

**Meeting of the Central Valley Flood Protection Board
November 16, 2012**

Staff Report – Encroachment Permit

**Three Rivers Levee Improvement Authority (TRLIA)
Access Corridor Vegetation Removal, Yuba County**

1.0 – ITEM

Consider approval of Permit No. 18170-1 (Attachment C) and Resolution No. 2012-45 (Attachment B) to transplant elderberry shrubs and associated planting onto the Feather River Elderberry Transplant Area (FRET).

2.0 – APPLICANT

Three Rivers Levee Improvement Authority (TRLIA)

3.0 – LOCATION

The project is located on the East levee of the Feather River, north of Island Avenue. (Feather River, Yuba County, see Attachment A)

4.0 – DESCRIPTION

Applicant proposes to amend Permit 18170 to include the transplant of 12 elderberry shrubs and 170 associated plantings onto 0.8 acres of the Feather River Elderberry Transplant (FRET) mitigation area to mitigate impacts from construction of the access corridor located along the landside toe of the Segment 3 levee north of Island Avenue, Olivehurst, in Yuba County.

5.0 – PROJECT ANALYSIS

The applicant proposes to transplant 12 elderberry shrubs and 170 associated plantings onto the FRET site that are located within the area necessary to construct a landside toe access corridor. U.S. Army Corps of Engineers (USACE) policy requires a 15-foot levee toe vegetation-free zone. Recently approved California Department of Water

Resources (DWR) Urban Levee Design Criteria (ULDC) requires a 20 foot toe access corridor along the landside toe. The construction of the toe access corridor requires the removal of vegetation including necessary drainage features and mitigation elderberry shrubs.

5.1 – Project Background

The Three Rivers Levee Improvement Authority (TRLIA) recently completed initial levee improvements along the Feather River East Levee (FREL) from Island Avenue to the Yuba South Levee consisting of flattening the waterside slope and installing monitoring piezometers in the landside toe foundation under Permit 18170-Rev. This reach of levee is part of the Federal Sacramento River Flood Control Project (SRFCP). TRLIA recently recognized additional work was needed in some areas of Segment 3 of the East Feather River Levee that should have been included in the original levee improvements. This work involves drainage improvements to provide an accessible levee toe corridor during significant rain storms and clearing of vegetation.

Establishment of a 20-foot-wide toe access corridor on the landside of Segment 3 north of Island Avenue would result in expansion of the toe access corridor past existing fences of adjacent private properties. Although establishment of the toe access corridor would extend past existing fences of private properties, this expansion would occur entirely within the property boundary of the State of California. Recent review of parcel boundaries by TRLIA and DWR revealed that existing private properties adjacent to the levee in Segment 3 have encroached an average of 17 feet into State property. The elderberry shrubs along the existing fences on the land side of the levee in Segment 3 are proposed to be removed from Segment 3 and transplanted to the FRET mitigation area in Segment 2. The FRET site was used to mitigate for Elderberry shrubs impacted by the construction of the Feather River Setback Levee and approved by the CVFPB on March 25, 2011 through Permit No. 18637.

State and federal requirements require that vegetation and other encroachments (e.g., trash, equipment, vehicles, and other removable items) be cleared and removed from within the levee access corridor. This requirement would result in the need to remove the existing fences, vegetation, debris, and other material from within the access corridor. Most of the vegetation in the access corridor consists of weedy herbaceous species, some native and non-native shrubs, and native and non-native trees. However, there are also 12 elderberry shrubs growing along the existing fences that would need to be removed.

The anticipated construction schedule is for elderberry transplantation to occur during the USFWS recommended period of November 15 to February 15, most likely starting in January 2013. Construction of the new fence, maintenance road, concrete v-ditch, additional vegetation and trash clearing, and other improvements associated with the proposed project refinements would start in summer 2013 (authorized under Board Permit No. 18690 on March 12, 2012).

5.2 – Authority of the Board

- Title 23, §112, Regulated Streams, Table 8.1

5.3 – Hydraulic Analysis

A hydraulic impact analysis is not required because the work will be limited to the landside of the levee. The plantings of the Elderberry shrubs to the FRET site were modeled under the hydraulic analysis for the Feather River Setback Levee (Segment 2) assuming dense vegetation in the expanded floodway.

5.4 – Geotechnical Analysis

A geotechnical analysis is not required for the proposed work. Earthwork activities will be completed in accordance with conditions in Permit No. 18690 and Title 23, Section 123.

6.0 – AGENCY COMMENTS AND ENDORSEMENTS

The comments and endorsements associated with this project, from all pertinent agencies are shown below:

- The U.S. Army Corps of Engineers (USACE) comment letter has not been received for this application. Staff has been in coordination with the USACE and anticipates receipt of a letter indicating that the USACE District Engineer has no objection to the project, subject to conditions. Upon receipt of the letter, staff will review to ensure conformity with the permit language and incorporate it into the permit as Exhibit A.
- Reclamation District 784 (RD 784) serves as the Local Maintaining Agency at this proposed project site and they have endorsed the project with conditions, which are incorporated to the permit as Exhibit B.

7.0 – PROPOSED CEQA ANALYSIS

The Board, acting as a responsible agency under CEQA, has independently reviewed the Draft Environmental Impact Report (DEIR) (August 2006); Final EIR (FEIR) (SCH No. 2006062071, November 2006); and an Addendum (October 2012) on the Feather River Levee Repair Project submitted by TRLIA. TRLIA, as the lead agency, determined that the project would have a significant effect on the environment and adopted Resolution 2007-04 on February 6, 2007 (including Statement of Facts, Findings, Impacts and Mitigation Measures, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program). The Notice of Determination was filed with the State Clearinghouse on February 8, 2007. The DEIR, FEIR, Addendum, Resolution 2007-04, and the Mitigation Monitoring Plan may be viewed or downloaded from the Central Valley Flood Protection Board website at <http://www.cvfpb.ca.gov/meetings/2012/11-16-2012.cfm> under a link for this agenda item. The DEIR, FEIR and Addendum are also available for review in hard copy at the Board and TRLIA offices.

Impacts that can be Mitigated

The significant impacts and the mitigation measures to reduce them to less than significant are adopted in TRLIA Resolution 2007-04, dated February 6, 2007 (which includes a Statement of Facts, Findings, Impacts and Mitigation Measures, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program). The significant impacts associated with the Feather River Levee Repair Project, which includes expansion of the landside levee toe access corridor, vegetation removal and relocation are reduced to a less-than-significant level by mitigation measures identified in the MMRP and have been incorporated into the project for mitigating impacts to biological resources.

Based on its independent review of the EIR and TRLIA Resolution 2007-04, the Board finds that for each of the significant impacts described, changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects as identified in the EIR. Moreover, such changes or alterations are within the responsibility and jurisdiction of another public agency, TRLIA, and such changes have been adopted by that agency.

Significant Unavoidable Adverse Impacts of the Project

The following impacts of the proposed project remain significant following adoption and implementation of the mitigation measures described in the FEIR:

- The proposed project conflicts with land use planning and policies resulting from levee repairs and the levee setback;
- The proposed project would result in the conversion of important farmland to nonagricultural uses resulting from levee repairs and strengthening;
- The proposed project would result in temporary emissions of air pollutants (Reactive Organic Gas (ROG); Nitrogen Oxides (NOx); Particulate Matter (PM10)) during construction;
- The proposed project would result in temporary increases in noise levels during construction.

The Board further finds that none of the significant unavoidable adverse impacts of the project are within the Board's jurisdiction. The Board also finds that the specific economic, legal, social, technological or other benefits of the project outweigh the unavoidable adverse environmental effects, which are thus considered to be "acceptable."

Statement of Overriding Considerations

The Board of the TRLIA adopted Resolution 2007-04 including the Statement of Overriding Considerations. The Board concurs with this Statement.

The Board has independently considered the significant and unavoidable environmental impacts of the proposed project. The Board has also considered the benefits of the project, including increasing the level of flood protection for Yuba County. The Board finds that economic, legal, social, technological, or other benefits of the proposed project outweigh the unavoidable adverse environmental effects of the project, and the adverse environmental effects are considered acceptable when these benefits of the project are considered.

The documents and other materials which constitute the record of the Central Valley Flood Board's proceedings in this matter are in the custody of Jay Punia, Executive Officer, Central Valley Flood Protection Board, 3310 El Camino Ave., Rm. 151, Sacramento, California 95821.

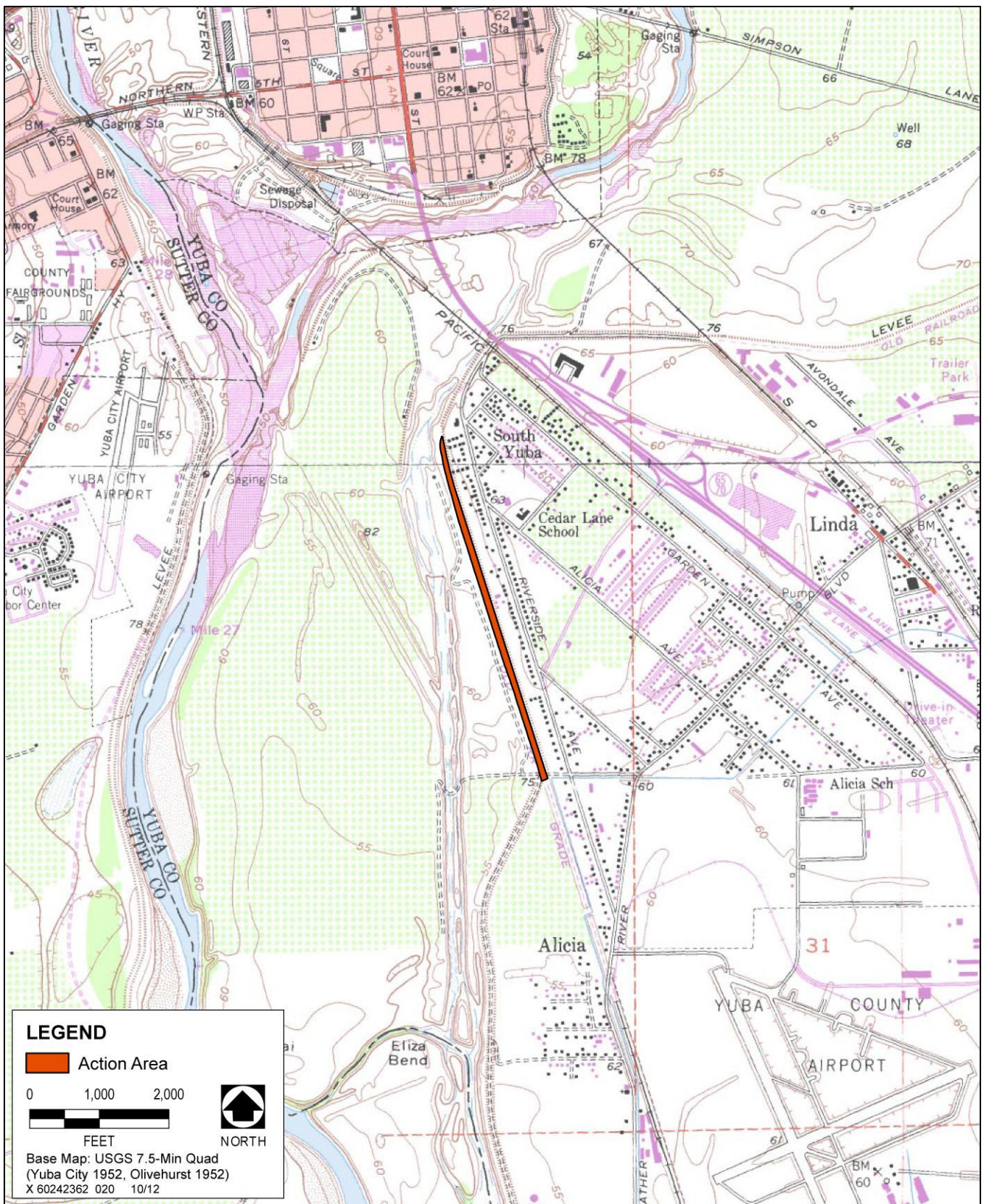
8.0 – STAFF RECOMMENDATION

Staff recommends that the Board adopt the CEQA findings, Resolution No. 2012-45, approve the permit conditioned upon receipt of a favorable U.S. Army Corps of Engineers comment letter and direct staff to file a Notice of Determination with the State Clearinghouse.

9.0 – LIST OF ATTACHMENTS

- A. Location Map
- B. Resolution No. 2012-45
- C. Draft Permit No. 18170-1
 - Exhibit A – USACE comment letter – PENDING
 - EXHIBIT B – RD 784 Endorsement letter

Design Review:	Angeles Caliso
Document Review:	Len Marino, James Herota



Source: AECOM 2012

Exhibit 1

Vicinity of the Action Area



Source: GEI 2012, AECOM 2012

Exhibit 2

Action Area and Elderberry Shrubs

STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 2012-45

FINDINGS AND DECISION AUTHORIZING ISSUANCE OF
ENCROACHMENT PERMIT NO. 18170-1

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY (TRLIA)
FEATHER RIVER REPAIR PROJECT - ACCESS
CORRIDOR EXPANSION AND VEGETATION REMOVAL

WHEREAS, TRLIA submitted Application No. 18170-1 to the Central Valley Flood Protection Board (Board) on August 21, 2012 to transplant shrubs and associated plantings onto 0.8 acres of the Feather River Elderberry Transplant (FRET) mitigation area to mitigate impacts from constructing a toe access corridor located on the landside of the Segment 3 levee north of Island Avenue, Olivehurst, in Yuba County; and

WHEREAS, during the survey preparation for TRLIA's Feather River Phase 4, Segment 3 levee improvements project, it was discovered that there were elderberry shrubs host plant to valley elderberry longhorn beetle (VELB) (*Desmocerus californicus dimorphus*), listed as a threatened species on August 8, 1980 (Federal Register 45: 52803-52807) and fully protected under the Endangered Species Act of 1973; and

WHEREAS, The Feather River Elderberry Transplant (FRET) mitigation area is a 44-acre mitigation site located in the northern end of the Feather River levee setback area, (Parcel# (APN): 014-250-022-000, Yuba County) owned by the Sacramento San Joaquin Drainage District. The mitigation area was established to mitigate impacts to the VELB resulting from the construction of the Segment 2 setback levee and associated facilities. The FRET mitigation area is a requirement of the August 28, 2008 U.S. Fish and Wildlife Service (USFWS) Biological Opinion (BO) and the USACE Section 404 Permit for the Segment 2 setback levee; and

WHEREAS, TRLIA as lead agency under the California Environmental Quality Act, Public Resources Code sections 21000 *et seq.* ("CEQA") prepared an Environmental Impact Report on the Feather River Levee Repair Project ("EIR") (incorporated herein by reference and available at the Central Valley Flood Protection Board offices or TRLIA office); and

WHEREAS, TRLIA, as lead agency, certified the EIR, adopted mitigation measures and a Mitigation Monitoring Reporting Plan ("MMRP") (incorporated herein by reference and available at the Central Valley Flood Protection Board or at TRLIA), approved findings and a statement of overriding considerations pursuant to CEQA and the CEQA Guidelines (incorporated herein by reference); and approved the Project as identified in Alternative 2 of the EIR; and

Attachment B

WHEREAS, the Draft EIR (State Clearinghouse (SCH) No. 2006062071) was published on August 3, 2006, for a 45-day public review period that ended on September 18, 2006; and

WHEREAS, the Final EIR (FEIR) was published in November 2006 and on February 6, 2007, the Board of TRLIA certified the Final EIR, made CEQA Findings adopting the Mitigation Monitoring and Reporting Program (MMRP), a Statement of Overriding Considerations (TRLIA Resolution 2007-04); and filed a Notice of Determination with the State Clearinghouse on February 8, 2007; and

WHEREAS, TRLIA prepared an addendum to the EIR (SCH No. 2006062071, October 2012) on the Feather River Levee Repair Project, including the construction of a 0.9-mile-long, 20-foot-wide toe access corridor on the landside of the Segment 3 levee north of Island Avenue; and removal and relocation of 12 elderberry shrubs within the newly established 20-foot-wide toe access corridor; and

WHEREAS, the Central Valley Flood Protection Board has conducted a hearing on Permit Application 18170-1 and has reviewed the Reports of its staff, the documents and correspondence in its file, and the environmental documents prepared by TRLIA;

NOW, THEREFORE, BE IT RESOLVED THAT,

Findings of Fact.

1. The Central Valley Flood Protection Board hereby adopts as findings the facts set forth in the Staff Report.
2. The Board has reviewed the Attachments listed in the Staff Report.

CEQA Findings.

3. The Central Valley Flood Protection Board, as a responsible agency, has independently reviewed the analysis in the DEIR (SCH No. 2006062071, August 2006), the FEIR (SCH No. 2006062071, November 2006) and Addendum (SCH No. 2006062071, October 2012) on the Feather River Levee Repair Project which includes mitigation for impacts to elderberry shrubs as a result of constructing a toe access corridor located on the landside of the Segment 3 levee north of Island Avenue and has reached its own conclusions regarding them.
4. The Central Valley Flood Protection Board, after consideration of the FEIR, and TRLIA findings, adopts the project description, analysis and findings in the FEIR and TRLIA Findings which are relevant to activities authorized by issuance of final encroachment Permit No. 18170-1 Feather River Levee Repair Project.

5. **Findings regarding significant impacts.** Pursuant to CEQA Guidelines sections 15096(h) and 15091, the Central Valley Flood Protection Board determines that the TRLIA Findings, attached to the Staff Report, and incorporated herein by reference, summarize the EIR's determinations regarding impacts of the modifications to the Feather River Levee Repair Project before and after mitigation. Having reviewed the FEIR and the TRLIA Findings, the Central Valley Flood Protection Board makes its findings as follows:

a. Findings regarding Significant and Unavoidable Impacts.

The Central Valley Flood Protection Board finds that the modifications to the Feather River Levee Repair Project may have the following significant, unavoidable impacts, as more fully described in the Staff Report, FEIR and the TRLIA Findings. Mitigation has been adopted for each of these impacts, although it does not reduce the impacts to less than significant. The impacts and mitigation measures are set forth in more detail in the Staff Report, FEIR and TRLIA Findings.

- The proposed project conflicts with land use planning and policies resulting from levee repairs and the levee setback;
- The proposed project would result in the conversion of important farmland to nonagricultural uses resulting from levee repairs and strengthening;
- The proposed project would result in temporary emissions of air pollutants (Reactive Organic Gas (ROG); Nitrogen Oxides (NO_x); Particulate Matter (PM₁₀)) during construction;
- The proposed project would result in temporary increases in noise levels during construction.

Finding: The Board finds that changes or alterations have been required in, or incorporated into, the project which substantially lessen such impacts, as set forth more fully in the Staff Report, TRLIA Findings, but that each of the above impacts remains significant after mitigation. Such mitigation measures are within the responsibility of another agency, TRLIA, and TRLIA can and should implement the described mitigation measures. Specific economic, legal, social, technological or other considerations, rendered infeasible mitigation or alternatives that would have reduced these impacts to less than significant.

b. Findings regarding Significant Impacts that can be reduced to Less-Than Significant.

The FEIR identifies the following significant impacts associated with the Feather River Levee Repair Project. These impacts are reduced to a less-than-significant level by mitigation measures identified in the Staff Report, FEIR and incorporated into the project. It is hereby determined that the impacts addressed by these mitigation measures will be

Attachment B

mitigated to a less-than-significant level or avoided by incorporation of these mitigation measures into the project.

A. Disruption of local drainage systems by the levee setback.

Drainage facilities that would be affected by the levee setback will be modified to ensure appropriate functioning of the local drainage system.

B. Fish stranding following flooding of the levee setback area.

Drainage and grading will be implemented to minimize loss or incidental loss of fish from stranding.

C. Effects on sensitive habitats.

Avoid disturbance of sensitive habitat to the extent feasible and comply with Corps and DFG processes to mitigate unavoidable effects.

D. Effects on Giant Garter Snake.

Implement applicable take minimization measures and a mitigation plan as necessary for Giant Garter Snake.

Finding. The Board finds that changes or alterations have been required in, or incorporated into, the project which substantially lessen such impacts, as set forth more fully in the Staff Report, TRLIA Findings, which describe the mitigation measures for each impact in detail. With such mitigation, each of the significant impacts will be reduced to less-than-significant. Such mitigation measures are within the responsibility of another agency, TRLIA, and TRLIA can and should implement the described mitigation measures.

6. As a responsible agency, the Central Valley Flood Protection Board has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. The Board confirms that it has reviewed the Mitigation Monitoring and Reporting Plan (MMRP), and confirmed that TRLIA has adopted and committed to implementation of the measures identified therein. The Board agrees with the analysis in the MMRP and confirms that there are no feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment. None of the mitigation measures in the MMRP require implementation by the Board directly, although continued implementation of the MMRP shall be made a condition of issuance of the Encroachment Permit. However, the measures in the MMRP may be modified to accommodate changed circumstances or new information not triggering the need for subsequent or supplemental analysis under CEQA Guidelines sections 15062 or 15063.

7. **Statement of Overriding Considerations.** Pursuant to CEQA Guidelines sections 15096(h) and 15093, the Board has balanced the economic, social, technological and other benefits of the Project described in application No. 18170-1, against its significant and unavoidable impacts, listed in paragraph 5 (a) above, and finds that the benefits of the Project outweigh these impacts and they may, therefore, be considered “acceptable”.

The Central Valley Flood Protection Board finds that there is an immediate need to correct deficiencies in the left (east) bank levee of the Feather River and minimize environmental impacts during project construction and operation.

8. **Custodian of Record.** The custodian of the CEQA record for the Board is its Executive Officer, Jay Punia, at the Central Valley Flood Protection Board Offices at 3310 El Camino Avenue, Room 151, Sacramento, California 95821.

Findings pursuant to Water Code section 8610.5

9. **Evidence Admitted into the Record.** The Board has considered all the evidence presented in this matter, including the original and updated applications, past and present Staff Reports and attachments, the original Environmental Impact Report on the Feather River Levee Repair Project (Draft and Final Versions), the MMRP, the TRLIA Findings, and the Corps of Engineers recommendations. The Board has also considered all letters and other correspondence received by the Board and in the Board’s files related to this matter.

The custodian of the file is Executive Officer Jay Punia at the Central Valley Flood Protection Board.

10. **Best Available Science.** In making its findings, the Board has used the best available science relating to the issues presented by all parties.
11. **Effects on State Plan of Flood Control.** This project has no negative effect on the State Plan of Flood Control.
12. **Effects of Reasonably Projected Future Events.** There are no foreseeable projected future events that would impact this project

Other Findings/Conclusions regarding Issuance of the Permit.

13. Based on the foregoing, and particularly on the evidence that the condition of the existing TRLIA levees poses an unacceptable risk to life and property, the Board finds and concludes that the issuance of the Encroachment Permit No. 18170-1 Feather River Levee Repair Project, is in the public interest.

Attachment B

14. This resolution shall constitute the written decision of the Central Valley Flood Protection Board in the matter of Permit No. 18170-1.

Approval of Encroachment Permit No. 18170-1

15. Based on the foregoing, the Central Valley Flood Protection Board hereby approves the issuance of Encroachment Permit No. 18170-1 in substantially the form provided as Attachment B of the Staff Report.

16. The Board directs the Executive Officer to take the necessary actions to prepare and execute the permit and related documents and to prepare and file a Notice of Determination with the State Clearinghouse.

PASSED AND ADOPTED by vote of the Board on _____, 2012

Bill Edgar
President

Jane Dolan
Secretary

STATE OF CALIFORNIA
THE RESOURCES AGENCY
THE CENTRAL VALLEY FLOOD PROTECTION BOARD

PERMIT NO. 18170-1 BD

This Permit is issued to:

Three Rivers Levee Improvement Authority
114 Yuba Street, Suite 218
Marysville, California 95901

Transplant 12 elderberry shrubs and 170 associated plantings onto 0.8 acres of the Feather River Elderberry Transplant Area. These plantings are to mitigate Valley Elderberry Longhorn beetle impacts from constructing a toe access corridor along Seg. 3 of the Feather River Levee Repair Project, required due to modification of CVFPB Permit 18170. The project is located on the right bank of the Feather River approximately 2 miles southwest of Olivehurst in Yuba County (Section 12, T14N, R3E, MDB&M, Reclamation District 784, Feather River, Yuba County).

NOTE: Special Conditions have been incorporated herein which may place limitations on and/or require modification of your proposed project as described above.

(SEAL)

Dated: _____

Executive Officer

GENERAL CONDITIONS:

ONE: This permit is issued under the provisions of Sections 8700 – 8723 of the Water Code.

TWO: Only work described in the subject application is authorized hereby.

THREE: This permit does not grant a right to use or construct works on land owned by the Sacramento and San Joaquin Drainage District or on any other land.

FOUR: The approved work shall be accomplished under the direction and supervision of the State Department of Water Resources, and the permittee shall conform to all requirements of the Department and The Central Valley Flood Protection Board.

FIVE: Unless the work herein contemplated shall have been commenced within one year after issuance of this permit, the Board reserves the right to change any conditions in this permit as may be consistent with current flood control standards and policies of The Central Valley Flood Protection

Board.

SIX: This permit shall remain in effect until revoked. In the event any conditions in this permit are not complied with, it may be revoked on 15 days' notice.

SEVEN: It is understood and agreed to by the permittee that the start of any work under this permit shall constitute an acceptance of the conditions in this permit and an agreement to perform work in accordance therewith.

EIGHT: This permit does not establish any precedent with respect to any other application received by The Central Valley Flood Protection Board.

NINE: The permittee shall, when required by law, secure the written order or consent from all other public agencies having jurisdiction.

TEN: The permittee is responsible for all personal liability and property damage which may arise out of failure on the permittee's part to perform the obligations under this permit. If any claim of liability is made against the State of California, or any departments thereof, the United States of America, a local district or other maintaining agencies and the officers, agents or employees thereof, the permittee shall defend and shall hold each of them harmless from each claim.

ELEVEN: The permittee shall exercise reasonable care to operate and maintain any work authorized herein to preclude injury to or damage to any works necessary to any plan of flood control adopted by the Board or the Legislature, or interfere with the successful execution, functioning or operation of any plan of flood control adopted by the Board or the Legislature.

TWELVE: Should any of the work not conform to the conditions of this permit, the permittee, upon order of The Central Valley Flood Protection Board, shall in the manner prescribed by the Board be responsible for the cost and expense to remove, alter, relocate, or reconstruct all or any part of the work herein approved.

SPECIAL CONDITIONS FOR PERMIT NO. 18170-1 BD

THIRTEEN: All work approved by this permit shall be in accordance with the submitted drawings and specifications except as modified by special permit conditions herein. No further work, other than that approved by this permit, shall be done in the area without prior approval of the Central Valley Flood Protection Board.

FOURTEEN: There shall be no additional plantings within the project area under this permit. Only those plantings expressly described under this permit shall be allowed within the project area and any modifications to the quantity, species, or location of the plantings will require a modification to the approved planting tile, species count, and location map, as well as a Board approved modification to this permit based on the aforementioned modified documents.

FIFTEEN: The permittee shall contact the Department of Water Resources by telephone, (916) 574-0609, and submit the enclosed postcard to schedule a preconstruction conference. Failure to do so at least 10 working days prior to start of work may result in delay of the project.

SIXTEEN: The permittee shall defend, indemnify, and hold the Central Valley Flood Protection Board and the State of California, including its agencies, departments, boards, commissions, and their respective officers, agents, employees, successors and assigns (collectively, the "State"), safe and harmless, of and from all claims and damages related to the Central Valley Flood Protection Board's approval of this permit, including but not limited to claims filed pursuant to the California Environmental Quality Act. The State expressly reserves the right to supplement or take over its defense, in its sole discretion.

SEVENTEEN: The mitigation measures approved by the CEQA lead agency and the permittee are found in its Mitigation and Monitoring Reporting Program (MMRP) adopted by the CEQA lead agency. The permittee shall implement all such mitigation measures.

ATTACHMENT C

EIGHTEEN: The permittee is responsible for all liability associated with construction, operation, and maintenance of the permitted encroachments and shall defend and hold the Central Valley Flood Protection Board and the State of California; including its agencies, departments, boards, commissions, and their respective officers, agents, employees, successors and assigns (collectively, the "State"), safe and harmless, of and from all claims and damages arising from the project undertaken pursuant to this permit, all to the extent allowed by law. The State expressly reserves the right to supplement or take over its defense, in its sole discretion.

NINETEEN: The permittee shall be responsible for securing any necessary permits incidental to habitat manipulation and restoration work completed in the flood control project, and will provide any biological surveying, monitoring, and reporting needed to satisfy those permits.

TWENTY: The permittee agrees to incur all costs for compliance with local, State, and Federal permitting and resolve conflicts between any of the terms and conditions that agencies might impose under the laws and regulations it administers and enforces.

TWENTY-ONE: The Central Valley Flood Protection Board, Department of Water Resources, and Reclamation District 784 shall not be held liable for damages to the permitted encroachment(s) resulting from releases of water from reservoirs, flood fight, operation, maintenance, inspection, or emergency repair.

TWENTY-TWO: The permittee shall be responsible for repair of any damages to the project levee and other flood control facilities due to construction, operation, or maintenance of the proposed project.

TWENTY-THREE: Any construction activities, other than those associated with the transplant of the elderberry shrubs and seedlings, shall not be permitted during the flood season from November 1 to April 15 without prior approval of the Central Valley Flood Protection Board.

TWENTY-FOUR: The permittee shall provide supervision and inspection services acceptable to the Central Valley Flood Protection Board.

TWENTY-FIVE: Cleared trees and brush (or prunings therefrom) shall be completely burned or removed from the floodway, and downed trees or brush shall not remain in the floodway during the flood season from November 1 to April 15.

TWENTY-SIX: The work area shall be restored to the condition that existed prior to start of work.

TWENTY-SEVEN: The permittee may be required, at permittee's cost and expense, to remove, alter, relocate, or reconstruct all or any part of the permitted encroachment(s) if removal, alteration, relocation, or reconstruction is necessary as part of or in conjunction with any present or future flood control plan or project or if damaged by any cause. If the permittee does not comply, the Central Valley Flood Protection Board may remove the encroachment(s) at the permittee's expense.

TWENTY-EIGHT: If the project, or any portion thereof, is to be abandoned in the future, the permittee or successor shall abandon the project under direction of the Central Valley Flood Protection Board and Department of Water Resources, at the permittee's or successor's cost and expense.

ATTACHMENT C

TWENTY-NINE: Areas where plantings are lost to erosion on the floodplain shall not be replanted.

THIRTY: The permittee shall comply with all conditions set forth in the letter from the U.S. Army Corps of Engineers dated Month XX, 2012, which is attached to this permit as Exhibit A and is incorporated by reference.

THIRTY-ONE: The permittee shall comply with all conditions set forth in the project endorsement from Reclamation District 784, which is attached to this permit as Exhibit B and incorporated by reference.

ATTACHMENT C EXHIBIT B

Reclamation District No. 784 has the following conditions to be included on the Central Valley Flood Protection Board Encroachment Permit to transplant elderberry shrubs and plant additional associated species into the existing FRET Mitigation Site:

1. All improvements shall meet Central Valley Flood Protection Board Standards;
2. The proposed project shall not increase, as determined by the U.S. Corps of Engineers and the California Central Valley Flood Protection Board the 1-in-100 and 1-in-200 water surface elevation or the velocity on the east or west bank of the Feather River;
3. Grading or Tree Plantings shall be designed not to direct water towards the existing levee or the diversion levees. Grading shall not affect the hydraulic characteristics of the river in a negative manner;
4. A copy of operation and maintenance manual shall be provided to Reclamation District No. 784 upon completion of the work;
5. A set of As-Built Mylar plans shall be provided to Reclamation District No. 784 upon completion of the work;
6. A copy of the final Central Valley Flood Protection Board Permit shall be provided to Reclamation District No. 784 prior to any work.
7. Reclamation District No. 784 shall be notified five (5) working days prior to any construction activities.
8. Reclamation District No. 784 shall be included in all construction status meetings.
9. Reclamation District No. 784 shall be reimbursed for all costs directly related to proposed work on the Central Valley Flood Protection Board Standards.