

**Meeting of the Central Valley Flood Protection Board
January 25, 2019**

Staff Report

**Approve Amendment #2 to the Yuba River Basin, California
Marysville Ring Levee and Reach 1 (Linda/Olivehurst) Project**

1.0 – ITEM

Consider Central Valley Flood Protection Board (Board) adoption of Resolution 2019-01 (Attachment 1) to:

1. Approve the three-way Project Partnership Agreement (PPA) Amendment No. 2 between the Board, the Marysville Levee District (MLD), and the United States Army Corps of Engineers (USACE) for the Yuba River Basin, California Marysville Ring Levee and Reach 1 (Linda/Olivehurst) Project in substantially the form attached hereto (Attachment 2).
2. Delegate the Board President the authority to sign Amendment No. 2 to the PPA, with non-substantive changes and in substantially the same form attached hereto.

2.0 – SPONSORS

Federal Sponsor: United States Army Corps of Engineers
State Sponsor: Central Valley Flood Protection Board
Local Sponsor: Marysville Levee District

3.0 – PROJECT LOCATION

The City of Marysville is located approximately 50 miles north of Sacramento, California in Yuba County and is surrounded by approximately 7.5 miles of levee. (Attachment 3)

4.0 – PROJECT BACKGROUND

The Yuba River Basin, California Marysville Ring Levee and Reach 1 (Linda/Olivehurst) Project (MRL Project) was originally authorized as part of the Yuba River Basin, California Project in the Water Resources Development Act of 1999 (WRDA 1999) and amended by the Water Resources Development Act of 2007 (WRDA 2007). In 2008, the MRL Project was approved for construction as a separable element of the Yuba River Basin, California Project. An Engineering Documentation Report (EDR) was

completed in April 2010, which found that, although design changes were necessary, they did not constitute a change in the Yuba River Basin, California Project scope, and the MRL Project could proceed to construction as a separable element. The MRL Project initiated construction in 2010. The below previous agreements have been executed as part of the project.

Date	Agreement	Key Agreement Aspects
21 July 2010	Three Party PPA between USACE, Board, and MLD	65% Federal / 35% Non-Federal Cost Share
5 August 2010	Local Project Partnership Agreement between Board and MLD	70% State / 30% Local Split of Non-Federal Cost Share
17 March 2017	Amendment 1 to PPA	Established up to \$42,827,000 in Credit for the Non-Federal Sponsors

5.0 – PROPOSED PPA AMENDMENT #2

In February of 2018 the United States Congress passed the Bipartisan Budget Act of 2018 (BBA 2018). Among other things, BBA 2018 provided \$17.398 billion total to USACE, with nearly \$14 billion devoted to the Long-Term Disaster Recovery Investment Plan. The MRL Project was allocated \$13,586,000 in funds. However, these funds cannot be expended until a PPA Amendment is executed by the Project Sponsors, specifying how these funds may be used in accordance with BBA 2018. As such USACE has requested the Board approve PPA Amendment #2. Among other things, PPA Amendment #2 would accomplish the following:

- Provide \$13,546,000.00 in BBA 2018 funds for the Project.
- A portion of these funds would not be counted towards the USACE Section 902 cost control limit, decreasing the likelihood the Project would need to return to Congress for additional cost authorizations.
- Allow the Federal Government to use BBA 2018 funds to reimburse the Non-Federal Sponsors for Lands, Easements, Rights of Way, Relocations, and Disposals costs, as opposed to the typical process of receiving in-kind credit.

6.0 CEQA ANALYSIS

The Board is lead agency under CEQA regarding the PPA Amendment No. 2 because of its discretionary funding authority. The Amendment is an allocation of funding; the project description or footprint has not changed. In addition, since the Supplemental Environmental Assessment/Initial Study (SEA/IS) (January 2018) and the Supplemental

Mitigated Negative Declaration (SMND) (February 2018) were finalized, there have been no substantial changes to the MRL Project and no substantial changes in project circumstances that would require major revisions to the SEA/IS/SMND due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the SEA/IS/SMND. Furthermore, Board staff has not identified any feasible alternative or additional feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect that the MRL Project would have on the environment.

The Board's approval and execution of the proposed PPA Amendment No. 2 is a subsequent 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 PPA, and therefore the PPA Amendment No. 2 comes within the scope of the Board's prior CEQA findings and approval as detailed in Resolution 2018-02, and no further CEQA review or findings are required.

7.0 – AUTHORITIES

Federal:

- Section 101(a)(10) of the Water Resources Development Act of 1999 (P.L. 106-53)
- Section 3041 of the Water Resources Development Act of 2007 (P.L. 110-114)

State:

- Water Code sections 8617 and 12670.7

8.0 – STAFF RECOMMENDATION

Staff recommends that the Board:

Approve:

- Amendment #2 to the Yuba River Basin, California Marysville Ring Levee and Reach 1 (Linda/Olivehurst) Project, Project Partnership Agreement.

Delegate:

- The authority to sign Amendment #2 to the Board President with non-substantive changes and in substantially the same form attached hereto.

9.0 – LIST OF ATTACHMENTS

1 – Resolution 2019-01

2 – PPA Amendment #2

3 – Project Map

Prepared By:	Daniel Bremerman, PE, Project Manager; Flood Projects Office
DWR Staff Review:	Robert E. Scarborough; Todd Bernardy
DWR Legal Review:	James Herink, DWR Counsel
Board Staff Review:	Ruth Darling; Greg Harvey; Michael Wright;
Board Legal Review:	Jit Dua, Board Counsel

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

RESOLUTION 2019-01

**FOR EXECUTION OF A PROJECT PARTNERSHIP AGREEMENT AMENDMENT 2
FOR THE YUBA RIVER BASIN, CALIFORNIA MARYSVILLE RING LEVEE AND REACH 1
(LINDA/OLIVEHURST) PROJECT**

- A. WHEREAS**, construction of the Yuba River Basin, California Project for flood risk management (Authorized Project) at Yuba County, California, was authorized by the federal government through Section 101(a)(10) of the Water Resources Development Act of 1999 (Public Law 106-53) as amended by Section 3041 of the Water Resources Development Act of 2007 (Public Law 110-114); and
- B. WHEREAS**, the United States Department of the Army Corps of Engineers (USACE) and the Central Valley Flood Protection Board (Board) entered into a design agreement (Design Agreement) on June 13, 2000, for engineering and design of the Authorized Project, which obligates the Board to pay a portion of the costs for engineering and design of the Authorized Project as a cost sharing partner with the USACE; and
- C. WHEREAS**, the Board and Yuba County Water Authority (YCWA) entered into local design agreement (Local Design Agreement) on November 11, 2000, where the Board and YCWA agreed to share the non-Federal costs of the design project, agree on a cost share formula, and delegate the non-Federal design obligations for the Authorized Project between them; and
- D. WHEREAS**, the Urban Level of Flood Protection Criteria, developed in response to the requirements from the Central Valley Flood Protection Act of 2008, enacted by Senate Bill 5 (Chapter 364, Statutes of 2007), the State of California Department of Water Resources (DWR), Division of Flood Management established a minimum flood protection requirement for urban communities for a 200-year protection level, which the Authorized Project at that time did not meet; and
- E. WHEREAS**, USACE and the Board initially understood in 2008 that reevaluation of the Authorized Project via a General Reevaluation Report (GRR) would be necessary to formulate alternatives that could correct Authorized Project flood protection deficiencies at that time; and
- F. WHEREAS**, the USACE determined February 12, 2008, that the Marysville Ring Levee is hydraulically separate from the other elements of the Authorized Project, that the design for the Yuba River Basin California, Marysville Ring Levee and Reach 1 (Linda Olivehurst) Project (Marysville Ring Levee Improvement Project), which was a part of the original Authorized

Project design, has not changed and does not need a reevaluation so the Marysville Ring Levee Improvement Project is deemed to be a separable element of the Authorized Project not subject to reevaluation and can be designed and constructed on a separate parallel path with the GRR; and

- G. WHEREAS**, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. § 1962d-5b), and Section 103(j) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. § 2213(j)), requires each non-Federal partner to enter into a written agreement with the Secretary of the Army for the project or separable element before the Secretary of the Army commences construction of any water resources project, or any element of a water resources project; and
- H. WHEREAS**, the Board and the Marysville Levee District (MLD) each assume the responsibilities of the non-Federal Sponsor for construction of the Marysville Ring Levee Improvement Project under the terms of the Project Partnership Agreement (PPA), equal to and exclusive of each other; and
- I. WHEREAS**, the Local Sponsor, MLD, provided Board Resolution LC-2010-01 on April 5, 2010, approving the draft PPA and Local Project Partnership Agreement (LPPA), and certifying their financial capability to participate in the Marysville Ring Levee Improvement Project as a non-Federal partner to the PPA, and as a Local Sponsor to the LPPA, in the design and construction of the Marysville Ring Levee Improvement Project; and
- J. WHEREAS**, the non-Federal Partners entered into a LPPA on August 5, 2010, for construction of the Marysville Ring Levee Improvement Project; and
- K. WHEREAS**, pursuant to Water Code Sections 8617 and 12670.7, the Board has the power and authority to do all activities required of a non-Federal sponsor for the Marysville Ring Levee Improvement Project, and the Local Sponsor has the power and authority to do all activities required of a non-Federal sponsor for the Marysville Ring Levee Improvement Project pursuant to Marysville Levee Commission Board Resolution NO. LC-2009-03; and
- L. WHEREAS**, the USACE and the non-Federal Partners have the full authority and capability to perform and intend to cooperate in cost sharing and financing of the Marysville Ring Levee Improvement Project in accordance with the terms of the PPA; and
- M. WHEREAS**, the MLD, USACE, and the Board entered into a PPA on July 21, 2010, for design and construction of the Marysville Ring Levee Improvement Project, which is a separable element of the Authorized Project, as defined in Article I.A. of the PPA and later further defined in Article 2a of PPA Amendment 1; and
- N. WHEREAS**, \$13,000,000 in American Recovery and Rebuilding Act funds were made available for the Marysville Ring Levee Improvement Project, contingent upon USACE executing the

PPA and awarding a construction contract by June, 2010; and

- O. WHEREAS**, Section 3041 of the Water Resources Development Act of 2007 authorizes the Secretary of the Army to credit, in accordance with Section 221 (a) (4) of the Flood Control Act of 1970, as amended (42 U.S.C. § 1962d-5b (a)(4)), toward the non-Federal share of the cost of the Authorized Project, work carried out prior to the execution of the PPA; and
- P. WHEREAS**, on December 7, 2012, USACE South Pacific Division released a Memorandum regarding a Strategic Plan for the Authorized Project, stating that the USACE Sacramento District will stop work on the GRR and instead prepare a Limited Reevaluation Report and Integral Determination Report to determine that the Reach 1 (Linda/Olivehurst) completed by the non-Federal Sponsors is integral to the completion of the Authorized Project, and amend the PPA to include the appropriate costs as credit toward the non-Federal Sponsors share of Costs of the Marysville Ring Levee Improvement Project.
- Q. WHEREAS**, on February 12, 2014, the Secretary determined that the construction of parts of the Upper Yuba Levee Improvement Project is integral to Reach 1 of the Authorized Project, as defined in accordance with Section 221 of the Flood Control Act of 1970, and is thereby creditable pursuant to Section 3041 of the Water Resources Development Act of 2007; and
- R. WHEREAS**, the MLD, USACE and the Board entered into an Amended PPA (PPA Amendment 1) on March 17, 2017, which provided up to \$42,827,000 in credit to the non-Federal Partners for design and construction of the Marysville Ring Levee Improvement Project, which is a separable element of the Authorized Project, as defined in Article I.A. of the PPA and later further defined in Article 2a of PPA Amendment 1; and
- S. WHEREAS**, the design and construction costs under the terms of the PPA are cost-shared between the Federal and non-Federal Partners and apportioned at a rate of 65% and 35%, respectively; and
- T. WHEREAS**, the non-Federal design and construction costs are to be cost-shared between the Board and the MLD and apportioned at a rate of 70% and 30%, respectively; and
- U. WHEREAS**, the Board as lead agency under CEQA, adopted Resolution 2018-02 which adopted CEQA Findings (2018), and the Supplemental Environmental Assessment/Initial Study and Supplemental Mitigated Negative Declaration (SEA/IS/MND) (2018); and
- V. WHEREAS**, the total project cost for the Marysville Ring Levee Improvement Project is currently estimated by the USACE to be approximately \$160,000,000; and
- W. WHEREAS**, the Marysville Ring Levee Improvement Project is consistent with the 2017 Central Valley Flood Protection Plan Update by improving flood risk management and advances the vision for an integrated flood management system in the Central Valley to provide for safe,

healthy, and thriving communities while protecting and restoring the environment; and

- X. WHEREAS**, the Government and the Non-Federal Sponsors desire to amend the PPA to provide for the use of \$13,586,000 in funds as allocated in The Bipartisan Budget Act of 2018 (Public Law 115-123) for uses including reimbursement of the non-Federal Sponsor for costs for Lands, Easements, Rights of Way, Relocations, and Disposals.

NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD:

- 1 Determines that execution of the proposed PPA Amendment No. 2 is a subsequent administrative and contractual action necessary to coordinate and carry out the joint obligations of the nonfederal partners to construct the Project as set forth in the PPA and within the scope of the Project previously approved by the Board through Resolution 2018-02, and as such requires no further CEQA findings.
- 2 Approves the three-way PPA Amendment No. 2 between the Board, the MLD, and USACE for the Yuba River Basin, California Marysville Ring Levee and Reach 1 (Linda/Olivehurst) Project in substantially the form attached hereto (Exhibit B, incorporated by reference).
- 3 Delegates to the Board President the authority to sign Amendment No. 2 to the PPA, with non-substantive changes and in substantially the same as the form attached hereto.

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

William H. Edgar
President

Jane Dolan
Secretary

AMENDMENT NUMBER 2
TO THE
PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE STATE OF CALIFORNIA
AND
MARYSVILLE LEVEE DISTRICT, CALIFORNIA
FOR
CONSTRUCTION
OF THE
YUBA RIVER BASIN, CALIFORNIA
MARYSVILLE RING LEVEE AND REACH 1 (LINDA/OLIVEHURST) PROJECT

This Amendment Number 2 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, represented by its President and the Marysville Levee District, California, represented by its President (hereinafter the “Non-Federal Sponsors”).

WITNESSETH, THAT:

WHEREAS, construction of the Yuba River Basin Project for flood risk management (hereinafter the “Authorized Project”) at Yuba County, California, was authorized by Section 101(a)(10) of the Water Resources Development Act of 1999, Public Law 106-53, as modified by Section 3041 of the Water Resources Development Act of 2007, Public Law 110-114;

WHEREAS, the Government and the Non-Federal Sponsors entered into a Project Partnership Agreement on July 21, 2010 (hereinafter referred to as the “Agreement”) for construction of the Marysville Ring Levee separable element of the Authorized Project;

WHEREAS, on March 17, 2017, the Agreement was amended to increase the scope of the Project to include Reach 1 (Linda/Olivehurst) of the Authorized Project (hereinafter the “Project” as defined in Article I.A. of the Agreement, as amended) and to afford credit for in-kind contributions provided by the Non-Federal Sponsors in the design and construction of Reach 1; and

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.

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

1. Insert after the third 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 XXII – 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. Non-BBA 2018 Construction funds provided for the Project, including funds provided by the Energy and Water Development and Related Agencies Appropriations Act, 2019 (Public Law 115-244), will be used for the approved work for which they were provided, with such funds subject to cost sharing as otherwise provided for in this Agreement.

B. As of the effective date of Amendment Number 2 to this Agreement, the amount of available BBA 2018 funds for the Project is estimated at \$ 13,586,000.00. 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.

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 2 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 XXII.E. 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

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 XXII.E.

c. For relocations performed after the effective date of Amendment Number 2 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 XXII.E. 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 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 2 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 XXII.E. The crediting procedures in Article IV.E. 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 2 to this Agreement, for investigations for hazardous substances conducted pursuant to Article XIV.A.

4. The Non-Federal Sponsors shall be responsible solely for any costs they incur, after the effective date of Amendment Number 2 to this Agreement, for participation in the Project Coordination Team and for conducting audits, without credit or reimbursement by the Government.

5. 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.

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

D. Except as provided in Article XXII.B.3., nothing in this Article affects the responsibilities of the parties regarding hazardous substances as provided in Article XIV.

E. 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 2 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 2 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 2 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.C. 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.

5. BBA 2018 funds shall not be used to provide reimbursements for any in-kind contributions provided by the Non-Federal Sponsors that exceed their cost share for the work that has been or will be completed with other than BBA 2018 funds.

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

IN WITNESS WHEREOF, the parties hereto have executed this Amendment

Number 2 which shall become effective upon the date it is signed by the Division Commander for the South Pacific Division or District Commander for the Sacramento District, if signature authority is delegated.

DEPARTMENT OF THE ARMY

STATE OF CALIFORNIA

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: _____

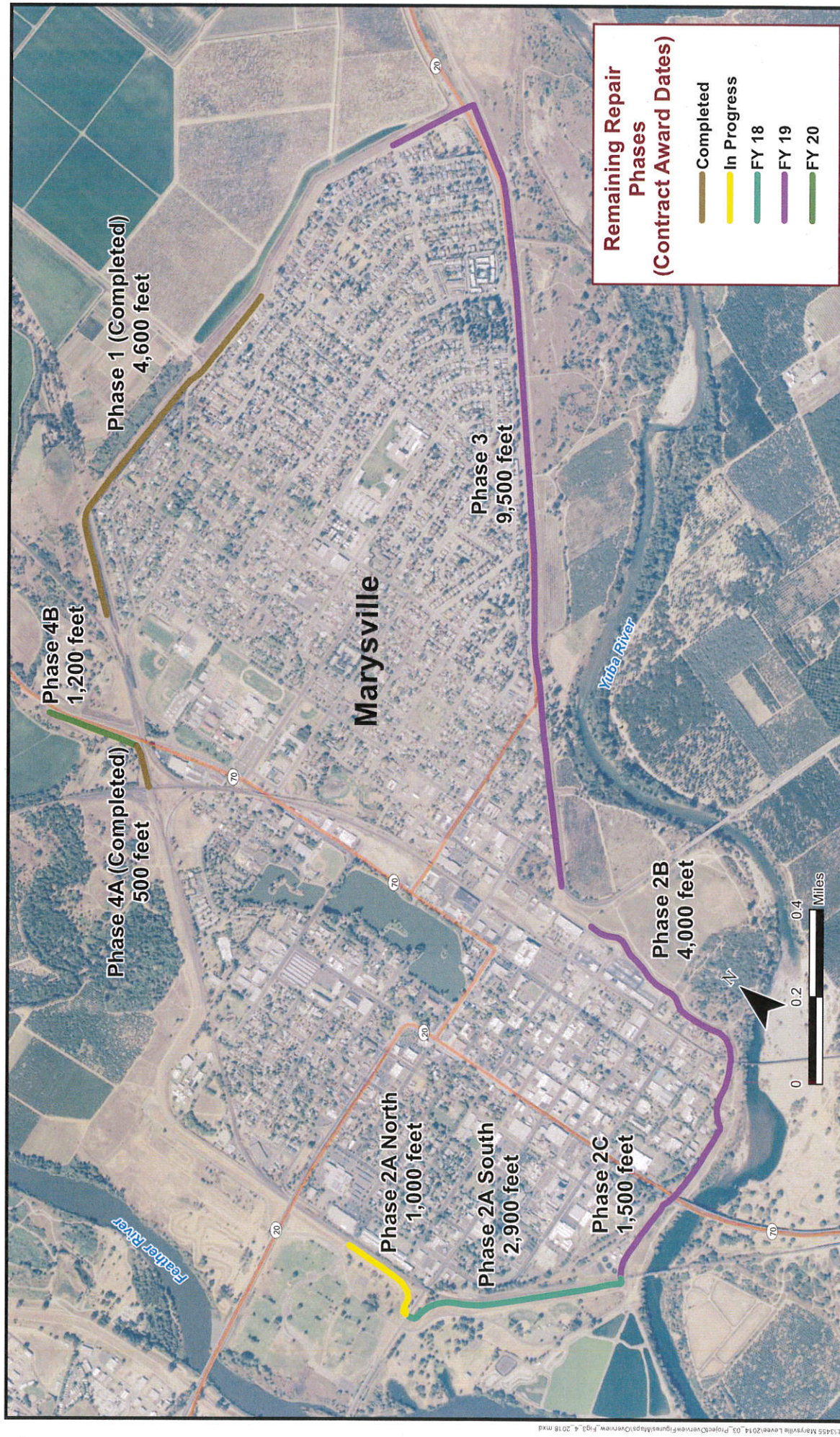
DATE: _____

MARYSVILLE LEVEE DISTRICT,
CALIFORNIA

BY: _____

Patrick H. Ajuria
President of the Board

DATE: _____



Yuba River Basin, California
Marysville Ring Levee Project
April 2018

Marysville Ring Levee Repair Schedule