

Meeting of the Central Valley Flood Protection Board

March 29, 2019

Staff Report

Success Dam, Tule River, California Project

Approve Amendment No.1 to the Project Cooperation Agreement

1.0 ITEM

Consider adoption of Resolution 2019-07 (Attachment A) to:

1. Approve Amendment No. 1 to the Project Cooperation Agreement (PCA) (Attachment B) between the Central Valley Flood Protection Board (Board), U.S. Army Corps of Engineers (USACE), and Lower Tule River Irrigation District (LTRID) for the construction of the Success Dam, Tule River, California Project (Project) in substantially the form provided. Amendment No. 1 to the PCA will allow the USACE to fully fund the Project up to \$74 million through the Bipartisan Budget Act of 2018 to the extent funds are available and used to complete construction of the project; and
2. Delegate the Board President to sign Amendment No. 1 to the PCA.

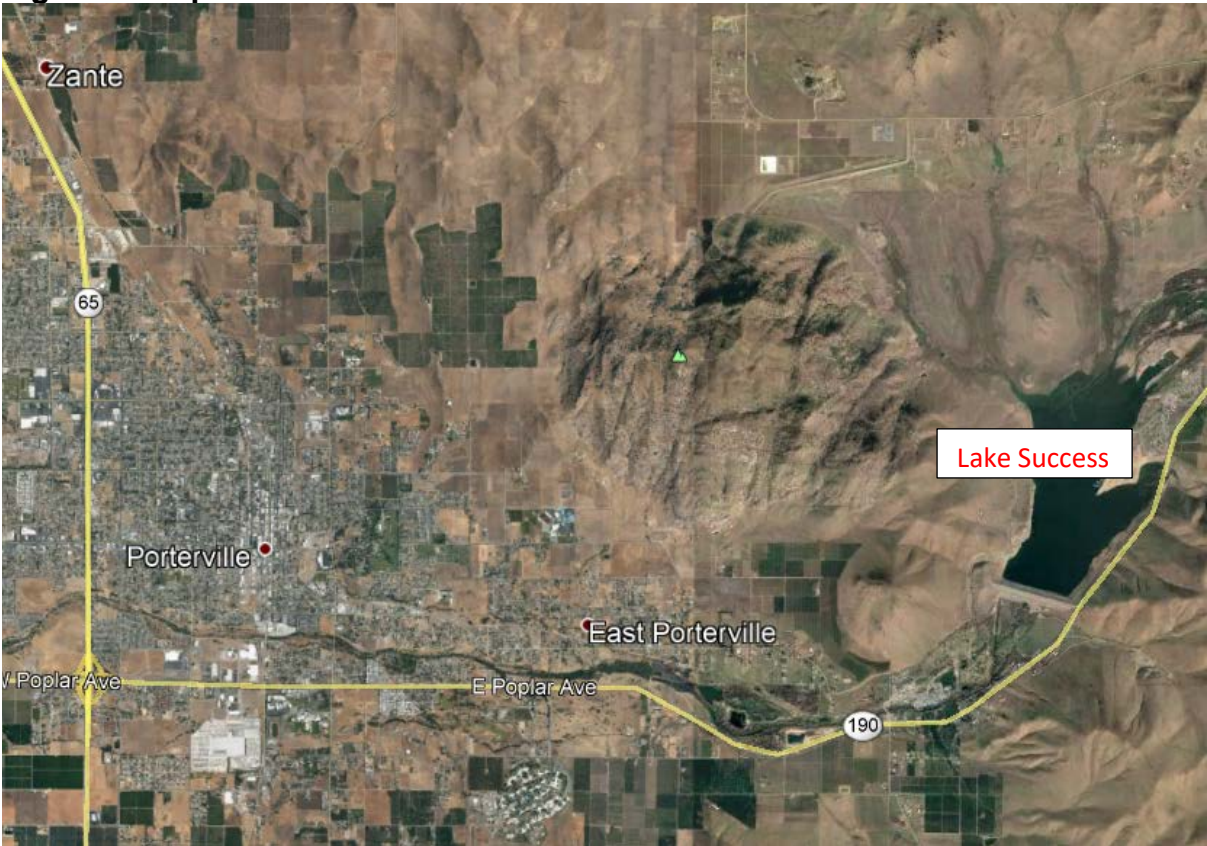
2.0 SPONSORS

Federal: U.S. Army Corps of Engineers
State: Central Valley Flood Protection Board
Local: Lower Tule River Irrigation District

3.0 PROJECT LOCATION

The project area extends from Success Lake in the foothills six miles east of Porterville, to the Tulare lakebed southwest of Corcoran. See map in Figure 1. Most of the project area is located in Tulare County while the western portion of the project extends into Kings County. State Highway 190 provides access to Success Lake from the valley floor and connects the project area with State Highway 99, a major north-south freeway route on the San Joaquin Valley floor. Elevations range from a maximum of 10,000 feet in the upper watershed to 550 feet at the dam, 450 feet at Porterville and approximately 175 feet at the lowest point in the Tulare lakebed.

Figure 1: Maps



4.0 PROJECT DESCRIPTION

The existing Success Dam leaves downstream communities and agricultural areas with significant flood risk. In the past, under current operations of the existing dam, releases greater than 3,200 cubic feet per second (cfs) from Success Dam have caused damage to the agricultural areas. Channel capacity downstream from the dam ranges from 10,000 cfs through the city of Porterville to as little as 3,200 cfs west of the city. Agricultural areas west of the city are the first areas where property damage and danger to residents have historically occurred, given a 3,200 cfs release.

The existing project controls downstream flows by making releases through its outlet works. When the reservoir elevation exceeds the spillway crest elevation, uncontrolled flows are released into the downstream channel. The existing spillway crest elevation corresponds to a flood event with a 2.2% annual chance exceedance (ACE) (approximately, the “46-year flood”). Peak spillway discharge and routing duration information are in the Water Control Manual.

Flooding downstream of Success Dam can cause extensive damage to residences, agricultural farmland, and public facilities; it is a major risk and concern for downstream residents. Additional storage capacity of Tule River flows would offer opportunities to increase flood protection to downstream areas in Porterville and the Tulare Lakebed, irrigation water storage, hydro power production, and recreation.

5.0 PROJECT BACKGROUND

Construction of Success Dam began in 1958 and was completed May 15, 1961. A small privately-owned power plant was placed online in February 1990. A series of USACE studies dating from the mid-1960s to investigate additional storage in the Tule River Basin concluded that no other economically justified sites existed upstream of Success Lake. A reconnaissance investigation launched in 1986 culminated in the 1999 feasibility report that recommended increasing the storage capacity of the existing lake by raising the spillway by 10 feet. Construction of the spillway modification, authorized by Water Resource Development Act (WRDA) 1999, was to begin in Fiscal Year (FY) 2002. However, construction was subsequently put on hold due to dam safety issues stemming from seismicity and seepage which led the dam to be classified as Dam Safety Action Classification (DSAC) II. A Baseline Risk Assessment was completed and presented to the Dam Safety Oversight Group (DSOG) in July 2017, with their finding that both seismic issues and seepage issues were much less than previously understood. The DSOG reclassified the dam from DSAC II to DSAC III, which allowed for moving forward with the spillway modification.

The project consists of constructing a 10-foot-high concrete ogee weir across the spillway, raising the gross pool elevation from 652.5 feet to 662.5 feet, and widening the spillway from 200 to 365 feet. Raising the gross pool would add 28,000 acre-feet of joint-use flood control and irrigation water storage space in the reservoir, increasing storage capacity from 82,300 to 110,300 acre-feet. The reservoir surface area would increase from 2,400 to 3,120 acres. To accommodate the modified spillway, a paved access road that currently passes through the spillway would be relocated. A bridge on California Highway 190 that passes over the lake will be armored to accommodate the increase in gross pool. Rock slope protection will be added to Frazier Dike.

6.0 AUTHORITIES

Construction of Success Dam and Lake Success

The Flood Control Act of 1944 (Public Law 534, 22 December 1944, Seventy-eighth Congress, Second Session) authorized construction of Success Dam and Lake Success.

Spillway Raise Feasibility Study

The Tule River Basin Investigation Final Feasibility Report was completed in 1999 under the general authority from the 1964 Congressional Resolution of the House Committee on Public Works, presented below:

“Resolved by the Committee on Public Works of the House of Representatives, United States, that the Board of Engineers for Rivers and Harbors is hereby requested to review the report on Sacramento-San Joaquin Basin Streams, California, published as House Document No. 367, 81st Congress, 1st Session, and other reports, with a view to determining whether any modification of the recommendations contained therein are advisable at this time, with particular reference to further coordinated development of the water resources in the San Joaquin River Basin, California.”

The 1999 Chief's Report recommended increasing storage in Success Dam Reservoir for flood risk management and irrigation water supply by raising the spillway 10 feet.

Spillway Rise Construction

Authorization for construction is provided by WRDA 1999 Section 101 (b)(4) (Public Law 106-53, 17 August 1999), which authorized the flood damage reduction and water supply project based on the recommendations of the final report of the Chief of Engineers.

7.0 FUNDING STATUS

Project funding is provided under a Supplemental Appropriation approved in 2018. The USACE's Project Manager (PM), working with the technical team lead and the rest of the Project Development Team (PDT), develops a funding cost estimate based on the project schedule and detailed scopes of work/services developed by each PDT section. Each fiscal year, the PM reconciles cost estimates and budgets to the appropriated funding. Additional funding may be received on a yearly basis as a congressional line item. In addition to the allocated amount, reprogramming from other Construction General projects may be allowed, as authorized by Congress.

Reimbursement to the Non-Federal Sponsor (NFS) for Lands, Easements, Right of Way, Relocation, and Disposal Area (LERRDs) is anticipated to be allocated on a quarterly basis and currently the estimated amount of \$5,540,000 million is set aside for all of the LERRDs activities. Out of the \$74M allocated to the project, approximately \$16,863,000 million is set aside for contingency, and the reimbursement to the NFS for LERRDS will come out of the contingency account, leaving approximately \$11 million in contingency for design and construction completion.

8.0 PROJECT COOPERATION AGREEMENT AMENDMENT NO. 1

Amendment No. 1 to the PCA has been prepared by USACE in coordination with Board staff and LTRID for the Board's consideration. Amendment No. 1 to the PCA will allow the USACE to fully fund the Project up to \$74 million through the Bipartisan Budget Act of 2018 to the extent funds are available and used to complete construction of the project. Amendment No. 1 to the PCA reestablishes obligations of the federal (USACE) and non-federal (State and LTRID) parties agreeing to construct the Project.

9.0 ENVIRONMENTAL ANALYSIS

The Board's approval and execution of Amendment No. 1 to the PCA is an administrative and contractual action necessary to coordinate and carry out the joint obligations of the non-federal partners to construct the Project as set forth in the PCA, and therefore Amendment No. 1 to the PCA comes within the scope of the Board's prior CEQA findings and approval as detailed in Resolution 2000-12, and no further CEQA review or findings are required.

10.0 STAFF RECOMMENDATION

Staff recommends that the Board adopt Resolution 2019-07 (in substantially the form provided in Attachment A), which:

Approves:

- Amendment No. 1 to the PCA in substantially the form provided; and

Delegate:

- The Board President to sign Amendment No. 1 to the PCA.

10.0 LIST OF ATTACHMENTS

- A. Resolution 2019-07
- B. Amendment No. 1 to the Project Cooperation Agreement

Prepared By: Katie Charan, PM

CVFPB Staff Review: Greg Harvey, Michael C. Wright, Itzia Rivera,

CVFPB Legal Review: Jit Dua

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

**RESOLUTION 2019-07
FOR EXECUTION OF AMENDMENT NO. 1 TO THE PROJECT COOPERATION
AGREEMENT FOR THE
SUCCESS DAM, TULE RIVER, CALIFORNIA PROJECT**

BACKGROUND:

- A. WHEREAS**, the Success Dam, Tule River, California Project (Project) is a cooperative effort by the U.S. Army Corps of Engineers (USACE), the Central Valley Flood Protection Board (Board), and Lower Tule River Irrigation District (LTRID) to provide flood risk protection for the Porterville area by making improvements to Lake Success and associated features; and
- B. WHEREAS**, construction of the Project for flood control, agricultural water supply storage, and dam safety assurance was authorized by Section 10 of the Flood Control Act of 1944, Public Law 78-534, as modified by Section 101(b)(4) of the Water Resources Development Act (WRDA) of 1999, Public Law 106-53; and
- C. WHEREAS**, the Government and the Non-Federal Sponsors entered into a Project Cooperation Agreement on June 20, 2003 (hereinafter referred to as the “Agreement”) for construction of the spillway modifications and the other work authorized by Section 101(b)(4) of the (WRDA) of 1999 (as defined in Article I.A. of the Agreement); and
- D. WHEREAS**, notwithstanding Section 103 of the WRDA of 1986, as amended (33 U.S.C. 2213), which specifies the cost-sharing requirements applicable to the Project, Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123, enacted February 9, 2018 (hereinafter “BBA 2018”), authorizes the Government to complete construction of the Project at full Federal expense to the extent that appropriations provided under the Construction heading of the BBA 2018 are available and used for such purpose; and
- E. WHEREAS**, the provisions of Section 902 of the WRDA of 1986, as amended, do not apply to the funds provided in BBA 2018 that will be used for completing construction of the Project.
- F. WHEREAS**, the Board and LTRID are authorized and empowered under their organizing acts and other state laws to participate in, fund, and carry out flood control activities; and
- G. WHEREAS**, the Board is the State non-federal Project sponsor and responsible agency under the California Environmental Quality Act (CEQA) for the Project, the USACE is the federal sponsor and Lead Agency under the National Environmental Policy Act (NEPA), and LTRID is the local non-federal sponsor and lead agency under CEQA; and

- H. WHEREAS**, the Tule River Basin Investigation, California (1999) Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) contained a general evaluation of the Project, including: modification of emergency spillway with a 10-foot raise; this feature and their potential impacts were analyzed based on the level of design available at that time; and
- I. WHEREAS**, the Board, as the responsible agency, adopted the Tule River Basin, California Final EIS/EIR, the Findings of Fact, and a Mitigation Monitoring and Reporting Plan, and approved the Project; and
- J. WHEREAS**, based on the Project's primary purpose of flood damage reduction, water supply and recreation, the Project would provide flood protection benefits while also resolving certain dam safety issues associated with passing the probable maximum flood (PMF); and
- K. WHEREAS**, the Federal Sponsors' obligations are set forth in the Agreement.

NOW, THEREFORE, BE IT RESOLVED that the BOARD:

- 1.** Approves Amendment No. 1 to the Agreement between the Board, USACE, and LTRID for the construction of the Project in substantially the form provided; and
- 2.** Delegates to the Board President the authority to sign Amendment No. 1 to the Agreement.

PASSED AND ADOPTED by vote of Board on _____, 2019.

By: _____

William H. Edgar
President

By: _____

Jane Dolan
Secretary

AMENDMENT NUMBER 1
TO THE
PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
STATE OF CALIFORNIA, THE RECLAMATION BOARD
AND LOWER TULE RIVER IRRIGATION DISTRICT
FOR IMPROVEMENTS TO THE
SUCCESS DAM, TULE RIVER, CALIFORNIA
FOR
FLOOD CONTROL, AGRICULTURAL WATER SUPPLY STORAGE, AND
DAM SAFETY ASSURANCE

This Amendment Number 1 is entered into this ____ day of _____, 20__, by and between the Department of the Army (hereinafter the “Government”), represented by the District Commander for the Sacramento District and the State of California acting by and through the Central Valley Flood Protection Board, which was formerly known as the Reclamation Board, (hereinafter the “State”), represented by its Board President, and the Lower Tule River Irrigation District (hereinafter the “LTRID”), represented by its General Manager. The State and LTRID are hereinafter collectively referred to as the “Non-Federal Sponsors”.

WITNESSETH, THAT:

WHEREAS, construction of the Success Dam, Tule River project for flood control, agricultural water supply, and dam safety assurance was authorized by Section 10 of the Flood Control Act of 1944, Public Law 78-534, as modified by Section 101(b)(4) of the Water Resources Development Act of 1999, Public Law 106-53;

WHEREAS, the Government and the Non-Federal Sponsors entered into a Project Cooperation Agreement on June 20, 2003 (hereinafter referred to as the “Agreement”) for construction of the spillway modifications and the other work authorized by Section 101(b)(4) of the Water Resources Development Act of 1999 (hereinafter the “Project”, as defined in Article I.A. of the Agreement);

WHEREAS, notwithstanding Section 103 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2213), which specifies the cost-sharing requirements applicable to the Project, Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123, enacted February 9, 2018 (hereinafter “BBA 2018”), authorizes the Government to complete construction of the Project at full Federal expense to the extent that appropriations provided under the Construction heading of the BBA 2018 are available and used for such purpose; and

WHEREAS, the provisions of Section 902 of the Water Resources Development Act of 1986, as amended, do not apply to the funds provided in BBA 2018 that will be used for completing construction of the Project.

NOW, THEREFORE, the Government and the Non-Federal Sponsors agree to further amend the Agreement as follows:

1. Insert after the seventh WHEREAS clause the following:

“WHEREAS, notwithstanding Section 103 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2213), which specifies the cost-sharing requirements applicable to the Project, Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123, enacted February 9, 2018 (hereinafter “BBA 2018”), authorizes the Government to complete construction of the Project at full Federal expense to the extent that appropriations provided under the Construction heading of the BBA 2018 are available and used for such purpose;”

2. Insert as the last Article the following:

**“ARTICLE XXI – COMPLETION OF CONSTRUCTION OF THE PROJECT USING
FUNDING PROVIDED IN BBA 2018**

Notwithstanding any other provisions of this Agreement, the Government and Non-Federal Sponsors agree to the following terms and conditions for completion of construction of the Project:

A. As of the effective date of Amendment Number 1 to this Agreement, the amount of available BBA 2018 funds is estimated at \$74 Million. To the extent BBA 2018 funds are available and used to complete construction of the Project, the following provisions apply:

1. Any costs funded with BBA 2018 funds shall not be included in the calculation of total project costs for cost-sharing purposes. In addition, any costs funded with BBA 2018 funds shall not be included in the calculation of dam safety assurance costs assigned to irrigation that are subject to cost recovery under Article II.G.

2. The Non-Federal Sponsors remain responsible for providing the lands, easements, and rights-of-way, and performing all relocations, and making improvements to lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required to complete construction of the Project.

- a. For lands, easements, and rights-of-way acquired from private owners after the effective date of Amendment Number 1 to this Agreement, the Government shall reimburse the Non-Federal Sponsors, subject to the availability of BBA 2018 funds, for costs they incur in acquiring such lands, easements, and rights-of-way, except as provided in Article XXI.D. The crediting procedures in Article IV.B. will be used to determine the costs, documented to the satisfaction of the Government, that are eligible for reimbursement. If requested by the Non-Federal Sponsors, the Government, in its sole discretion, may agree to acquire any lands, easements, or rights-of-way on the Non-Federal Sponsors’ behalf, using BBA 2018 funds.

b. Any publicly owned lands, easements, and rights-of-way required for completing construction of the Project will be provided by the Non-Federal Sponsors at no cost to the Government and without credit or reimbursement, except as provided in Article XXI.D.

c. For relocations performed after the effective date of Amendment Number 1 to this Agreement, the Government shall reimburse the Non-Federal Sponsors, subject to the availability of BBA 2018 funds, for costs they incur in performing such relocations, except as provided in Article XXI.D. The crediting procedures in Article IV.C. will be used to determine the costs, documented to the satisfaction of the Government, that are eligible for reimbursement. If requested by the Non-Federal Sponsors, the Government, in its sole discretion, may agree to perform any relocations on the Non-Federal Sponsors' behalf, using BBA 2018 funds.

d. For improvements to lands, easements, and rights-of-way to enable the disposal of dredged or excavated material made after the effective date of Amendment Number 1 to this Agreement, the Government shall reimburse the Non-Federal Sponsors, subject to the availability of BBA 2018 funds, for costs they incur in making such improvements, except as provided in Article XXI.D. The crediting procedures in Article IV.D. will be used to determine the costs, documented to the satisfaction of the Government, that are eligible for reimbursement. If requested by the Non-Federal Sponsors, the Government, in its sole discretion, may agree to make any improvements on the Non-Federal Sponsors' behalf, using BBA 2018 funds.

3. Subject to the availability of BBA 2018 funds, the Government shall reimburse the Non-Federal Sponsors for costs, documented to the satisfaction of the Government, that the Non-Federal Sponsors incur, after the effective date of Amendment Number 1 to this Agreement, for investigations for hazardous substances conducted pursuant to Article XV.A.

4. The Non-Federal Sponsors shall be responsible solely for any costs they incur, after the effective date of Amendment Number 1 to this Agreement, for participation in the Project Coordination Team and for conducting audits, without credit or reimbursement by the Government.

5. The provisions of Article XIX regarding the Section 902 project cost limits do not apply to the funds provided in BBA 2018 that are used for completing construction of the Project.

6. In the event that there are insufficient BBA 2018 funds to complete construction of the Project, such completion shall be subject to cost-sharing as otherwise provided for in this Agreement.

B. Nothing in this Article affects the responsibility of LTRID for operation, maintenance, repair, replacement, and rehabilitation of the Project as provided in Article VIII and for indemnification as provided by the Non-Federal Sponsors in Article IX.

C. Except as provided in Article XXI.A.3., nothing in this Article affects the responsibilities of the parties regarding hazardous substances as provided in Article XV.

D. As soon as practicable, the Government shall perform an interim accounting of work that has or will be completed with other than BBA 2018 funds on a cost-shared basis and furnish the Non-Federal Sponsors with the results of such interim accounting.

1. If the Government determines that the Non-Federal Sponsors have not met their minimum required cash contribution for the cost-shared work, the Non-Federal Sponsors shall provide funds in the amount necessary to meet the required minimum cash contribution.

2. If the Government determines that the Non-Federal Sponsors owe an additional amount to meet the required minimum non-Federal share of the cost-shared work, the amount owed by the Non-Federal Sponsors may be reduced by the estimated value of publicly owned lands, easements, and rights-of-way that the Non-Federal Sponsors must provide after the date of Amendment Number 1 to this Agreement.

3. If the Government determines the estimated value of publicly owned lands, easements, and rights-of-way that the Non-Federal Sponsors must provide after the date of Amendment Number 1 to this Agreement is less than the additional amount necessary to meet the required minimum non-Federal share of the cost-shared work, the Non-Federal Sponsors shall either provide the required amount in cash or elect to waive reimbursement of the required amount for privately owned lands, easements, and rights-of-way, relocations, and improvements to enable the disposal of dredged or excavated material to be acquired, provided, or made after the date of Amendment Number 1 to this Agreement.

4. The determinations made as a result of the interim accounting shall be verified during the final accounting. The crediting procedures in Article IV.B. shall be used to verify the value of any publicly owned lands, easements, and rights-of-way used to reduce the amount owed by the Non-Federal Sponsors for the cost-shared work.”

3. All other terms and conditions of this Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number 1 which shall become effective upon the date it is signed by the District Commander for the Sacramento District.

DEPARTMENT OF THE ARMY

CENTRAL VALLEY FLOOD
PROTECTION BOARD

BY: _____
David G. Ray, PE
Colonel, U.S. Army
Commander and District Engineer

BY: _____
William H. Edgar
President of the Board
The Central Valley Flood Protection Board

DATE: _____

DATE: _____

LOWER TULE RIVER IRRIGATION
DISTRICT

BY: _____
Eric Limas
General Manager

DATE: _____