

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

RESOLUTION NO. 2009-08

**A RESOLUTION OF THE BOARD OF DIRECTORS OF
THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
APPROVING ENGINEER'S REPORT, CONFIRMING DIAGRAM AND ASSESSMENT, AND ORDERING
LEVY OF ASSESSMENTS WITHIN THE LEVEE AND FLOOD CONTROL FACILITIES ASSESSMENT
DISTRICT FOR FISCAL YEAR 2009-2010**

WHEREAS, Yuba County and Reclamation District No. 784 formed the Three Rivers Levee Improvement Authority ("Three Rivers") to provide improved flood protection in Yuba County;

WHEREAS, Three Rivers has installed and otherwise made substantial improvements to the flood control facilities along portions of the Feather, Yuba and Bear Rivers and the Western Pacific Interceptor Canal within Yuba County (the "Facilities");

WHEREAS, to fund the ongoing maintenance, operation, installation, improvement and repayment of the capital costs of the flood control facilities (the "Services"), it is necessary to create a new assessment district—the Three Rivers Levee Improvement Authority Flood Control Facilities Assessment District (the "District")—and to levy a new special benefit assessment pursuant to the Benefit Assessment Act of 1982 (the "Act") and Article XIII D of the California Constitution ("Proposition 218");

WHEREAS, after preparation and consideration of the following documents analyzing the potential environmental effects of the Services pursuant to the California Environmental Quality Act ("CEQA"), the Board of Directors approved and/or certified that the documents fully comply with CEQA:

- October 2003. Draft Environmental Impact Report for the Yuba-Feather Supplemental Flood Control Project, SCH #2001072062.
- March 2004. Final Environmental Impact Report for the Yuba-Feather Supplemental Flood Control Project, SCH #2001072062.
- August 2004. Bear River and Western Pacific Interceptor Canal Levee Improvements Project Environmental Impact Report, SCH 2004032118.
- September 2004. Draft Environmental Impact Report for the Feather-Bear Rivers Levee Setback Project, An Element of the Yuba-Feather Supplemental Flood Control Project, SCH #2004072113.
- November 2004. Final Environmental Impact Report for the Feather-Bear Rivers Levee Setback Project, An Element of the Yuba-Feather Supplemental Flood Control Project, SCH #2004072113.
- August 2004. Yuba River Levee Repair Project Initial Study/Mitigated Negative Declaration, SCH #2004082014.
- June 2005. Addendum to Yuba River Levee Repair Project Initial Study/Mitigated Negative Declaration, SCH #2004082014.
- July 2006. Yuba River Levee Repair Project (Phase 4) Initial Study/Mitigated Negative Declaration, SCH #2006062037.

- August 2006. Draft Environmental Impact Report for the Feather River Levee Repair Project, An Element of the Yuba-Feather Supplemental Flood Control Project, SCH #2006062071.
- November 2006. Final Environmental Impact Report for the Feather River Levee Repair Project, An Element of the Yuba-Feather Supplemental Flood Control Project, SCH #2006062071.
- April 2008. Addendum to the Environmental Impact Report for the Feather River Levee Repair Project, An Element of the Yuba-Feather Supplemental Flood Control Project, SCH #2006062071.
- May 2008. Addendum 2 to the Environmental Impact Report for the Feather River Levee Repair Project, An Element of the Yuba-Feather Supplemental Flood Control Project, SCH #2006062071.
- March 2009. Feather River Erosion Site 2 Repair Project Initial Study/Mitigated Negative Declaration, SCH # 2009022024.

WHEREAS, the ongoing maintenance, operation, repair and minor alteration of existing flood control structures and facilities, such as the Facilities, is exempt from CEQA pursuant to Title 14, section 15301 of the California Code of Regulations;

WHEREAS, CEQA does not apply to the establishment or approval of charges by public agencies which the public agency finds are for the purpose of: (1) meeting operating expenses, including employee wage rates and fringe benefits, (2) purchasing or leasing supplies, equipment, or materials, (3) meeting financial reserve needs and requirements, or (4) obtaining funds for capital projects, necessary to maintain service within existing service areas, pursuant to Title 14, section 15273 of the California Code of Regulations;

WHEREAS, a state-licensed professional engineer with the SCI Consulting Group prepared a detailed Engineer's Report to describe the boundaries of the proposed District, characterize the flood control improvements, explain the special benefits to be provided by the Services, and establish a methodology for levying a special benefit assessment against the properties within the District in proportion to the special benefits they will receive from the Services;

WHEREAS, on March 10, 2009, the Board of Directors of Three Rivers adopted Resolution No. 2009-03, a Resolution of Intention to Levy Assessments for Fiscal Year 2009 – 2010, which:

- Proposed forming the District and levying a special benefit assessment,
- Preliminarily approved the Engineer's Report,
- Fixed the time of a public hearing to hear public comment on the proposed District and special benefit assessment, and
- Directed Three Rivers' staff to undertake the procedural and approval processes necessary for the establishment of the District and levying of a special assessment proportional to the special benefits to be provided by the Services.

WHEREAS, during March through May 2009, Three Rivers conducted an assessment ballot proceeding pursuant to Proposition 218 in which the landowners that would be specially benefited by the Services were provided by mail with notice of the proposed special assessment and the opportunity to vote as to whether Three Rivers should levy the assessment;

WHEREAS, as part of the assessment ballot proceeding, the Three Rivers Board of Directors held a public hearing on May 12, 2009 for the purpose of receiving comments on and protests to the proposed benefit assessment and for accepting new or changed ballots from specially benefited landowners;

WHEREAS, during the public hearing, the Board of Directors considered all public comments.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The above recitals are true and correct.
2. The canvass of the assessment ballots submitted by property owners is complete and was certified by Michael Hinz, CPA, and the votes cast were as follows:

Total Number of Valid Ballots Submitted:	<u>2,434</u>
Total Assessment Amount of Valid Ballots:	<u>\$275,441.59</u>
Total Number of "Yes" Votes:	<u>1,364</u>
Total Weighted Value of "Yes" Votes:	<u>\$171,440.15</u>
Total Weighted Percentage of "Yes" Votes:	<u>62.24%</u>
Total Number of "No" Votes:	<u>1,070</u>
Total Weighted Value of "No" Votes:	<u>\$104,001.44</u>
Total Weighted Percentage of "No" Votes:	<u>37.76%</u>
Total Number of "Invalid" Ballots:	<u>25</u>
Total Assessment Amount of "Invalid" Ballots:	<u>\$1,954.58</u>

3. A total of 2,459 assessment ballots were returned and received by or on behalf of the Board Secretary prior to the close of the public input portion of the public hearing on May 12, 2009. Of the assessment ballots returned, 25 assessment ballots were declared invalid in that they were either not marked with a "Yes" or "No," were marked with both a "Yes" and a "No," were not signed, or the property ownership and barcode information was illegible.

4. After the ballots were weighted according to the proportional financial obligation of the affected property, the tabulation shows that 62.24% of the valid ballots were cast in support of the Three Rivers Levee Improvement Authority Levee and Flood Control Facilities Assessment District assessment. Since a majority protest, as defined by Article XIII-D of the California Constitution, did not exist, the Board may levy the assessment as described in the Engineer's Report to pay the costs and expenses of the Services identified therein.

5. The Engineer's Report for the Three Rivers Levee Improvement Authority Levee and Flood Control Facilities Assessment District, together with the diagram of the District contained therein, and the proposed assessment roll for fiscal year 2009-10 contained therein, which Engineer's Report is attached hereto as Exhibit A and is incorporated hereby by reference, are hereby confirmed and approved.

6. That based on the oral and documentary evidence, including the Engineer's Report, offered and received at the public hearing, the Board finds and determines that: (a) each of the several assessed lots and parcels of land within the District will be specially benefited by the Services (as described in the Engineer's Report) in at least the amount of the benefit assessment apportioned against such lots and parcels of land, respectively; and (b) there is substantial evidence to support, and the weight of the evidence preponderates in favor of, said finding and determination as to special benefit to property within the Assessment District from the Services to be financed with assessment proceeds.

7. The Three Rivers Levee Improvement Authority Levee and Flood Control Facilities Assessment District is hereby formed, and assessments consistent with the Engineer's Report are hereby levied, pursuant to the Act.

8. The assessments for fiscal year 2009-10 shall be levied at the rate of one hundred forty eight dollars and four cents (\$148.04) per single-family equivalent benefit unit for the South Zone, eleven dollars and thirty three cents (\$11.33) for the Central A Zone, thirty two dollars and sixteen cents (\$32.16) for the Central B Zone, and eleven dollars and twelve cents (\$11.12) for the East Zone, all as specified in the Engineer's Report for fiscal year 2009-10 with estimated total annual assessment revenues as set forth in the Engineer's Report.

9. The Services to be financed with assessment proceeds described in the Engineer's Report are hereby ordered.

10. The authorized maximum assessment to be levied in future fiscal years shall be adjusted based on the U.S. Department of Labor Consumer Price Index for the San Francisco Bay Area, not to exceed 4% per year as described in the Engineer's Report. In the event that the annual change in CPI exceeds 4%, any percentage change in excess of 4% may be cumulatively reserved and added to the annual change in the CPI in years for which the change is less than 4%.

11. Three Rivers staff is directed to file or cause to be filed a certified copy of the Diagram and Assessment and a certified copy of this Resolution with the Auditor/Controller of Yuba County (the "County Auditor/Controller"). Upon such filing, the County Auditor/Controller shall enter on the County tax roll opposite each lot or parcel of land in the District the amount of assessment thereupon as shown in the Engineer's Report and described in Section 8 of this Resolution. The benefit assessment shall be collected at the same time and in the same manner as County ad valorem taxes are collected and all laws providing for the collection and enforcement of County ad valorem taxes shall apply to the collection and enforcement of the assessments. After collection by the County Tax Collector, the net amount of the assessments, after deduction of any compensation due the County for collection, shall be paid to Three Rivers for the purposes of the District.

12. The monies representing assessments collected shall be deposited in a separate fund designated for the District. Amounts deposited to such fund shall be expended only for the Services and other activities that specially benefit the lands within the Assessment District as described in the Engineer's Report, including repayment of capital costs of the flood control facilities.

13. The assessment, as it applies to any parcel, may be corrected, cancelled or a refund granted as appropriate, by order of the Board or by order of the Executive Director of Three Rivers. Any such corrections, cancellations or refunds shall be limited to the current fiscal year.

14. The potential environmental effects of funding the Services have been analyzed pursuant to CEQA documents previously certified and/or approved by the TRLIA Board of Directors. The creation of the assessment funding mechanism is exempt from CEQA because it is for the ongoing maintenance, operation, repair and minor alteration of existing flood control structures, pursuant to Cal. Code Regs, tit. 14, § 15301, and because the assessment is for the purpose of meeting operating expenses, purchasing or leasing supplies, equipment or materials, meeting financial reserve needs, and obtaining funds for capital projects necessary to maintain service within existing service areas, pursuant to Cal. Code Regs, tit. 14, § 15273. Three Rivers staff is directed to prepare and file or cause to be filed a Notice of Exemption to that effect with the Yuba County Clerk.

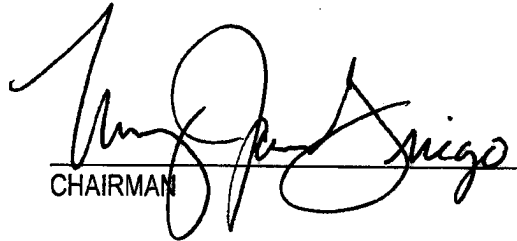
PASSED AND ADOPTED as a resolution of the Board of Directors of the Three Rivers Levee Improvement Authority at a regular meeting duly held on the 2nd day of June, 2009, by the following vote:

AYES: Directors Brown, Crippen, Graham, Griego, Nicoletti

NOES: None

ABSENT: None

ABSTAIN: None


CHAIRMAN

APPROVED AS TO FORM:

Audrea P. Clark

ATTEST:


DONNA STOTTEMEYER, SECRETARY