JULY 11, 2006

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

Unless otherwise indicated

2:00 P.M. I  ROLL CALL  – Directors Rick Brown, Mary Jane Griego, Dan Logue, Richard Webb

II CONSENT AGENDA

A. Approve minutes of the meetings of June 13 and 27, 2006.

III DISCUSSION/ACTION ITEMS

A. Review Western Pacific Interceptor Canal Construction timeline on Hofman property.

B. Recommend TRLIA assume financial responsibility for haul route easement on Hofman property and take action as appropriate.

C. Approve waiver request from Ms. Hofman for reproduction costs of TRLIA records and take action as appropriate.

D. Authorize Executive Director to release retention funds for Phase 2 contract.

E. Authorize Executive Director to issue a contract solicitation to acquire assessment engineer for studies to support a Proposition 218 election and increased assessment.

IV BOARD AND STAFF MEMBERS’ REPORTS

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

2:30 P.M.  THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
Final Budget Hearings – Fiscal Year 2006/2007
(Hearing may be continued on a day-to-day basis through July 21, 2006)

I  ROLL CALL  – Directors Rick Brown, Mary Jane Griego, Dan Logue, Richard Webb
II   PUBLIC HEARINGS – FINAL BUDGET FISCAL YEAR 2006/2007

A. Executive Director: Present overview and recommendation for Fiscal Year 2006/2007 Final Budget.

B. Board of Directors: Consider and discuss Fiscal year 2006/2007 Budget.

C. Public Communication: Receive public comments. Comments will be limited to five minutes per individual or group and may address only those items so identified with Final Budget Hearings.

D. Board of Directors: Provide direction to staff and take action as appropriate for Fiscal Year 2006/2007 Final Budget.

III   RECESS TO DATE AND TIME CERTAIN OR ADJOURN
July 11, 2006

TO: Three Rivers Levee Improvement Authority Board  
FROM: Paul G. Brunner, Executive Director  

SUBJECT: Western Pacific Interceptor Canal (WPIC) Construction Timeline 6 July 2006 – Ms Hoffman Property

Prior to May 2005 – HDR Engineering and design efforts take place. It is believed that all field work is performed from the top of the levee.

May 2005 – TRLIA Survey Delineated DWR rights on Hoffman Property (TRLIA Easement – Hoffman property. PDF)

May 2005 – McDonough Holland and Allen reviewed rights within and determined TRLIA had the rights to use DWR easements

May-July 2005 - Jones and Stokes (Environmental subcontractor to HDR) places pin flags to identify environmentally sensitive areas as part of the pre-construction environmental survey for the entire length of the WPIC. This work included pin-flag placement on the Hoffman property outside the DWR easement area.

June 2005 – DWR grants TRLIA permit to use their easements on Hoffman property (Hoffman, Alfaro, et al – DWR permit. PDF)


11 July 2005 - Work along WPIC is awarded to Nordic with aggressive construction schedule to complete work in 2005. TRLIA needs to delay construction due to permit issues. Even with the delays TRLIA is hopeful that WPIC work will be completed on schedule. Per discussions with Nordic their plan was to build turnarounds on top of the WPIC, but with the shortened construction season caused by the permit delays Nordic could not accomplish this action and looked for alternatives (access to Hwy 70 or haul route on Ms Hoffman’s property).

August 2005 – Nordic begins construction of two turnouts along the WPIC land side for RD 784 (one turnout located along Ms. Hoffman’s property, one turnout at the end of the WPIC along Mr. Alfaro’s property. This was a deal between Cal Trans and RD 784 – Cal Trans eliminated access to the levee from Hwy 70. Cal Trans pays for the design and construction of the turnouts.
19 September 2005 - Works begins on WPIC levee - Nordic approaches Ms Hofman to use haul route on her property. Ms Hofman grants rights. TRLIA (environmental contractor) places Orange fencing around the environmentally sensitive areas previously pin-flagged to support the use of the existing haul road. This fencing is outside of the DWR easement area.

End of Sept. 2005, HDR employee confronted by Ms. Hofman for driving on her property without her permission. An onsite meeting w/Blake Johnson, Nordic (Axel Karlshoej), and Ms. Hofman takes place in which Ms. Hofman clarifies her position that only Nordic and Nordic's sub-contractors may access her property.

15 Oct 2005 - end of construction season. WPIC levee work needs to extend to next construction season. Nordic prepares site for winter shut down.

Fall 2005 — Ms. Hofman contacts TRLIA complaining about work with her property. Nordic continues to operate on property with verbal approval from Mrs. Hoffman.

Spring 2006 — Ms. Hoffman continues to complain to TRLIA. Yet, no formal action is taken by Ms. Hoffman. Nordic continues to operate on Property with verbal approval from Mrs. Hoffman.

15 April 2006 - End of construction off season. When site conditions are right Nordic can restart WPIC levee work. Portions of the WPIC levee is under redesign which impacts what Nordic can do and Nordic cannot build the levee turnarounds and again must seek alternative soil transport alternatives.

May 2006 - Nordic seeks verbal approval from Ms Hofman to use the haul route and Ms Hofman grants permission. TRLIA representative states a written easement must be granted, which results in Ms Hofman requesting the items listed in Kent McClain’s 18 May 2006 memo to the TRLIA Board.

6 June 2006 — Mrs. Hoffman attends TRLIA board meeting to her responses to questions to Kent McClain (19 May 2006 memo). Ms Hofman is not satisfied with TRLIA responses and will return on 11 July 2006 to hear more information before making final decision on easement for haul route. Ms Hofman allows Nordic to continue to use haul route via verbal permission until 13 July 2006 TRLIA meeting.

June 2006 — TRLIA removes winter shut down material and environmental marking from her property.

11 July 2006 - Next TRLIA Board meeting

Note: Work will most likely continue into late September 2006
July 11, 2006

TO: Three Rivers Levee Improvement Authority Board

FROM: Paul G. Brunner, Executive Director

SUBJECT: Assumption of Financial Responsibility for Nordic Industries’ use of haul route easement on Hofman Property

**Recommended Action** - Recommend Three Rivers Levee Improvement Authority (TRLIA) assume the financial responsibility of the haul route easement on Ms. Hofman’s property due to public benefit derived from expedited work.

**Discussion** - At the June 13, 2006, TRLIA Board meeting staff presented responses to the six items Ms. Hofman had requested answers for in order for her to determine if her property could continue to be used as a haul route by Nordic as work was being done on Reclamation District 784 levees under a TRLIA contract. Ms. Hofman was not satisfied with TRLIA’s response that Nordic may be responsible for the easement costs. Ms. Hofman stated that instead TRLIA should assume the responsibility.

TRLIA staff was requested to research the history of this specific project and report back to the TRLIA Board. Thereafter, Ms. Hofman extended her verbal grant of an easement to Nordic for the use of her property until July 13, 2006, at which time the authorization to Nordic could terminate.

After reviewing history of this project and timeline of event, I found:

1. The TRLIA levee project was originally bid without the haul route. The engineer believed at the time and still believes the project could be completed without the haul route easement.

2. Nordic approached Ms. Hofman to utilize her property for the haul route in order to expedite the project, and believed by doing so he was providing a public benefit to Yuba County since the flood control protective measures would occur quicker.

3. Work on this levee has occurred over two construction seasons; summer of 2005 and the summer of 2006. In each construction season Nordic has used the haul route with the verbal authorization of Ms Hofman.

4. The use of the haul route through Ms. Hofman’s property, has allowed the construction work to be performed quicker.
5. The work will extend into September 2006, thus if the use of the haul route is to be continued, an easement (verbal) is needed at a minimum by Nordic. TRLIA staff can perform their construction duties by using the current levee easements.

6. Environmental markings have been removed from Ms. Hofman’s property at this time since risk of environmental habitat damage is small unless Nordic drives off the haul route.

7. TRLIA operating procedures were reviewed and the right of entry to private property process was found to be lacking. TRLIA staff was directed to correct this oversight.

8. I did not find any intentional wrong doing by any of the participants. I did find that many of the TRLIA project staff were new and the quick pace of the levee work that TRLIA is doing, has caused staff to be aggressive in their actions to accomplish work quickly. This zeal to move quickly has caused details like this right of entry to Ms. Hofman’s property to be overlooked. TRLIA has recently brought on many new additional personnel (Construction Manager, Environmental Manager and Executive Director), which will allow TRLIA and its contractors to minimize and hopefully avoid this type of issue in the future.

**Conclusion**

During the summer of 2005, Nordic bid on and won the contract to perform levee improvements on the Western Pacific Interceptor Canal (WPIC). Nordic’s bid anticipated performing the work within the confines of the WPIC levee and potentially using the turnarounds that were to be built under a separate Reclamation District 784 contract. In 2005 and again in 2006, there have been TRLIA permit issues which have impacted Nordic’s ability to complete the turnarounds and proceed with the TRLIA project in a timely manner. Due to the urgency of the levee work, Nordic approached Ms. Hoffman in 2005 and then again in 2006, to utilize her property for the haul route in order to expedite the project. Expediting the work is a public benefit.

Ms. Hoffman has granted Nordic verbal permission on both occasions to use the haul route on her property.

**Fiscal Impact**

Unknown at this time
July 11, 2006

TO: Three Rivers Levee Improvement Authority Board
FROM: Paul G. Brunner, Executive Director
Angil Morris-Jones, General Counsel

SUBJECT: Ms Hofman request for waiver of reproduction costs of TRILIA Records

Recommended Action

The cost of TRILIA record reproduction be waived and used as an offset to the haul route easement cost.

Discussion

At the Jun 13, 2006 TRLIA Board meeting staff presented responses to the six items Ms Hofman had requested responses for in order for her to determine if her property could continue to be used as haul route by Nordic as work was being done on Reclamation District 784 levees under a TRILIA contract. One of the six items Ms Hofman requested under the Public Records Act was a copy of all TRILIA records. Ms Hofman subsequently asked the TRLIA Board to waive the cost of reproducing these records. In discussions with General Counsel, Ms Hofman is agreeable to using the cost of reproduction to reduce as an offset to the cost of the haul road easement that is under negotiation with the TRLIA Board. TRLIA staff will keep a record of the reproduction costs so that the offset can be applied once the easement cost is determined.

Fiscal Impact

Unknown at this time.
THREE RIVERS LEVEE
IMPROVEMENT AUTHORITY
GOVERNMENT CENTER – 915 8TH STREET, SUITE 115
MARYSVILLE, CA 95901-5273
(530) 749-7575 (530) 749-7312 Fax

July 5, 2006

TO: Three Rivers Levee Improvement Authority Board
FROM: Paul G. Brunner, Executive Director
       Doug Handen, Construction Manager
SUBJECT: Release of retention for slurry wall construction for Phase 2 Contract

Recommended Action: Approve TRLIA Executive Director to release retention funds for Phase 2 slurry wall work that has been completed

Background- Nordic Construction’s contract includes work that was subcontracted to Envirocon Construction to perform the installation of slurry walls on the WPIC. The total cost of this work, including change orders related to this work is $812,321.94. The work has been completed, tested, and deemed completed by HDR. The work has been paid for with the exception of 10% of the value of the work ($81,232.19), which has been held as retention within the terms of the construction agreement for this project. All retentions are normally held until the entire project has been completed and accepted. Releasing portions of the retention is a deviation from the contract and Board approval for this deviation is now being requested.

Discussion - Nordic has requested full payment for the Envirocon work, including the retention. The subcontractor believes that their work has been completed and accepted and should not require retention. The project was originally to be completed in 2005 and all retentions would have been paid had the entire project been completed. The slurry work can be considered as a distinct portion of the work that does not require further testing, acceptance, or warranty. The subcontractor reasonably assumed that they would receive payment for this work during the prior construction season.

Fiscal Impact - Release of $81,232.19. This dollar amount is available in the TRLIA 805 account.
July 11, 2006

TO: Three Rivers Levee Improvement Authority Board
FROM: Paul G. Brunner, Executive Director  Scott Shapiro, Special Counsel

SUBJECT: TRLIA and Operation and Maintenance of R.D. 784 Levees

Recommended Action - Approve TRLIA Executive Director issuing a contract solicitation to acquire an assessment engineer to begin the necessary studies to support a Proposition 218 election and increased assessment.

Background – When Three Rivers was created many may never have intended Three Rivers to be involved with O&M on the R.D. 784 levees. In reality Three Rivers has both the legal authority and the obligation to assure the performance of O&M as required to satisfy other legal constraints. While Three Rivers is ultimately not a local agency looked to by the State of California to provide O&M for the majority of the R.D. 784 levees (that responsibility falls to R.D. 784), Three Rivers does have separate legal obligations in regard to that O&M.

Discussion – See attached letter from Scott Shapiro, Special Counsel. The following is an excerpt from this letter: “Three Rivers has both the authority and the obligation to assure that O&M properly occurs on the R.D. 784 levees. Because a modern O&M plan in an urban district requires more financial resources than R.D. 784 currently has, it is imperative that in the process of developing an O&M plan R.D. 784 and Three Rivers consider how R.D. 784 may raise additional funds for O&M. While the Funding Agreement may provide funds for interim O&M, those funds will not result in an upgraded and sustainable O&M program to meet the required criteria. It therefore seems to me imperative that Three Rivers advance all necessary efforts to develop and fund the R.D. 784 O&M plan, including taking the necessary steps to raise additional funds. In light of Proposition 218 and the associated limitations contained within that Proposition, the next essential step to raise additional funds is for Three Rivers to retain an assessment engineer to begin the necessary studies to support a Proposition 218 election and increased assessment.”

Fiscal Impact – estimated cost is approx. $100,000. Proposed FY06/07 budget contains this cost.

Attachment: Scott Shapiro letter, dated July 6, 2006
July 6, 2006

Paul Brunner
Three Rivers Levee Improvement Authority
915 Eighth Street
Marysville, CA 95901-5273

Re: Three Rivers Levee Improvement Authority and Operation and Maintenance of R.D.
784 Levees
Client-Matter No. 36317.00000

Dear Paul:

You have asked for my thoughts on the authority and/or obligation of Three Rivers Levee Improvement Authority to perform O&M on R.D. 784 levees. In short, while when Three Rivers was created many may never have intended Three Rivers to be involved with O&M on the R.D. 784 levees, Three Rivers has both the legal authority and the obligation to assure the performance of O&M as required to satisfy other legal constraints. While Three Rivers is ultimately not a local agency looked to by the State of California to provide O&M for the majority of the R.D. 784 levees (that responsibility falls to R.D. 784), Three Rivers does have separate legal obligations in regard to that O&M.

As a starting point, the joint powers agreement that created Three Rivers states in Section 4.03 that the "Authority is hereby authorized, in its own name, to do all acts necessary for the exercise of the foregoing powers in furtherance of the purposes of the Authority set forth in Section 2.01, including but not limited to, any or all of the following..." Thus, to the extent that Three Rivers needs to perform or fund O&M to satisfy one of its other obligations, the joint powers agreement supports such exercise of power.

The first impetus for Three Rivers to perform O&M relates to Three Rivers’ effort to get the R.D. 784 levees certified by FEMA. FEMA regulations provide that as part of such certification, the "levee systems must be maintained in accordance with an officially adopted maintenance plan (copy supplied to FEMA)." 44 C.F.R. Part 65.10(d). Thus, in order for Three Rivers to obtain certification for its improved levees, an officially adopted maintenance plan must be submitted to FEMA. While not explicit in the regulations, implicit is that FEMA will evaluate the maintenance plan to determine its adequacy for ensuring the continued effectiveness of the certified levees. Based upon R.D. 784’s limited financial and technical capability, it appears likely that Three Rivers must contribute both financial resources as well as technical resources to
the development of a maintenance plan, including assisting the District in raising additional funds to implement a maintenance plan.

The second impetus relates to the various implementation construction grants obtained by Three Rivers from the State of California. Standard article A-9 of those contracts states in relevant part:

For the useful life of the Project or Implementation Unit and in consideration of the Grant made by the State, the Local Public Entity agrees to expeditiously commence and to continue operation of the Project or Implementation Unit and shall cause the Project or Implementation Unit to be operated in an effective and economical manner; shall provide for all repairs, renewals, and replacements necessary to the efficient operation of the same; and shall cause the same to be maintained in as good and efficient condition as upon its construction, ordinary and reasonable wear and depreciation accepted. Refusal of the Local Public Entity to operate and maintain the Project or Implementation Unit in accordance with this provision may, at the option of the State, be considered a breach of this Grant Agreement and may be treated as default under Article B-2.

Thus, in accepting grant money from the State of California, Three Rivers has committed, as a condition of the grant agreement, to assure continual and adequate O&M on the improved levees. Interestingly, breach of that obligation may be treated as a default under the grant agreement, with various consequences including an obligation to repay the grant money received under the contract.

The third impetus for some obligation to perform or assure O&M on the R.D. 784 levees relates to various commitments to the State Reclamation Board. In particular, Three Rivers has recently executed a Local Project Cooperation Agreement with the State of California in regard to the 408 process for the Bear River setback levee. As part of that agreement, Three Rivers agreed to provide O&M for the newly constructed Bear River setback levees. While Three Rivers need not perform the actual O&M itself, it is obligated to ensure that such O&M is performed and is performed up to the required federal standard.

As to each of these circumstances, Three Rivers has both the authority and the obligation to assure that O&M properly occurs on the R.D. 784 levees. Because a modern O&M plan in an urban district requires more financial resources than R.D. 784 currently has, it is imperative that in the process of developing an O&M plan R.D. 784 and Three Rivers consider how R.D. 784 may raise additional funds for O&M. While the Funding Agreement may provide funds for interim O&M, those funds will not result in an upgraded and sustainable O&M program to meet the required criteria. It therefore seems to me imperative that Three Rivers advance all necessary efforts to develop and fund the R.D. 784 O&M plan, including taking the necessary steps to raise additional funds. In light of Proposition 218 and the associated limitations contained within that Proposition, the next essential step to raise additional funds is for Three Rivers to retain an
assessment engineer to begin the necessary studies to support a Proposition 218 election and increased assessment.

Two further questions to be considered at a later time are what entity should collect the increased funds and what agency should perform the required O&M. My analysis is not intended to prejudge the answer the answers to those questions. Rather, this analysis merely demonstrates Three Rivers' need to assure that steps are underway to make sure both funding and O&M efforts are sufficiently robust to meet FEMA, Reclamation Board, and State of California requirements.

Please call if you wish to discuss.

Very truly yours,

DOWNey BRAND LLP

/Si

Scott L. Shapiro

SLS:jgw