

**THREE RIVERS LEVEE IMPROVEMENT AUTHORITY**  
**Yuba County Government Center, Board Chambers**  
**915 Eighth Street, Suite 109A**  
**Marysville, California**

**SEPTEMBER 16, 2008 –2:00 P.M.**

**I CALL TO ORDER**

**II ROLL CALL** – Directors Rick Brown, Jerry Crippen, Don Graham, Mary Jane Griego, Dan Logue

**III 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.

**IV CONSENT AGENDA**: All matters listed under the consent agenda are considered to be routine and can be enacted by one motion.

A. Approve minutes of the regular meeting of August 19, 2008.

**V ACTION ITEMS**

A. Award Lease Agreement to North Star Construction and Engineering for five year term and authorize Executive Director to negotiate final terms and execute agreement upon review and approval of Counsel.

B. Approve Second Assessment District survey for a Levee and Flood Control Assessment District and authorize Executive Director to finalize and issue survey.

**VI BOARD AND STAFF MEMBERS' REPORTS**

**VII CLOSED SESSION**

Conference with Counsel and Real Property Negotiator pursuant to Government Code 54956.9 – Property: APN 013-010-014/Parties: Davit, TRLIA, Stacey Sheston, Bob Morrison/Negotiation: Price and Terms of Payment

**VIII ADJOURN**

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The complete agenda, including backup material, is available at the Yuba County Government Center, 915 8<sup>th</sup> Street, Suite 109, and the County Library at 303 Second Street, Marysville. Any disclosable public record related to an open session item on the agenda and distributed to all or a majority of the Board of Directors less than 72 hours prior to the meeting are available for public inspection at Suite 109 during normal business hours.

In compliance with the American with Disabilities Act, the meeting room is wheelchair accessible and disabled parking is available. If you have a disability and need disability-related modifications or accommodations to participate in this meeting, please contact the Clerk of the Board's office at (530) 749-7510 or (530) 749-7353 (fax). Requests must be made one full business day before the start of the meeting.

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

MINUTES – BOARD OF DIRECTORS

AUGUST 19, 2008

A meeting of the Board of Directors of the Three Rivers Levee Improvement Authority was held on the above date, commencing at 2:00 p.m., within the Government Center, Marysville, California, with a quorum being present as follows: Directors Rick Brown, Jerry Crippen, Don L. Graham, Mary Jane Griego, and Dan Logue. Also present were Executive Director Paul Brunner, Assistant Counsel Andrea Clark, and Clerk of the Board of Supervisors/Secretary Donna Stottlemeyer. Chair Griego presided.

ACTION ITEMS

A. Resolution of Necessity/Khang, Jourbee and Truc Y.: Following a brief recap from Chair Griego regarding hearing process, Right-of-way Manager Bob Morrison recapped the proposed action, location, and advised of waiver of notice requirements.

In response to inquiries from Ms. Frances Hoffman, Executive Director Paul Brunner recapped available funding for acquisition.

Upon motion of Director Logue, seconded by Director Crippen, and unanimously carried, the public hearing was closed and the Board adopted Resolution No. 08-32, which is entitled: "AMENDED RESOLUTION NO. 08-32, WHICH IS ENTITLED: A RESOLUTION OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY DECLARING THE PUBLIC NECESSITY FOR THE TAKING OF CERTAIN PROPERTY FOR REPAIR, CONSTRUCTION, INSTALLATION AND MAINTENANCE OF THE THREE RIVERS LEVEE IMPROVEMENT PROJECT." as it relates to APN 020-360-002 (Khang, Jorbee and True Y.).

ADOPT  
RESOLUTION  
NO. 08-32

Chair Griego directed staff to proceed with eminent domain action.

PUBLIC COMMUNICATIONS

In response to inquiries from Ms. Frances Hoffman, Marysville, Executive Director Paul Brunner recapped reimbursements included in agreement with State of California regarding the early implementation funding and local share requirements.

Mr. Tom Eres, Hofman Ranch, opposed any efforts of eminent domain actions regarding the Hofman property due to the easement held by the State of California.

Director Logue requested a chart outlining revenues and expenditures regarding early implementation funds from Proposition 1E.

Mr. Craig Denisoff, Westervelt Ecological Services, recapped habitat restoration services offered including giant garter snake mitigation and encouraged an open process for request of proposals.

Director Logue left the meeting at 2:35 p.m. and did not return.

ACTION ITEMS CONTINUED

B. Teichert Construction/Phase 4 Feather River Set Back levee Project: Executive Director Paul Brunner recapped additional construction required on setback levee and recommended the proposed contract be amended to include addition of 1,700 linear feet at a cost of \$2.7 million. Mr. Brunner responded to Board inquiries.

Upon motion of Director Graham, seconded by Director Crippen, and carried with Director Logue being absent, the Board awarded contract amendment to Teichert Construction, the apparent low bidder, for additional work on Phase 4 Feather River Set Back Levee Project; amended the contract to include \$2.7 million for 1,700 linear feet; authorized the Chair to execute upon review and approval of Counsel; and authorized the Executive Director to take the necessary actions to implement amendment and issue Notice to Proceed upon review and approval of Counsel.

AWARD  
CONTRACT  
AMNDMNT.

C. River Partners/Elderberry Relocation/\$387,500: Environmental Manager Anja Kelsey and Executive Director Paul Brunner recapped need for elderberry relocation and responded to Board inquiries.

Upon motion of Director Brown, seconded by Director Griego, and carried with Director Logue being absent, the Board approved an agreement with River Partners in the amount of \$400,000 for elderberry relocation and maintenance and authorized the Executive Director to execute upon review and approval of Counsel.

APPROVE  
AGRMNT.

C. Bender Rosenthal, Inc. (BRI)/Amendment No. 7/\$825,000: Executive Director Paul Brunner recapped services required for the acquisition process and workload and responded to Board inquiries.

Ms. Frances Hoffman, Marysville, recapped recent offers from BRL, opposed acquisition of her property due to the easement held by the State and urged the Board to establish policies regarding acquisitions and easements which the Director would implement.

Following Board discussion, upon motion of Director Crippen, seconded by Director Graham, and carried with Director Logue being absent, the Board approved Amendment No. 7 to the agreement with Bender Rosenthal, Inc., in the amount of \$825,000 for right of way services and authorized the Executive Director to execute upon review and approval of Counsel. APPROVE  
AMDMNT.

#### BOARD AND STAFF MEMBERS' REPORTS

Reports were received on the following:

Right of way Manager Bob Morrison:

- Release of request for proposal regarding agriculture leases for property within the floodway

Executive Director Paul Brunner:

- Various upcoming meetings and construction tours
- Funding request to Department of Water Resources for Segment 1 of the Feather River Levee Repair Project
- July 2008 Newsletter

Director Griego:

- Levee tour for state and federal officials held August 14, 2008

#### ADJOURNMENT

There being no further business to come before the Three Rivers Levee Improvement Authority the meeting was adjourned at 3:12 p.m. by Chair Griego.

\_\_\_\_\_  
Chair

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

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



# THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

1114 Yuba Street, Suite 218

Marysville, CA 95901

Office (530) 749-7841 Fax (530) 749-6990

September 16, 2008

TO: Three Rivers Levee Improvement Authority Board  
FROM: Paul Brunner, Executive Director  
Bob Morrison, Real Estate Manager

SUBJECT: Award of Five-Year Agricultural Lease of Naumes Property

**Staff Recommendation:** Approve award of five-year lease agreement with North Star Construction and Engineering, and delegate authority to Executive Director to negotiate final terms, sign, and execute lease agreement once General Counsel has approved.

**Background:** As part of the Feather River Setback Levee project and on the behalf of the State Department of Water Resources, TRLIA is acquiring approximately 821 acres from the Naumes Corporation along Feather River Boulevard. Prior to the Setback Levee construction, this property was on the protected side of the existing levee. However, once the Setback Levee is completed, this property will be in the floodway of the Feather River. TRLIA estimates that at least 230 acres of the 821 acres will continue to be available for agricultural use during and after the Feather River Setback Levee project construction. Naumes Corporation has stated that they are not interested in continuing leaseback of the property. TRLIA is projected to take possession of the 821 acres on October 2, 2008.

In order to keep the land in agriculture use and capture potential revenue from these 230 acres, staff recommended issuing a Request for Proposals (RFP) for leasing the property. The initial term of the lease would be five-years since it is anticipated the ownership of the property will be transferred from TRLIA to the Department of Water Resources within this timeframe. DWR is interested allowing agriculture use to continue beyond five-years, but has not yet committed to a time period longer than five-years.

**Discussion:** The TRLIA Board authorized staff to issue a RFP for continued agricultural use of 230 acres of the Naumes Property. Advertisements were placed in the Appeal-Democrat and the Farm Bureau's "Crop Talk" magazine. Staff received inquiries from 10 potential respondents, 8 RFP packages were requested and mailed, 3 potential respondents attended the pre-proposal meeting, and 2 proposals were received. (See Attachment 1: Agricultural Lease Bid Summary dated September 11, 2008).

The RFP outlined TRLIA's desire to continue to keep the Naumes orchards in agricultural use, and although continuing Pear farming is preferred, any proposed

alternate crop would be considered. The RFP included the following proposal selection criteria:

- Experience and qualifications of the applicant, key personnel, and sub-consultants on similar projects
- Demonstrated ability to complete the work effort outlined in the farming proposal
- Proposed rent structure and rental amount
- Project understanding, identification of key issues and innovative approaches
- Responsiveness to the RFP

The RFP stated that the proposals were due on September 11, 2008 at 4:00 at the offices of Bender Rosenthal, Inc. Two proposals were received: (1) North Star Construction and Engineering; and (2) Sunrise Orchards. Sunrise Orchard's submittal was received at 4:04 pm.

Staff is recommending entering into negotiations with North Star to finalize draft lease (see Attachment 2), as they were the only respondent with a five-year proposal. North Star included longer-term lease options, and Sunrise Orchards *only* proposed for longer-term leases. While longer than five-year lease may be desirable, staff has not yet been able to obtain consent from DWR to entertain more than a five-year lease, although discussions are ongoing.

**Fiscal Impact:** The North Star Proposal is offering 10% of gross sales for the existing pear crop for a five-year lease, conditioned upon their ability to locate a market and contract for the pears. If North Star is unable to locate a market for the pears, they would remove the existing pear trees and plant row crops with a \$50 per acre per year rent (230 acres x \$50/acre = \$11,500 per year). North Star also included a longer-term lease alternative proposal to remove the pear trees and plant walnut trees. However, with this option they have requested a 20-year lease, as walnut trees take seven years to begin producing a crop. This option would pay 10% of adjusted gross sales beginning in year seven through year 20, resulting in approximately \$92,000/year rent. As we stated earlier, authority has not been obtained to offer anything longer than a five-year lease.

Attachments:

1. Bid Summary
2. Draft Lease

## Agricultural Lease Bid Summary September 11, 2008

Bidder	Time Rec'd	Proposal
North Star Const. Eng. Contact: Sarb Basrai	9/11/08 - 3:19 PM	1. Pears – Pending Contract, or 2. Walnuts – Pending Long Term Lease, with 10% of Adjusted Gross rent in year 7 3. Row Crop - \$50 / acre per year, or 4. Mitigation – Pending Purchase
Sunrise Orchards Contact: Raj Sharma	9/11/08 – 4:04 PM	1. Walnuts – Pending Long Term Lease 0-7 yrs - \$25/year rent 8-10yrs – 5% Gross Crop Value 11-20yrs - 10% Gross Crop Value

Selection Criteria – Scale of 1 to 10 – each selection is equal

- Experience and qualifications of the applicant, key personnel, and sub-consultants on similar projects
  - North Star     9
  - Sunrise        10
- Demonstrated ability to complete the work effort outlined in the farming proposal
  - North Star     10
  - Sunrise        10
- Proposed rent structure and rental amount
  - North Star     6
  - Sunrise        5
- Project understanding, identification of key issues and innovative approaches
  - North Star     7
  - Sunrise        5
- Responsiveness to the RFP
  - North Star     7
  - Sunrise        0 – Proposal was Late

Totals:	North Star	39
	Sunrise	30

DRAFT

## AGRICULTURAL LEASE

1. **Parties.** This Lease, dated for reference purposes only \_\_\_\_\_, 2008 is made by and between THREE RIVES LEVEE IMPROVEMENT AUTHORITY, a joint powers agency of the State of California ("Landlord") and \_\_\_\_\_ ("Tenant").

2. **Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord for the term, and upon all of the conditions set forth herein, that certain real property located in the County of Yuba (the "County"), State of California (the "State"), consisting of 233.86 acres, more or less, of Assessor's Parcel Number 014-250-027 and more particularly described on **Exhibit A** (the "Premises"). The Premises includes \_\_\_\_\_.

3. **Term.** The term of this Lease shall be five years, commencing upon the execution of this Lease and terminating at the end of the 2013 crop year, which shall be deemed to be December 31, 2013. The term shall be extended each January 1, unless prior to the end of any one-year term, 30 days' written notice is given by either party to terminate this Lease. Notwithstanding the foregoing, Landlord may terminate this Lease at any time on 60 days notice if Landlord finds it necessary to do so in meeting Landlord's needs, including any federal or state requirements.

4. **Rent.**

4.1. **Rent.** Tenant shall pay to Landlord an annual rent for the Premises in the amount of \$ \_\_\_\_\_ per acre per annum in arrears, on December 1st of each year. Rent shall be payable at the Landlord's address stated below or to such other persons or at such other places as Landlord may designate in writing. The acreage under this Lease shall be as determined pursuant to the Farm Services Administration ("FSA") allowance for acreage. *[This is just one possible rent structure. TRLLA is willing to consider alternative rent structures, such as a crop share rent based upon a percentage of gross receipts.]*

4.2. **Additional Rent.** In addition to the rent reserved by Paragraph 4.1, Tenant shall pay to the parties respectively entitled to such amounts, the annual cost of irrigation water, utilities, insurance premiums, operating charges, and any other charges, costs and expenses which arise or may be contemplated under any provisions of this Lease during the term. All of such charges, costs and expenses shall constitute additional rent, and upon the failure of Tenant to pay any of such costs, charges or expenses, Landlord shall have the same rights and remedies as otherwise provided in the Lease for the failure of Tenant to pay rent.

4.3. **No Abatement of Rent.** It is the intention of the parties that this Lease shall not be terminable for any reason by Tenant, except as provided in Paragraph 3, and that Tenant shall in no event be entitled to any abatement of or reduction in rent payable under this Lease, except as expressly provided in this Lease. Any present or future law to the contrary shall not alter this agreement of the parties.



5. Use.

5.1. Use. The Premises shall be used and occupied for agricultural and related purposes only. Any other use of the Premises is prohibited.

5.2. Compliance with Law. Tenant shall, at Tenant's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the term or any part of the term hereof, regulating the use by Tenant of the Premises. Tenant shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance.

5.3. Flood Plain. Tenant acknowledges that the Premises is in a flood plain and subject to flooding. Tenant assumes all risk that the Premises may flood during the term of this Lease.

5.4. No Warranty of Suitability of the Soil. Landlord does not warrant suitability of the soil for growing authorized crops, nor the absence of deleterious organisms or chemicals in the soil.

5.5. Water Availability. It is understood and agreed by the parties that Landlord does not guarantee the availability, quality or quantity of water on the Premises.

6. Lease Subject to Existing Rights of Others. This Lease is subject to all existing easements, servitudes, licenses and rights-of-way for canals, ditches, levees, roads, highways and telegraph, telephone and electric power lines, railroads, pipelines and other purposes, whether recorded or not. Landlord makes no warranty of title to the Premises.

7. Maintenance, Repairs and Alterations.

7.1. Tenant's Obligations. Tenant, at Tenant's sole cost, shall keep the Premises in good order and condition during the term of this Lease. All operations incident to this use of the Premises shall be carried on according to the best course of agricultural practices in the vicinity. On default of Tenant to use the Premises as required by this Lease, Landlord reserves the right, after having given 10 days' notice, to take reasonably necessary remedial measures at the expense of Tenant, for which Tenant shall reimburse Landlord on demand. Tenant will make reasonably diligent efforts to prevent the spread of all noxious weeds on the Premises and will take commercially reasonable measures in accordance with customary good farming practices to protect the Premises from infestations of pests. Tenant will make reasonably diligent efforts to prevent infestations of organisms that may produce disease in crops grown on the Premises during and after the term of this Lease.

7.2. Surrender. On the last day of the term of this Lease, or on any sooner termination, Tenant shall surrender the Premises to Landlord in reasonably the same condition as when received. Tenant shall remove any equipment on the Premises but not any wells or pumps.

7.3. Landlord's Obligations. Landlord shall have no obligation, in any manner whatsoever, to repair and maintain the Premises. Tenant expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Tenant the right to make

repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition and repair.

7.4. Alterations and Additions.

(a) Tenant shall not, without Landlord's prior written consent, which consent shall not be unreasonably withheld, make any alterations, improvements or additions on or about the Premises, except for that which is required for the agricultural use of the Premises. Should Tenant make any alterations, improvements or additions Landlord may condition its approval on Tenant agreeing to remove any or all of such improvements at the end of the term of this Lease.

(b) Tenant shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Tenant at or for use in the Premises which claims are or may be, secured by any mechanics' or materialmen's lien against the Premises or any interest in the Premises.

(c) Unless Landlord requires their removal, as set forth in Paragraph 7.4(a), all alterations, improvements or additions, which may be made on the Premises, shall become the property of Landlord and remain upon and be surrendered with the Premises at the expiration of the term. Notwithstanding the provisions of this paragraph, Tenant's machinery and equipment, other than that which is affixed to the Premises so that it cannot be removed without material damage to the Premises, shall remain the property of Tenant and may be removed by Tenant subject to the provisions of Paragraph 7.2.

8. Environmental Matters.

8.1. Compliance with Environmental Requirements. Tenant expressly agrees, at all times and in all respects, to comply with all federal, state and local laws, regulations, ordinances, other requirements, permits and orders issued in relation thereto, which are designed to protect public health and safety, worker health and safety, or the environment, including, but not limited to, management of hazardous materials and/or hazardous waste (collectively referred to hereinafter as "**Environmental Requirements**"). For this purpose, "management" includes, but is not limited to, use, storage, handling and transportation. Tenant expressly agrees not to store hazardous waste on the Premises, treat hazardous waste on the Premises or dispose of, or bury any waste, including hazardous waste, on the Premises.

8.2. Handling of Pesticides and Fertilizer. Tenant expressly agrees to use and handle pesticides and fertilizers in compliance with all Environmental Requirements which are designed to regulate pesticides and fertilizers, including, but not limited to, requirements pertaining to re-entry or pre-harvest intervals. No pesticide or agricultural chemical shall be used by Tenant if it results in a plant-back restriction or other provision which would place any limitation on the use of the Premises which extend beyond the term of the Lease without the prior written consent of Landlord. Tenant shall provide Landlord a copy of Tenant's County Pesticide Permit prior to planting each crop year.

8.3. Contamination. Tenant expressly agrees, at all times and in all respects, to comply with all federal, state and local laws, regulations, ordinances, other requirements, and

permits and orders issued in relation thereto which concern any contamination, release, pollution, nuisance or waste, whether toxic or nontoxic chemical or biological, which may result from Tenant's operation on, and use of, the Premises during the term of this Lease, whether created or maintained by Tenant, its agents, servants or employees, or whether Tenant assists in the creation or maintenance thereof.

9. **Insurance.**

9.1. **Liability Insurance.** Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease a policy of Combined Single Limit, Bodily Injury and Property Damage insurance insuring Landlord and Tenant against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant to the Premises. Such insurance shall be a combined single limit policy in an amount not less than \$1 Million per occurrence. The policy shall insure performance by Tenant of the indemnity provisions of this Paragraph 9. The limits of such insurance shall not, however, limit the liability of Tenant under this Lease. Landlord shall be an additional named insured on the policy of insurance.

9.2. **Insurance Policies.** Insurance required hereunder shall be in companies holding a "General Policyholders Rating" of at least "A-VII" in the most current issue of "Best's Insurance Guide". At Landlord's request, Tenant shall deliver to the Landlord copies of policies of such insurance or certificates evidencing the existence and amount of such insurance with loss payable clauses as required by this Paragraph 9 concurrently with the execution and delivery of this Lease. No such policy shall be subject to cancellation or reduction of coverage or other modification except after 30 days' prior written notice to Landlord. Tenant shall not do or permit to be done anything which shall invalidate the insurance policy referred to in this Paragraph 9. Should Tenant fail to maintain the insurance coverage required by this Lease, Landlord shall make demand upon Tenant to cure such default and if it is not cured within 15 days of notice thereof, then Landlord may purchase such coverage and charge Tenant for the costs incurred by Landlord and Tenant shall reimburse Landlord for such costs within 30 days.

9.3. **Indemnity.** Tenant shall defend, indemnify and hold harmless Landlord from and against any and all claims arising from Tenant's use of the Premises, or from the conduct of Tenant's business or from any activity, work or things done, permitted or suffered by Tenant in or about the Premises or elsewhere and shall further defend, indemnify and hold harmless Landlord from and against any and all claims arising from the failure of Tenant to perform any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any negligence of the Tenant, or any of Tenant's agents, contractors, or employees, and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord.

10. **Real Property Taxes.**

10.1. Payment of Taxes. Tenant shall pay the real property tax applicable to the Premises, assessments or charges that may be levied upon the interests in this Lease. Tenant understands that this Lease may create a possessory interest subject to property taxation and Tenant may be subject to the payment of property taxes levied on such interest, assessed against the Premises during the term of this Lease.

10.2. Personal Property Taxes.

(a) Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises or elsewhere. When possible, Tenant shall cause such trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord.

(b) If any of Tenant's personal property shall be assessed with Landlord's real property, Tenant shall pay Landlord the taxes attributable to Tenant within 30 days after receipt of a written statement setting forth the taxes applicable to Tenant's property.

11. Utilities. Tenant shall pay for power, telephone or other utilities provided to the Premises at Tenant's request or for Tenant's use.

12. Subletting and Assignment.

12.1. Sublease. Tenant may not sublease the Premises, without Landlord's consent, which Landlord may withhold in Landlord's sole discretion.

12.2. Assignment. Tenant may not assign this Lease, in whole or in part, without Landlord's consent, which Landlord may withhold in Landlord's sole discretion.

13. Defaults; Remedies.

13.1. Defaults. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant:

(a) The vacating or abandonment of the Premises by Tenant. Notwithstanding the forgoing, Tenant's failure to farm the Premises or allow some or all field to lie fallow to comply with governmental programs, due to uneconomical conditions for growing crops or good agricultural practices shall not be deemed vacating or abandoning the Premises, provided that Tenant maintains such fallow ground in accordance with the provisions of Paragraph 7.1 with respect to weeds.

(b) The failure by Tenant to make any payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of five days after written notice thereof from Landlord to Tenant.

(c) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in paragraph (b) above, where such failure shall continue for a period of 30 days after

written notice of the default from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than 30 days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within the 30-day period and thereafter diligently prosecutes such cure to completion.

(d) (i) The making by Tenant of any general arrangement or assignment for the benefit of creditors; (ii) Tenant becomes a "debtor" as defined in 11 U.S.C. Section 101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the petition is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within 30 days. Provided, however, if any provision of this Paragraph 13.1(d) is contrary to any applicable law, such provision shall be of no force or effect.

13.2. Remedies. In the event of any such default by Tenant, in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder. If Landlord shall elect to terminate this Lease, then Landlord may recover from Tenant any amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligation under this Lease or which in the ordinary course of things would be likely to result from such failure.

13.3. Re-entry. In the event of any such default by Tenant, Landlord shall also have the right, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. No re-entry or taking possession of the Premises by Landlord pursuant to this Paragraph 13.3 shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination of this Lease be decreed by a court of competent jurisdiction.

13.4. Cumulative Rights. All rights, options and remedies of Landlord contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease. No waiver of any default of Tenant hereunder shall be implied from any acceptance by Landlord of any rent or other payments due hereunder or any omission by Landlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in the waiver. The consent or approval of Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar acts by Tenant.

13.5. Default by Landlord. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than 30 days after written notice by Tenant to Landlord and to the holder of any first mortgage or

deed of trust covering the Premises whose name and address shall have been furnished to Tenant in writing, specifying in what respect Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than 30 days are required for performance then Landlord shall not be in default if Landlord commences performance within such 30-day period and thereafter diligently prosecutes the same to completion.

14. **Condemnation**. If the whole or any part of the Premises shall be condemned or taken by any public authority under the power of eminent domain, then the terms of this Lease shall cease as to the parts taken, from the day that possession of such portion shall vest in the condemnor. If in excess of 50% of the Premises shall be so taken, Tenant may, at its option, upon 10 days written notice, declare this Lease terminated.

15. **Estoppel Certificate**. Tenant shall at any time upon not less than 10 days' prior written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing (a) that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (b) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed; and (c) such other information as may be reasonably requested regarding this Lease. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises.

16. **Severability**. The invalidity of any provision of this Lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision of this Lease.

17. **Interest on Past-due Obligations**. Except as expressly provided in this Lease, any amount due to Landlord not paid when due shall bear interest at the maximum rate than allowable by law from the date on which Landlord delivers notice to Tenant of late payment. Payment of such interest shall not excuse or cure any default by Tenant under this Lease, provided, however, that interest shall not be payable on late charges incurred by Tenant.

18. **Time of Essence**. Time is of the essence.

19. **Additional Rent**. Any monetary obligations of Tenant to Landlord under the terms of this Lease shall be deemed to be additional rent.

20. **Incorporation of Prior Agreements; Amendments**. This Lease contains all agreements of the parties with respect to any matter mentioned in this Lease. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification. Except as otherwise stated in this Lease, Tenant hereby acknowledges that Landlord and any employees and or agents of any of such persons have not made any oral or written warranties or representations to Tenant relative to the condition or use by Tenant of the Premises and Tenant acknowledges that Tenant shall materially comply with all applicable laws and shall be responsible for the legal use and adaptability of the Premises and the compliance thereof with all

applicable laws and regulations in effect during the term of this Lease except as otherwise specifically stated in this Lease.

21. **Notices.** Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery, by certified mail or overnight delivery by a nationally recognized, reputable delivery service (e.g., Federal Express, UPS, etc.), and if given personally or by mail, shall be deemed sufficiently given if addressed to Tenant or to Landlord at the address noted below the signature of the respective parties, as the case may be. Either party may by notice to the other specify a different address for notice purposes. A copy of all notices required or permitted to be given to Landlord shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time designate by notice to Tenant.

22. **Waivers.** No waiver by Landlord of any provision of this Lease shall be deemed a waiver of any other provision of this Lease or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to, or approval of, any act shall not be deemed to render necessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision of this Lease, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

23. **Holding Over.** If Tenant, with Landlord's consent, remains in possession of the Premises or any part thereof after the expiration of the term hereof, such occupancy shall be a tenancy from month to month upon all the provisions of this Lease pertaining to the obligations of Tenant, but all options and rights of first refusal, if any, granted under the terms of this Lease shall be deemed terminated and be of no further effect during said month to month tenancy.

24. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

25. **Covenants and Conditions.** Each provision of this Lease performable by Tenant shall be deemed both a covenant and a condition.

26. **Succession and Choice of Law.** Subject to any provisions of this Lease restricting assignment or subletting by Tenant and subject to the provisions of Paragraph 12, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State of California.

27. **Subordination.**

27.1. If Landlord encumbers the Premises, this Lease, at Landlord's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms.

27.2. Tenant agrees to execute any documents required to effectuate an attornment, non-disturbance and subordination to the lien of any mortgage, deed of trust or ground lease, as the case may be. Tenant's failure to execute such documents within 10 days after written demand shall constitute a material default by Tenant hereunder, or, at Landlord's option, Landlord shall execute such documents on behalf of Tenant as Tenant's attorney-in fact. Tenant does hereby make, constitute and irrevocably appoint Landlord as Tenant's attorney-in-fact and in Tenant's name, place and stead, to execute such documents in accordance with this Paragraph.

28. **Attorney's Fees.** If either party herein brings an action to enforce the terms of this Lease or declare rights under this Lease, the prevailing party in any action, on trial or appeal, shall be entitled to such party's reasonable attorney's fees to be paid by the losing party as fixed by the court.

29. **Landlord's Access.** Landlord and Landlord's agents shall have the right to enter on the Premises at reasonable times for any reasonable purpose. Landlord shall defend, indemnify and hold Tenant harmless from all liability relating to such entry, except for liability which results solely from Tenant's negligence or willful acts.

30. **Signs.** Except for signs which relate to agriculture products actually used by Tenant on the Premises, Tenant shall not place any sign upon the Premises without Landlord's prior written consent which consent shall not be unreasonably withheld. Landlord shall be allowed to place such signs upon the Premises as Landlord may from time to time desire.

31. **Merger.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, or a termination by Landlord, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

32. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions of this Lease, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of such party to pay such sum or any part thereof, such party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease.

33. **Waiver of California Code Sections.** Tenant waives the provisions of Civil Code Sections 1932(2) and 1933(4) with respect to the destruction of the Premises, Civil Code Sections 1932(1), 1941 and 1942 with respect to Landlord's repair duties and Tenant's right of repair, and Code of Civil Procedure Section 1265.130, allowing either party to petition the Superior Court to terminate this Lease in the event of a partial taking of the Premises for public or quasi-public use by statute, by right of eminent domain, or by purchase in lieu of eminent domain, and any right of redemption or reinstatement of Tenant under any present or future case law or statutory provision (including Code of Civil Procedure Sections 473, 1174(c) and 1179 and Civil Code Section 3275) if Tenant is dispossessed from the Premises for any reason. This



waiver applies to future statutes enacted in addition or in substitution to the statutes specified herein, and this waiver shall apply even though Tenant may be the subject of a voluntary or involuntary petition in bankruptcy.

34. **Successors to Lease.** The terms and obligations contained in this Lease shall bind and inure to the benefit of the representatives, assigns and successors in interest of the parties hereto, subject to the provisions of Paragraph 12 with respect to subletting and assignment. In the event of any transfer of Landlord's title or interest to the Premises, Landlord herein named (and in case of any subsequent transfers, then the grantor) shall be relieved from and after the date of such transfer of all liability as respects Landlord's obligations thereafter to be performed, provided that any funds in the hands of Landlord or the then grantor at the time of such transfer, in which Tenant has an interest, shall be delivered to the grantee.

35. **Waste.** Tenant shall not commit, or permit others to commit, on the Property waste, or nuisance, or any other act that could disturb the quiet enjoyment of Landlord on adjacent property.

36. **No Relocation Benefits.** Tenant acknowledges the following: Tenant commenced occupancy of the Premises after Landlord acquired possession to it, Landlord acquired the Premises for a public project (the Feather River Levee Improvement Project), Tenant may be required to vacate the Premises to allow construction of the public project, and Tenant is not entitled to receive any payments under either the State or the Federal Uniform Relocation Assistance Act. (Cal. Gov't Code §§ 7260, et seq.; 42 U.S.C. §§ 4601, et seq.)

**LANDLORD:**

THREE RIVES LEVEE IMPROVEMENT  
AUTHORITY, a joint powers agency of the State  
of California

Dated: \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
[Name]

**EXHIBIT A**

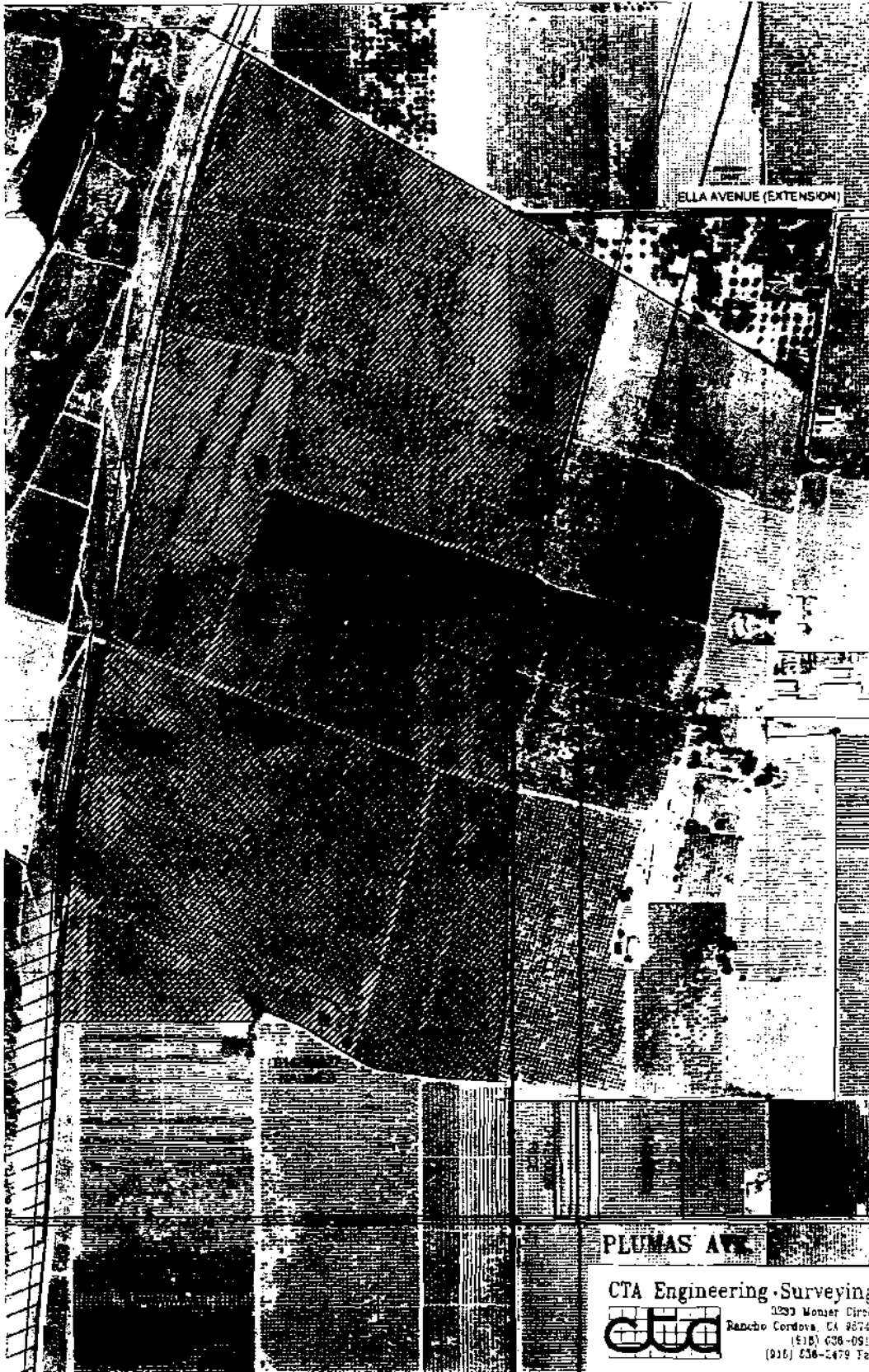
Description of Premises

EXHIBIT 'A'  
**NAUMES PROPERTY**

YUBA COUNTY, CALIFORNIA

A.P.N. 014-250-027

Scale: 1" = 500'



CTA Engineering • Surveying



3233 Monser Circle  
Rancho Cordova, CA 95742  
(916) 636-0916  
(916) 636-2479 Fax



# THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

1114 Yuba Street, Suite 218

Marysville, CA 95901

Office (530) 749-7841 Fax (530) 749-6990

September 16, 2008

TO: Three Rivers Levee Improvement Authority Board  
FROM: Paul Brunner, Executive Director *PAB*  
SUBJECT: Consider approval of an additional Assessment District Survey

**Staff Recommendation:** Approve a second Assessment District survey to confirm support for a Levee and Flood Control Assessment District and authorize Executive Director to finalize and issue survey.

**Discussion:** In November 2006, TRLIA retained SCI Consulting Group to assist in the formation of an assessment district to fund levee maintenance and operations. In February 2007, an initial survey of property owners was conducted which indicated support for an assessment. Since that time, TRLIA Staff has worked with consultants and stakeholders to develop various funding scenarios and budgets. This work is substantially complete. Since the initial survey in February 2007, the overall economy has slowed and conditions in the real estate market have declined substantially. Prior to proceeding with the assessment district formation and subsequent balloting, Staff (TRLIA and RD784), Lucy and Company, and SCI recommend conducting a follow-up mailed survey to confirm that support for the assessment is still high enough to result in a successful assessment ballot proceeding.

The survey is proposed to be mailed to property owners in early October 2008 and survey results presented to the TRLIA Board in November 2008. Assuming the results of the survey confirm the necessary support, the TRLIA Board would be asked to approve the mailing of the ballots in late January or early February 2009 and then the ballots for the assessment district would be mailed to property owners in February 2009. If successful, TRLIA would start receiving the new assessment revenue in January 2010. A copy of the proposed survey is attached.

In the last year a number of communities have passed assessments for flood control including Reclamation District (RD) 10 north of Marysville and RD 17 near Stockton.

**Fiscal Impact:** The estimated reproduction and mailing costs (\$12,000) of the proposed survey are planned to be paid with TRLIA operating expenses. TRLIA is working with SCI to keep the cost of this additional survey (approx. \$9,000) within the existing contract. A contract amendment may be needed in the future for this amount.



**DRAFT OFFICIAL SURVEY**  
**THREE RIVERS LEVEE IMPROVEMENT AUTHORITY**

DR.LIA Survey v1

This short survey has been mailed to property owners within the Three Rivers Levee Improvement Authority boundaries to gather information and opinions. This information will help the Three Rivers Levee Improvement Authority make decisions about future services. After completing the survey, simply mail it back in the return envelope provided. No postage is required to participate.

**Survey Instructions:**

- 1) Read each question listed below
- 2) Fill in the circle for your response. Please use a pen and completely fill in the circle.
- 3) Detach the bottom portion of this sheet containing your answers
- 4) Place the bottom portion of this sheet in the return envelope and mail (no postage needed)

Detach Here Fill Out Portion Below, Detach at This Line, and Mail Back in Return Envelope Detach Here

**1. Property owners in your area may be asked to vote by mail on a local ballot measure. Following is a summary of the proposal:**

In order to:

- Strengthen and rebuild levees along the Feather, Yuba and Bear Rivers to reduce the risk of levee failure and flooding
- Maintain the levees so they continue to protect lives and property in South Yuba County
- Reduce the severe local damage caused by floods like the Flood of 1986 and the Flood of 1997

would you support an annual assessment in the amount of \_\_\_\_\_ for your property(s)<sup>1</sup>

Definitely YES
Probably YES
Probably NO
Definitely NO

1. Assessment amount listed is the proposed total combined annual amount for all properties you own

**Now, please read the following arguments and statements regarding the proposed flood control measure. For each one, please indicate whether they make you more or less likely to support the measure:**

	Much More Likely	Somewhat More Likely	No Impact	Somewhat Less Likely	Much Less Likely
2. If the levees are improved and certified to the latest standards, then local property owners will continue to be eligible to purchase flood insurance at lower rates.....	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. Rebuilding, repairing, and maintaining the levees will reduce the risk of flooding.....	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4. Strong levees will promote economic development by encouraging businesses to return to the area, bringing new jobs and resources to the community.....	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5. Most of the construction costs are being paid by the State and Federal governments. We must properly maintain this investment in our levees.....	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6. This measure will reduce the risk of severe local damage, like that which resulted in South Yuba County from the Flood of 1986 and the Flood of 1997.....	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
7. Levees in South Yuba County are being improved to protect lives and property from flooding and meet the latest standards for levee safety.....	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
8. This measure will implement an effective maintenance program for the local levees to meet State and Federal standards.....	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
9. This measure will help improve local stormwater drainage and reduce seasonal flooding of homes, yards and streets.....	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
10. A major flood in Linda, Olivehurst and Plumas Lake could have devastating consequences.....	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
11. This measure has strong fiscal controls including a requirement that 95% of the money raised will be used for projects. Less than 5% will be used for administration.....	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
12. Independent annual audits and an independent oversight committee will make sure all funds are properly spent.....	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
13. A major flood would completely shut down many critical government offices and completely cut off South Yuba County's highways, railroads and the airport.....	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<i>Please use the back of this form to write any other reasons why you support or oppose this measure, and to describe which issues are most important to you (below the perforation)</i>					

**14. Now that you have read more about the proposed measure, and arguments for and against, would you vote yes or no on the proposed flood control measure?**

**Yes**
**No**