

**RESOLUTION NO. 2006- 12**

**A RESOLUTION BY THE BOARD OF  
THREE RIVERS LEVEE IMPROVEMENT AUTHORITY  
IN REGARD TO THE NEED FOR 24 HOUR CONSTRUCTION  
OF LEVEE IMPROVEMENTS ALONG THE YUBA RIVER**

**WHEREAS**, on July 18, 2006 the Three Rivers Levee Improvement Authority ("Three Rivers") Board adopted a resolution to adopt the Initial Study and Mitigated Negative Declaration ("IS/MND") for the Yuba River Levee Repair Project; and

**WHEREAS**, on that same day the Three Rivers Board awarded a contract for construction of the Phase 4 Yuba River Levee Repair Project and authorized the Chairman to execute upon review and approval of counsel; and

**WHEREAS**, despite these two approvals of July 18, 2006 a Notice to Proceed was not issued to Nordic Industries until Wednesday, August 30, 2006 because Three Rivers did not receive the necessary State Reclamation Board permit for construction and did not receive the necessary funding until Wednesday, August 30, 2006; and

**WHEREAS**, the IS/MND presumed that the work to be performed would be done in single shifts during the hours of 7:00 am to 10:00 pm, consistent with the Yuba County Noise Ordinance and without application of one of the listed exceptions to the ordinance; and

**WHEREAS**, Nordic Industries is proceeding with the necessary construction activities, and has already degraded substantial sections of the levee to allow for the construction of a slurry wall, but has also presented a schedule to Three Rivers that demonstrates that under the current operations plan of single shifts, the necessary work would not be completed until some time in December, after the November 1, 2006 Reclamation Board deadline to finish levee construction; and

**WHEREAS**, if the work cannot be completed prior to November 1, 2006, Three Rivers will be forced to restore the elevation of sections of the levee without addressing the known deficiencies within and underlying the levee; and

**WHEREAS**, the work to be performed will address conditions on sections of the Yuba River levee that are geotechnically similar to the stretch of the Yuba River levee that failed in 1986 inundating thousands of acres of land and resulting in a half a billion dollar legal settlement between the victims and the State of California, and Three Rivers has received information from a registered geotechnical engineer indicating that this stretch of levee should be repaired this year; and

**WHEREAS**, Nordic Industries has also presented a schedule that shows that under an operations plan with double shifts all of the necessary work can be completed by November 1, 2006, prior to the Reclamation Board imposed deadline to finish levee construction; and

**WHEREAS**, a review of the Yuba County Noise Ordinance has demonstrated that Three Rivers may proceed with a double shift operations plan, thus allowing construction during the hours of 10:00 pm until 7:00 am, either by requesting a permit under 8.20.710 from the Department of Planning and Building Services, or by determining that the work falls under the definition of 8.20.120(g); and

**WHEREAS**, while the Board has reviewed the issue of noise impacts and does not believe that the noise impacts would necessarily be significant, in an abundance of caution the Board believes that proceeding with a CEQA exemption under Public Resources Code Section 21080(b)(4) is appropriate; and

**WHEREAS**, a review of the case of *CalBeach Advocates v. City of Solano Beach*, 103 Cal. App. 4th 529 (2002), in which the court found appropriate the use of Section 21080(b)(4) where repairs were needed for an eroded beach cliff despite the fact that the repairs were previously planned and the repairs were intended to prevent, rather than to respond to, an emergency, demonstrates the appropriateness of the use of that exception in this case as well; and

**WHEREAS**, the Board desires to take such actions as are necessary to allow the use of double shifts so that the risks associated with the existing levee section are substantially reduced.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The Board hereby instructs the Executive Director to work with Nordic Industries to try to achieve a schedule which completes all needed work prior to the flood season, and to consult with the County of Yuba to obtain any necessary permits to facilitate any such schedule.
2. The Board also finds the use of Public Resources Code Section 21080(b)(4) is appropriate in this circumstance and directs the Executive Director to take all necessary actions in furtherance thereof.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Three Rivers Levee Improvement Authority, on the 12<sup>th</sup> day of September 2006, by the following vote:

AYES: Directors Brown, Griego, Logue, Webb

NOES: None

ABSENT: None

  
Richard Webb, TRLIA Chairperson

ATTEST:

  
DONNA STOTTLEMEYER  
Clerk of the TRLIA

APPROVED AS TO FORM  
  
DANIEL G. MONTGOMERY,  
County Counsel