



# THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

**DECEMBER 14, 2004**

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

**Unless otherwise indicated.**

2:00 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. Reclamation Board Levee Permit Special Conditions: Direct staff as to position on the alternatives presented. (Continued from December 7, 2004)
- B. Reclamation Board: Waive period of time for providing and receiving staff reports for the State Reclamation Board meeting on December 17, 2004.
- C. Engineering Consulting: Authorize Executive Director to commence negotiations with Bookman-Edmonston to perform engineering and related services necessary to construct the setback levee on the Bear River.
- D. Downey Brand Agreement: Authorize agreement with Downey Brand for legal services in an amount not to exceed \$15,000 and authorize Chairman to execute same.


**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

December 14, 2004

TO: Three Rivers Levee Improvement Authority  
FROM: Randy Margo, Assistant County Administrator   
SUBJECT: Waiving Period for Staff Report Addendums to State Reclamation Board

## **Recommended Action**

Approve waiving the period for providing and receiving staff reports for the State Reclamation Board meeting on December 17, 2004.

## **Reason for Recommendation**

At a December 9, 2004 meeting with State Reclamation Board staff, we agreed to ask the Authority Board to waive the one-week lead time requirement for addendums to staff reports to the State Reclamation Board given the dynamic nature of discussions concerning the Authority's request for an encroachment permit for the setback levee project.

## **Discussion**

The State Reclamation Board has a policy that all staff reports and information pertaining to agenda items be provided one-week prior to the Board taking action on such items. However, given the nature and dynamic process concerning discussions on the encroachment permit, staff recognized the value of having flexibility on this matter and informed the State Reclamation Board staff that we would take this issue to the full Authority Board for consideration.

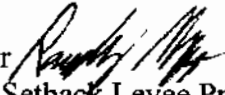
## **Fiscal Impact**

There is no cost associated with this item.



# THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

December 14, 2004

TO: Three Rivers Levee Improvement Authority  
FROM: Randy Margo, Assistant County Administrator   
SUBJECT: Selection of Engineering Consulting Firm for Setback Levee Project

## **Recommended Action**

Authorize Executive Director to commence negotiations with Bookman-Edmonston to perform engineering and related services necessary to construct the setback levee on the Bear River.

## **Reason for Recommendation**

The recommended action will allow these engineering services to begin provided an agreement can be reached with Bookman-Edmonston.

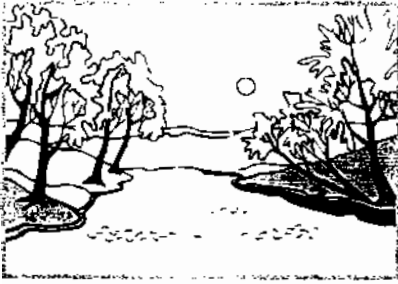
## **Discussion**

The Authority solicited proposals last month from engineering firms for the purpose of preparing plans and specifications for the Bear River Setback Levee Project this winter, in order to complete construction of this project by October 31, 2006. After proposals were received, the top two firms were interviewed on December 8, 2004. As a result of those interviews, it is recommended that the firm Bookman-Edmonston be selected to perform the engineering and related services. If the Authority Board approves this recommendation, staff will negotiate an agreement with the firm and bring that agreement back to the Authority for approval at the meeting of January 4, 2004.

The proposals for the two firms interviewed are on file with the Clerk of the Board.


## **Fiscal Impact**

Funding for this contractual agreement would come from the 2000 State Water Bond Act (Proposition 13) grant that was submitted to the State Department of Water Resources earlier this year.



# THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

December 14, 2004

TO: Three Rivers Levee Improvement Authority  
FROM: Charles K. McClain, Executive Director   
SUBJECT: Agreement for Legal Services with Downey Brand

## **Recommended Action**

Approve retainer agreement and conflict waiver with the law firm of Downey Brand in the amount of \$5,000 and a total amount not to exceed \$15,000.

## **Reason for Recommended Action**

In order to continue our efforts to finance and construct levee improvements, legal services are needed to obtain a comprehensive understanding of Federal Emergency Management Agency (FEMA) regulations pertaining to flood zone designations and criteria.

## **Discussion**

The State Department of Water Resources has informed staff that it intends to submit a letter of map revision request to FEMA on December 15, 2004. This request will initiate work on behalf of FEMA to map much of the South Yuba Basin Area into a 100-year flood plain zone.

The Authority is attempting to fix the levees before being mapped into a 100-year floodplain zone, or to obtain a zone designation, which would enable the financing of levee construction to proceed as planned through a Mello-Roos Community Facilities District. Consequently, specialized legal services related to FEMA regulations and criteria for floodplain zones are needed immediately to ascertain possible options for the Authority to evaluate in light of its overall objectives.

The law firm of Downey Brand, and specifically Mr. Scott Shapiro has significant experience with FEMA regulations including the representation of the California Central Valley Flood Control Association and comes highly recommended.

County Counsel has reviewed this agreement and concurs with the recommended action.

## **Fiscal Impact**

The \$5,000 retainer and any additional subsequent payment up to \$15,000 will be paid out of developer fees currently available in Trust Fund 805.

December 9, 2004

**VIA FACSIMILE (530/749-7312)**

Charles Kent McClain  
Three Rivers Levee Improvement Authority  
915 Eighth Street, Suite 115  
Marysville, California 95901-5273

Re: Retainer Agreement and Conflict Waiver

Dear Kent:

As we discussed earlier today, the purpose of this letter is to establish the general terms and conditions of Downey Brand's retention by the Three Rivers Levee Improvement Authority ("Authority"), and to ask that you waive, on behalf of the Authority, the potential conflict created by my continued representation of Valley View Packing and Suncal (the consultant advising Valley View Packing). I request that you carefully consider the issues raised in this letter and, if you believe doing so is in the best interest of the Authority, that you execute this retainer agreement and conflict waiver and return it to me by fax at the number listed above.

As you know, Valley View Packing owns land adjacent to the Feather River. Amongst a number of ongoing projects being considered by the Authority is the possibility of placing setback levees along the Feather River which could substantially, and negatively, affect the value of the Valley View Packing property. Thus, in my representation of both Valley View Packing and the Authority, there exists the very real possibility of a conflict if I was to advocate for both clients on the issue of setback levees on the Feather River. The rules of legal ethics governing attorneys prohibit our firm from representing one current client adversely to another current client, absent both clients' written consent after disclosure of the conflict and the opportunity to seek the advice of independent counsel.

To address this conflict I am writing to advise you that, as a condition of my retention, I will not advocate for the Authority, or advise the Authority, on the issue of the setback levees considered for the Feather River. In that regard, I may not be part of discussions on this issue, and any information provided to me from the Authority on this issue will not be received pursuant to an attorney-client relationship, and hence will not be confidential. On the issue of setback levees on the Feather River I will be representing Valley View Packing. Thus, if the circumstances so require, I will be permitted to advocate Valley View Packing's position on setback levees on the Feather River to the Authority. In this regard, you agree to waive any potential conflict created

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Charles Kent McClain  
December 9, 2004  
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by (i) my representation of the Authority on issues other than those associated with setback levees on the Feather River, and (ii) my continuing representation of Valley View Packing on issues associated with setback levees on the Feather River.

I wish to advise you that prior to considering the issues raised in this letter you may wish to consult with an attorney to ensure that you understand what is being asked of you and the implications of the decision you will make. If you have any questions in this regard, I request that you reach me by telephone at your earliest opportunity. My cell phone number is (916) 207-7029.

I am also writing today to confirm the general nature of the legal services that this firm will be providing, our respective responsibilities, and the manner in which we will charge you for our fees and out-of-pocket costs. Our fees for this representation will be charged on an hourly basis. Our firm includes lawyers with a variety of skills and experience, and we draw upon each other's skills to provide cost-effective service and to give our clients the benefit of all the resources available within the firm. The majority of the work on this matter will be performed by me, although others here at the firm may also help on your matter. I currently charge at the rate of \$275 per hour.

We charge in six-minute units of time with a minimum of twelve minutes billed at one time, and we bill for travel, legal research and analysis, court waiting time, review of documents, drafting of documents, personal and telephone conferences within and without our office, as well as attendance at and preparation for court appearances, depositions and meetings and preparation of pleadings, motions, declarations, responses and other court papers, investigation, and negotiation.

In addition, we will charge you for our out-of-pocket costs. These include mileage, photocopying, telecopying, telephone charges, parking, and postage, including Federal Express, Express Mail, Overnight Express, UPS, delivery and messenger service. We will also charge you for travel and lodging, at reasonable business rates, and for meal costs where appropriate. We will use our best efforts to obtain the best available rates for travel and lodging.

In conjunction with beginning work on your matter, we require receipt of a retainer in the amount of \$5,000, which we will retain in our general trust account, interest on which is required to be paid to the State Bar. State law requires that interest earned on such accounts be given to the State Bar to fund legal services for indigent persons. Every month, we will charge against the retainer any fees owed by the Authority for services rendered, and then we will bill you for funds sufficient to replenish the retainer and to cover any additional fees not covered by the retainer.

We will bill you on a monthly basis, and our bills are due and payable upon presentation. Our bills will clearly state the date of each service, the name and hourly rate of the professional performing the service, the service performed, and the number of hours (or portions of hours)

devoted to each item. Our out-of-pocket costs will be itemized. Please be sure to ask if you have any questions at any time about our bills or about the conduct of your matter.

If you agree to the terms of this letter and wish for us to begin our representation, please sign this letter, fax it back to me, and return a copy of the original. This will signify your agreement to and acceptance of the term of our engagement set forth in this letter.

Our overall aim is to work with you in a cooperative effort to achieve the best possible result consistent with your business objectives and to provide the most cost-effective legal services possible given the circumstances of your particular matter. We will be checking with you periodically to be sure that we are meeting your needs and expectations.

I very much appreciate the opportunity to be of service to you.

Best regards,

DOWNEY BRAND LLP

  
Scott L. Shapiro

04/050.1  
12/9/04

I have read the foregoing letter concerning representation by Downey Brand LLP and regarding potential conflicts associated with Downey Brand LLP's representation of the Authority. After having the opportunity to consult with independent counsel, on behalf of the Authority I hereby waive any and all conflicts that may arise from this representation, as set forth in the foregoing letter. I have read the information contained above and on behalf of the Authority I agree to the terms of retention and to the waiver as stated above.

\_\_\_\_\_  
Charles Kent McClain, Three Rivers Levee Improvement Authority

\_\_\_\_\_  
Date