period. On the basis of this information, the executive officer may suspend its recommendation to revise the FIRM. If the JPA does not submit any information or, if, based on a review of the information submitted, the executive officer still believes there is sufficient cause to find that the restoration will not be completed as provided for in the Restoration Plan, the executive officer may schedule a public hearing at the next available State Board of Reclamation hearing requesting the Board of Reclamation for authorization to submit such information to FEMA to map the subject area with the appropriate flood plain designation.

5. If after a public hearing held by the State Board of Reclamation, the State Board determines by a majority vote and based on substantial evidence in the record, there is sufficient cause to find restoration will not be substantially completed as provided for in the Restoration Plan, the State Board may, as it deems advisable, submit such information to FEMA as may be required for FEMA to map the subject area into the appropriate flood plain designation. Upon such vote by the State Board of Reclamation and acknowledgement by FEMA such technical information constitutes "best available information" for the purpose of enforcement of floodplain management criteria, the JPA, and in particular, its member Yuba County, shall implement flood plain management criteria as set forth in 44 Code of Federal Regulations, Chapter 1, section 60.3(a)1-(6).