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Vacant, Director (Division 5)



SANTA MARIA VALLEY WATER CONSERVATION DISTRICT BOARD OF DIRECTORS

SPECIAL MEETING
Thursday, May 30, 2024
5:00 p.m.

District Office
2255 S. Broadway, Ste. 8E
Santa Maria, California

AGENDA

1. CALL TO ORDER

- a. Roll Call
- b. Pledge of Allegiance

2. PUBLIC COMMENT

*Members of the public may address the Board on any subject within the jurisdiction of the Board and which is **not** on the agenda for Regular Meetings or that **is** on the agenda for Special Meetings. The public is encouraged to work through District staff to place items on the agenda for Board consideration. No action can be taken on matter not listed on the agenda. Comments are limited to five (5) minutes.*

3. ADDITIONS TO THE AGENDA

Items may be added to the agenda in accordance with Section 54954.2(b) of the Government Code, upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action come to the attention of the District after the Agenda was posted.

4. APPROVAL OF AGENDA

Recommended Action: Motion to approve Agenda as published.

5. APPROVAL OF CONTRACT EXTENSION FOR TEMPORARY DAM MONITORING SERVICES

Recommended Action: Motion to approve contract extension with Gaedeke Hydrologic Services LLC for temporary dam monitoring services

6. REVIEW AND APPROVAL OF RESPONSE TO GRAND JURY REQUEST FOR UPDATE

Recommended Action: Motion to approve response to Santa Barbara County Grand Jury request for update

7. DISCUSSION OF FEMA APPEAL OR ARBITRATION

Recommended Action: Direction to staff/consultant for next steps regarding FEMA claim denial

8. NEXT MEETING: June 20, 2024

9. ADJOURNMENT

Upon request, agendas can be made available in appropriate alternative formats to persons with disabilities, as required by section 202 of the Americans with Disabilities Act of 1990. Any person with a disability who requires a modification or accommodation in order to observe and participate in a meeting should direct such a request to the District Office at (805) 925-5212 at least 48 hours before the meeting, if possible.

POSTED/PUBLISHED:
May 29, 2024

STAFF REPORT

TO: SMVWCD Board of Directors
FROM: Carol Thomas-Keefer, Interim General Manager
DATE: May 30, 2024
RE: Contract Extension for Temporary Dam Monitoring Services

Background:

In response to the immediate need for dam tending services while the District seeks a full-time employee (or determines the best way to fill the dam tending needs), the District recently obtained proposals and subsequently retained the services of Gaedeke Hydrologic Consulting, LLC, at a daily rate of \$390, with an optional hourly rate of \$110 for work outside of the collection and submittal of daily site observations. Mr. Gaedeke's proposal was the lowest cost, and he has local experience collecting related hydrologic data. He has been performing the dam monitoring tasks on a daily basis since April, and he has performed the work reliably and with no issues.

The current contract with Gaedeke Hydrologic Consulting, LLC, expires on May 31, 2024. Both the District and Mr. Gaedeke are interested in extending the contract for another two months, through July 31, 2024, to allow the District additional time to recruit and hire a full-time dam tender.

Fiscal Impact:

The contract extension will add up to \$23,800 to the previous not-to-exceed amount of \$21,700, for a total not-to-exceed amount of \$45,500. Approximately \$12,000 of that amount will be billed and accrued in the 2024-25 budget year; additionally, a portion of the cost will be offset by costs avoided in salaries and benefits.

Recommendation:

The Board should consider approval of the contract extension with Gaedeke Hydrologic Consulting, LLC, for temporary dam monitoring services through July 31, 2024.

Attachment:

- Proposed Contract Extension with Gaedeke Hydrologic Consulting, LLC

**AMENDMENT 3 TO
AGREEMENT FOR GENERAL SERVICES
WITH THE SANTA MARIA VALLEY
WATER CONSERVATION (“DISTRICT”)
SHORT FORM**

Project Name/Description (“Project”): Temporary Monitoring Services

Contractor Name (“Contractor”): Gaedeke Hydologic Consulting, LLC

Contractor Business Type: Limited Liability Company (LLC)

Contractor Address: 6450 Squire Oaks Lane, San Luis Obispo, CA 93401

Contractor Representative Name and Title (“Contractor Representative”): Michael Gaedeke

Contractor Representative Work Phone and Email: Mike.Gaedeke@gmail.com

Termination Date: **July 31, 2024**

Total Not-To-Exceed Contract Amount (“Contract Sum”): **\$45,500.00** This amendment increases the not-to-exceed amount from \$21,700 to \$45,500.

District Contact (“District Contact”): Carol Thomas-Keefer

District Contact Work Phone and Email: 650-587-7300 X17, cthomaskeefer@rgs.ca.gov

THIS AGREEMENT FOR SERVICES (“Agreement”) is made and entered into and effective on the date executed by the District by and between the Santa Maria Valley Water Conservation District and Contractor. District and Contractor may be referred to individually as “Party” or collectively as “Parties.” In consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. SERVICES OF CONTRACTOR

- 1.1 Scope of Services.** In compliance with all terms and conditions of this Agreement, Contractor shall provide those services specified in the “**Scope of Services**” attached hereto as Exhibit A and incorporated herein by this reference.
- 1.2 Compliance with Law.** All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of District and any federal, State or local governmental agency having jurisdiction in effect at the time services are rendered. District, and its officers, employees and agents, shall not be liable at law or in equity for failure of Contractor to comply with this Section.
- 1.3 Licenses, Permits, Fees and Assessments.** Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the

sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless District against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against District hereunder.

- 1.4 Prevailing Wages.** If services include any "public work" or "maintenance work," as those terms are defined in California Labor Code section 1720 *et seq.* and California Code of Regulations, Title 8, section 16000 *et seq.*, and if the total compensation is \$1,000 or more, Contractor shall pay prevailing wages for such work and comply with the requirements in California Labor Code section 1770 *et seq.* and 1810 *et seq.*, and all other applicable laws.
- 1.5 Special Requirements.** Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit B and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit B and any other provisions of this Agreement, the provisions of Exhibit B shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT

- 2.1 Contract Sum.** Subject to any limitations set forth in this Agreement, District agrees to pay Contractor the Contract Sum.
- 2.2 Invoices.** Contractor shall submit to District, in a form approved by District's Finance Director, an invoice for services rendered prior to the date of the invoice. By submitting an invoice for payment under this Agreement, Contractor is certifying compliance with all provisions of this Agreement. District shall pay Contractor for all expenses stated thereon which are approved by District pursuant to this Agreement generally within thirty (30) days, and District will use its best efforts to make payment no later than forty-five (45) days, from the submission of an invoice in an approved form.

ARTICLE 3. PERFORMANCE SCHEDULE

- 3.0 Time of Essence.** Time is of the essence in the performance of this Agreement.
- 3.1 Term.** The Agreement shall commence upon the Effective Date set forth above and will continue until the Termination Date. Notwithstanding the foregoing

Indemnification and Insurance provisions set forth in Article 5 shall survive the termination of this Agreement.

ARTICLE 4. COORDINATION OF WORK

- 4.1 Representative of Contractor.** The Contractor Representative is authorized to act on Contractor's behalf with respect to the work or services specified herein and to make all decisions in connection therewith.
- 4.2 Department Contact for District.** The District Contact (or other person designated by the District General Manager) shall be the primary person on behalf of District responsible for the administration of the Agreement.
- 4.3 Independent Contractor.** Neither District, nor any of its officers, employees or agents, shall have any control over the manner or means by which Contractor, or its officers, employees, agents or subcontractors, perform the services required herein, except as otherwise set forth herein. Contractor shall perform all services required herein as an independent contractor of District and shall remain under only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it, or any of its officers, employees, agents or subcontractors, are officers, employees or agents of District. District shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor. Contractor shall not incur or have the power to incur any debt, obligation or liability whatever against District, or bind District in any manner. Contractor represents and warrants that the personnel used to provide services to District pursuant to this Agreement shall at all times be under Contractor's exclusive control and direction. No District employee benefits shall be available to Contractor, its officers, employees, agents or subcontractors, in connection with the performance of this Agreement. District shall not be liable for compensation or indemnification to Contractor, its officers, employees, agents or subcontractors, for injury or sickness arising out of performing services hereunder. In the event that Contractor or any officer, employee, agent, or subcontractor of Contractor providing services under this Agreement claims or is determined by a federal or state agency, a court of competent jurisdiction, or the California Public Employees' Retirement System, to be classified as other than an independent contractor for District, then Contractor shall indemnify, defend, and hold harmless District for the payment of any and all assessed fines, penalties, judgments, employee and/or employer contributions, and any other damages and costs assessed to District as a consequence of, or in any way attributable to, the assertion that Contractor, or any officer, employee, agent, or subcontractor Contractor used to provide services under this Agreement, is/are employees of District.

ARTICLE 5. INSURANCE AND INDEMNIFICATION

- 5.1 Insurance Coverages.** Prior to commencement of any services under this Agreement, and without limiting Contractor's indemnification obligation to

District, Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to District, for the duration of the Agreement, primary policies of insurance of the type and amounts set forth in the “Insurance Requirements” attached hereto as **Exhibit C** and incorporated herein by this reference.

5.2 Indemnification.

(a) General Obligations. Contractor agrees, to the full extent permitted by law, to indemnify, defend and hold harmless District and its elected and appointed officers, employees and agents (each an “**Indemnitee**” and collectively, “**Indemnitees**”) against, and will hold and save them and each of them harmless from, whether actual or threatened, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (herein “**Claims or Liabilities**”) that may be asserted or claimed by any person, firm or District arising out of or in connection with the performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or District for which Contractor is legally liable (each an “**Indemnitor**” and collectively, “**Indemnitors**”), and in connection therewith: 1) Contractor will defend any action or actions filed or threatened in connection with any such Claims or Liabilities, or at option of Indemnitee(s) will reimburse and pay for all costs and expenses, including legal costs and attorneys’ fees, incurred by Indemnitee(s) in connection therewith; and, 2) Contractor will promptly pay any judgment rendered against Indemnitee(s) for any such Claims or Liabilities, and will save and hold Indemnitee(s) harmless therefrom.

Further Provisions. The indemnity obligation herein shall be binding on successors, assigns and heirs of Contractor and shall survive termination of this Agreement. Contractor shall incorporate similar indemnity agreements as provided herein with its subcontractors, and if Contractor fails to do so Contractor shall be fully responsible to indemnify District hereunder therefor. Failure of District and/or District Parties (collectively “District” for solely this Section 5.2(b)) to monitor compliance with any of the indemnification provisions herein shall not be a waiver hereof. Payment of invoices by District is not a condition precedent to enforcement of the indemnity obligation herein. In the event of any dispute between Contractor and District, as to whether liability arises from the sole negligence or willful misconduct of District, Contractor will be obligated to pay for District’s defense until such time as a final judgment has been entered adjudicating District as solely negligent or responsible for willful misconduct. Contractor will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney’s fees, expert fees and costs of litigation.

ARTICLE 6. RECORDS, REPORTS AND RELEASE OF INFORMATION

- 6.1 Ownership of Documents.** All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (“documents and materials”) prepared by Contractor, its officers, employees, agents and subcontractors in the performance of this Agreement shall be the property of District and shall be delivered to District upon request of District and/or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by District of its full rights of ownership, use, reuse, or assignment of the documents and materials hereunder. Contractor may retain copies of such documents and materials for its own use. Contractor shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to District of any documents and materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify District for all damages resulting therefrom. Moreover, with respect to any Contractor documents and materials that may qualify as “works made for hire” as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed “works made for hire” for District.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

- 7.1 California Law.** This Agreement shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Luis Obispo, State of California, or any other appropriate court in such county, and Contractor agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, Northern Division, State of California.
- 7.2 Suspension, or Termination, Prior to Expiration of Term.** District reserves the right to terminate or suspend this Agreement, or any portion hereof, at any time, for any reason, with or without cause, upon ten (10) days’ notice to Contractor, except that where termination or suspension is due to the fault of Contractor, the period of notice may be such shorter time as determined by District. Upon receipt of any notice of termination or suspension, Contractor shall immediately cease all services hereunder, unless the notice provides otherwise, or except such as specifically approved by District. Upon submittal of an invoice consistent with Section 2.2, Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination or suspension.
- 7.3 Waiver.** Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent

breach or violation of any provision of this Agreement. Acceptance by District of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement.

- 7.4 Rights and Remedies are Cumulative.** Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.
- 7.5 Legal Action.** In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Contractor shall file a statutory claim pursuant to Government Code sections 905 *et seq.* and 910 *et seq.*, in order to pursue a legal action under this Agreement.
- 7.6 Attorneys' Fees.** If either Party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and a Party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, Contractors' fees, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. Such fees and costs shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. INDIVIDUAL LIABILITY, CONFLICTS AND NON-DISCRIMINATION

- 8.1 Non-liability of District Officers and Employees.** No officer or employee of District shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by District or for any amount which may become due to Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.
- 8.2 Conflict of Interest.** Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of District or which would in any way hinder Contractor's performance of services under this Agreement.
- 8.3 Covenant Against Discrimination.** Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital

status, national origin, ancestry or other protected class in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

ARTICLE 9. MISCELLANEOUS PROVISIONS

- 9.1 Notices.** Any notice or other communication either Party desires or is required to give to the other Party or any other person in regards to this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, in the case of District addressed to District to District, attention General Manager at PO Box 364, Santa Maria CA 93458, and in the case of Contractor, to the person(s) at the address designated on the cover page of this Agreement. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.
- 9.2 Interpretation.** The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement, headings used, or any other rule of construction which might otherwise apply.
- 9.3 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.
- 9.4 Integration; Amendment.** This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties as to the Agreement. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement, and this Agreement supersedes and cancels any and all prior and contemporaneous negotiations, arrangements, agreements and understandings, if any, between the Parties, concerning this Agreement, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Contractor and by District.
- 9.5 Severability.** Should a portion of this Agreement be declared invalid or unenforceable by a judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties unless the invalid provision is so material that its

invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

- 9.6 No Undue Influence.** Contractor declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of District in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of District has or will receive compensation, directly or indirectly, from Contractor, or from any officer, employee or agent of Contractor, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling District to remedies in Section 7.4 and any and all remedies at law or equity.
- 9.7 Corporate Authority.** The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) entering into this Agreement does not violate any provision of any other agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first-above written.

**SANTA MARIA VALLEY
WATER CONSERVATION DISTRICT**

Name : Keith Hadick
Title : President
Date: May 30, 2024

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Keith Lemieux, District Counsel

CONTRACTOR:

By: _____
Title:
Date:

By: _____
Name:
Title:
Date:

Two corporate officer signatures required when Contractor is a corporation, with one signature required from each of the following groups: 1) Chairperson of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. (Cal. Corp. Code § 313.) Appropriate attestations shall be included as may be required by the bylaws, articles of incorporation or other rules or regulations applicable to Contractor’s business District.

EXHIBIT "A"

SCOPE OF SERVICES

I. Contractor will perform the following Services:

Daily, beginning Monday, April 8, 2024 and ending Wednesday, July 31, 2024, Contractor will visit Twitchell Dam site and collect observation data as provided by District, in accordance with instruction provided by District representative(s).

Contractor must collect such data at 4:00 p.m. (1600 hours) each weekday and must notify district contact immediately of any days when he cannot collect observations as required.

Contractor will submit data collected via email each day to District personnel as directed.

Contractor will immediately notify District personnel of any conditions at the site that may be hazardous, unsafe, or require maintenance for proper operation of facilities.

Contractor will adhere to site access and safety protocols as instructed, and must ensure site is secured upon exit.

Amendment #2 - this Scope of Work is amended to extend through May 31, 2024.

Amendment #3 -- This Scope of Work is amended to extend through July 31, 2024.

EXHIBIT "B"

**SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)**

EXHIBIT C

INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000 per occurrence**. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000 per accident for bodily injury and property damage**.

3. Workers’ Compensation insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000 per accident for bodily injury or disease**. (Not required if Contractor provides written verification it has no employees)

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The District, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

Primary Coverage

For any claims related to this contract, the Contractor's **insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

Umbrella or Excess Policy

The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the District.

Waiver of Subrogation

Contractor hereby grants to District a waiver of any right to subrogation which any insurer of said Contractor may acquire against the District by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the District. The District may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or District. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 unless approved in writing by District. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. District may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. District reserves the right to obtain a copy of any policies and endorsements for verification.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

Verification of Coverage

Contractor shall furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements.** All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the District before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that District is an additional insured on insurance required from subcontractors.

Duration of Coverage

CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work,** shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must be maintained, and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**

Special Risks or Circumstances

District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

STAFF REPORT

TO: SMVWCD Board of Directors
FROM: Carol Thomas-Keefer, Interim General Manager
DATE: May 30, 2024
RE: Response to Grand Jury Request for Update

Background:

Last year, following investigation, the 2022-23 Santa Barbara County Grand Jury issued two reports relating to District governance and lack of transparency. In response to the Grand Jury reports, the District provided a letter dated September 21, 2023, indicating its commitment to addressing the Grand Jury's recommendations.

By letter dated May 16, 2024, the Grand Jury has requested that the District provide an update on progress with regard to its commitments for improvements. Legal counsel and staff have prepared a draft response letter identifying the various steps that the District has taken over the past several months to address the Grand Jury's recommendations.

Recommendation:

The Board should review, revise as needed and authorize the Interim General Manager to send the proposed letter to the Santa Barbara County Grand Jury in response to its request for an update.

Attachments:

- Letter dated May 16, 2024, from Santa Barbara County Grand Jury
- Draft letter from SMVWCD in response to Grand Jury request

County Courthouse
1100 Anacapa Street
Santa Barbara, CA 93101



805 568-2291
sbcgj@sbcourts.org
<http://www.sbcgj.org>

**Grand Jury
Santa Barbara County**

May 16, 2024

Santa Maria Valley Water Conservation District
Keith Hadick, President
P.O. Box 365
Santa Maria, CA 93456
(805) 925-5212
districtoffice@smvwcd.org

Re: Your Responses to the following reports:

- 1) **Lack of Transparency and Due Diligence - Santa Maria Valley Water Conservation District**, dated 6/21/2023
- 2) **Santa Maria Valley Water Conservation District – Aspects of Governance**, dated 6/21/2023

Dear Mr. Hadick:

The Grand Jury received your responses to the above-titled report(s) and is following up on the status of the commitments to either implement recommendations or conduct further analysis.

Response to Recommendation (see below): Your initial response to this recommendation indicated a commitment to implement these required actions in December 2023. Please confirm the action taken and the date when it was implemented.

Lack of Transparency and Due Diligence - Santa Maria Valley Water Conservation District: Recommendation 3

[*Lack of Transparency response*](#)

Santa Maria Valley Water Conservation District – Aspects of Governance: Recommendations 4a, 4b, 4c

[*SMVWCD Aspects of Government response*](#)

Response to Recommendation (see below): Your initial response to this recommendation indicated that further analysis was required prior to implementing any changes. Since it has been 6 months or more since your response, please provide the results of your analysis and any actions that have been or are scheduled to be implemented with the date of implementation or the associated timeline as appropriate.

Lack of Transparency and Due Diligence - Santa Maria Valley Water Conservation District: Recommendations 1 and 2

[Lack of Transparency response](#)

Santa Maria Valley Water Conservation District – Aspects of Governance: Recommendations 2 and 3

[SMVWCD Aspects of Government response](#)

The Grand Jury requests that you submit your updates to each of the above responses within ten (10) days of the date of this letter. Your continued cooperation with the Santa Barbara County Grand Jury is appreciated.

We ask that you send a copy of your response to sbcgj@sbcourts.org.

Respectfully,

A handwritten signature in blue ink that reads "Eva Macias". The signature is written in a cursive style.

Eva Macias
Foreman
2023-2024 Santa Barbara County Grand Jury



Officers

President
Keith Hadick

Board Secretary
Andy Adam

**SANTA MARIA VALLEY
WATER CONSERVATION DISTRICT**

P.O. BOX 364
SANTA MARIA, CALIFORNIA 93456
PHONE (805) 925-5212 FAX (805) 739-0763
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Directors

Vacant, Div. 1
Andy Adam, Div. 2
Keith Hadick, Div. 3
Gerald Mahoney, Div. 4
Vacant, Div. 5
Casey Conrad, Div. 6
Randy Sharer, Div. 7

May 30, 2024

Via First Class mail and Email: sbcgj@sbcourts.org

Ms. Eva Macias, Foreman
Grand Jury Chambers
Santa Barbara County Courthouse
1100 Anacapa Street
Santa Barbara, CA 93101

Re: May 16, 2024 Grand Jury Report and Responses
Santa Maria Valley Water Conservation District

Dear Ms. Macias:

The Santa Maria Valley Water Conservation District welcomes the follow-up inquiry from the Grand Jury and your effort to improve the practices of the District.

Transparency Findings

Finding 1: The Santa Maria Valley Water Conservation District's transparency needs to be improved both in terms of timeliness and adequacy.

Recommendation No. 1: That the Santa Maria Valley Water Conservation District bring its website disclosures up to best practices comparable to those recommended by the Special District Leadership Foundation and those employed by other special districts in northern Santa Barbara County.

Original Response to Finding No. 1: Respondent agrees with finding. The SMVWCD has indicated that it is currently working to retain a General Manager in response to other recommendations of this Grand Jury. The District will work with the new General Manager to improve the website as suggested.

Updated Response to Finding No. 1: The District has revised the website to adopt best practices comparable to those recommended by the Special District Leadership Foundation and those employed by other special districts in northern Santa Barbara County.

Finding 2: The Santa Maria Valley Water Conservation District's inadequate disclosure regarding its contract with Mitigation Solutions, LLC resulted in Western Sierra Resource Corporation's inaccurate news releases becoming the only public source of information about ongoing mitigation activities at Twitchell Dam and Reservoir.

Recommendation No. 2: That the Santa Maria Valley Water Conservation District's website report at least quarterly on ongoing mitigation projects.

Response to Finding No. 2: Respondent agrees with finding. The SMVWCD has indicated that it is currently working to retain a General Manager in response to other recommendations of this Grand Jury. The District will work with the new General Manager to improve the website as suggested.

Updated Response to Finding No. 2: The District has revised the website to include the requested information.

Finding 3: The Santa Maria Valley Water Conservation District failed to exercise financial due diligence in its evaluation of Mitigation Solutions, LLC's ability to meet its contractual obligations, particularly considering Western Sierra Resource Corporation and Mitigation Solutions, LLC's financial condition.

Recommendation No. 3: That within six months, the Santa Maria Valley Water Conservation District establish and follow policies for thoroughly vetting the financial capacity and capabilities of potential parties to all contracts.

Response to Finding No. 3: Respondent agrees with finding. The SMVWCD will work with District Counsel to develop the suggested policies in the time frame suggested.

Updated Response to Finding No. 3: On November 29, 2023, the District adopted a written procurement policy intended to address this issue. It is attached hereto for reference.

Governance Findings

Finding 1: The vacancies on the Santa Maria Valley Water Conservation District Board of Directors reduce the efficacy of the Board and impede good governance by limiting procedural actions. Since the Board has only four District Directors for the seven total divisions, the Board is often deadlocked, so motions fail to pass.

Recommendation 1: That the Santa Maria Valley Water Conservation District move to fill the vacant seats on its Board of Directors within three months (with aid from the Santa Barbara County Board of Supervisors if necessary), or by general election, whichever occurs first.

Response to finding No 1: Respondent agrees with finding. In fact, the board has filled a fifth seat with a new director, Randy Sharer. The board intends to fill the remaining seats by appointment.

Updated Response to finding No 1: The District has not been successful in finding candidates to fill the vacant seats. The District would welcome any help to accomplish this.

Finding 2: The training received by the Directors of the Santa Maria Valley Water Conservation District is insufficient for the requirements of their role.

Recommendation 2: That all Santa Maria Valley Water Conservation District Directors receive training annually in the following topics: The Brown Act; Basic parliamentary procedures in Robert's Rules of Order; Ethics Training as required by Assembly Bill 1234, Chapter 700; and Leadership and Best Practices Training offered by the State of California and the California Special Districts Association.

Response to finding No 2: Respondent agrees with finding. The board will work with District Counsel to ensure that the board receives training as required by AB 1234.

Updated Response to finding No 2: All Directors are up to date in receiving bi-annual ethics training. The District remains committed to ensuring that the Directors receive adequate and appropriate training.

Finding 3: The Santa Maria Valley Water Conservation District is short-staffed and the one employee who works in the District Office is overburdened.

Recommendation 3a: That, at a minimum, the Directors of the Santa Maria Valley Water Conservation District hire a General Manager and one or more Administrative Assistants within three months, and full-time Dam Tender(s) within six months.

Response to finding No 3a: Respondent agrees with finding. The board has directed staff to prepare an RFP for a General Manager. Following retention of a General Manager, the board will work to fill the other suggested positions with the aid of the General Manager.

Updated Response to finding No 3a: On December 21, 2023, the District board took action to hire an interim General Manager.

Recommendation 3b: That, concurrent with the hiring of additional staff, the Directors of the Santa Maria Valley Water Conservation District create an organizational chart and adopt an administrative operating manual.

Response to finding No 3b: Respondent agrees with finding. The board has directed staff to prepare an RFP for a General Manager. Following retention of a General Manager, the board will work to revise the organizational chart with the aid of the General Manager.

Updated Response to finding No 3b: The District currently has two employees, the General Manager and the District Counsel. The General Manager is currently working with the Board to develop a staffing plan to

accompany the District's proposed budget for FY 2024-25. Additional administrative services are available to the District through the General Manager's contract. The General Manager is also working to recruit and hire a full-time dam tender and an office staff member. Once a staffing plan has been determined, the organization chart will be prepared. An administrative handbook has also been drafted and will be adopted in the coming months as part of a larger administrative code.

Finding 4: The Santa Maria Valley Water Conservation District's financial management practices do not satisfy public expectations for transparency and fiscal accountability from a governing body, where information is created and freely available to the public in a timely manner, in open data formats, and without restrictions on use and reuse.

Recommendation 4a: That the Santa Maria Valley Water Conservation District's independent audit of financial reports, including opinions on internal controls, be completed no later than 180 days after the fiscal year's end.

Response to No. 4a recommendation: Respondent agrees with finding. District will work to complete audits in timely fashion.

Updated Response to finding No 4a: The District's audit is nearly complete and will be published and available upon presentation to the Board. The District remains committed to the recommendations for transparency and fiscal accountability.

Recommendation 4b: That the Directors of the Santa Maria Valley Water Conservation District establish written policies and procedures for expenditures made by District Directors and employees using District credit cards, which include the requirement that a receipt and other supporting documents be submitted monthly.

Response to No. 4b recommendation: Respondent agrees with finding. The District will promptly work with the District Counsel to implement this recommendation.

Updated Response to finding No 4b: The District requires that receipts and supporting documents accompany District credit card expenditures, which are made on a very limited basis. A policy has been included in the District's draft employee handbook, and a general policy that pertains to all District personnel will be included a comprehensive Administrative Code, currently under development with District counsel.

Recommendation 4c: That the Directors of the Santa Maria Valley Water Conservation District establish written policies and protocols within three months for the use of District-owned vehicles and equipment, including that personal use of District-owned vehicles and equipment be strictly prohibited.

Response to No. 4c recommendation: Respondent agrees with finding. The District will promptly work with the District Counsel to implement this recommendation.

Updated Response to No. 4c recommendation: The District's draft employee handbook contains policies prohibiting personal use of District vehicles and equipment; this handbook is currently under revision based

Santa Barbara Grand Jury
May 28, 2024
Page 5

on the District's organizational changes and will be finalized and adopted in the coming months, along with a comprehensive Administrative Code. Additionally, on April 18, 2024, the District adopted a policy regarding prohibition and disposal of private property left at District facilities.

Sincerely,

Carol Thomas-Keefer
Interim General Manager
Santa Maria Valley Water Conservation District

STAFF REPORT

TO: SMVWCD Board of Directors
FROM: Carol Thomas-Keefer, Interim General Manager
DATE: May 30, 2024
RE: FEMA Appeal Denial

Background:

Representatives from the District's consultant, Horne, recently notified the District that FEMA has denied the District's first appeal for the emergency pumping of water. Horne's representative cited the following excerpt from the FEMA determination letter as the primary reason for the denial:

"The Applicant has not demonstrated disaster-related damages from DR-4683-CA to the Facility, nor has it separated any such damages from damages resulting from lack of maintenance, negligence, etc.²⁵ Therefore, it is impossible for FEMA to determine how much, if any, sediment was deposited as a result of the declared incident."

At this time, the District should determine how to proceed with this process. As stated in the letter, the District has 60 days to either submit a second appeal or request arbitration. Should the Board wish to proceed with either course, Horne representatives can obtain additional information on which path may be most beneficial.

Recommendation:

The Board should discuss alternatives for proceeding with regard to the FEMA appeal denial and provide direction to staff and consultants.

Attachments:

- FEMA denial of District's first appeal, dated May 28, 2024



FEMA

May 28, 2024

Mr. Carl DeNigris
Acting Deputy Director, Recovery
California Governor's Office of Emergency Services
3650 Schriever Avenue
Mather, CA 95655

Mr. Casey Conrad
Treasurer
Santa Maria Valley Water Conservation District
P.O. Box 364
Santa Maria, California 93457

Reference: First Appeal – Santa Maria Valley Water Conservation District
FEMA-4683-DR-CA, PA ID: 083-UE5BU-00
Grants Manager Project 716224
FEMA Log 500383, Cal OES Log COR-002219
Result of Declared Incident

Dear Acting Deputy Director DeNigris and Treasurer Conrad:

This is in response to a letter from Cal OES (Recipient) dated February 2, 2024, which transmitted the referenced first appeal on behalf of Santa Maria Valley Water Conservation District (Applicant).¹ The Applicant is appealing the U.S. Department of Homeland Security's Federal Emergency Management Agency's (FEMA) denial of funding in the amount of \$14,858,798.15 for emergency pumping and pre-positioning of debris removal equipment at Twitchell Reservoir and Dam (Facility).

As explained in the enclosed analysis, FEMA determined the Applicant has not demonstrated that the requested work to repair the Facility was required as a result of the declared incident. Therefore, this appeal is denied. This letter officially notifies the Applicant of this determination.

The Applicant may appeal this determination to the Assistant Administrator, Recovery Directorate, at FEMA Headquarters pursuant to 44 C.F.R. § 206.206. If the Applicant elects to file such a second appeal, the appeal must: 1) contain documented justification supporting the Applicant's position; 2) specify the monetary figure in dispute; and 3) cite the provisions in federal law, regulation, or policy with which the Applicant believes the initial action was

¹ Letter from Acting Deputy Director, California Governor's Office of Emergency Services (Cal OES), to Regional Administrator, U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA), Region 9, at 1 (Feb. 2, 2024) [hereinafter *Letter from Cal OES*].

Acting Deputy Director DeNigris and Treasurer Conrad

inconsistent. The Applicant has 60 days from the date of receipt of this letter to submit a second appeal to the Recipient. The Recipient has 60 days from the date of receipt of the Applicant's second appeal to submit the appeal, with its recommendation, to FEMA Region 9, Recovery Division. FEMA Region 9 will transmit the second appeal to FEMA headquarters.

Alternatively, in lieu of a second appeal, an arbitration process is available to any Applicant meeting the statutory criteria pursuant to Section 423(d) of the Stafford Act. Please consult 44 C.F.R. § 206.206(b)(3) and 48 C.F.R. part 6106 for arbitration eligibility and procedural requirements.

If the Applicant elects not to submit a second appeal request or request for arbitration within 60 days of the Applicant's receipt of this letter, this decision is the final agency determination on the matter, and the Applicant will no longer be able to appeal or arbitrate the matter.

Please contact Recovery Division Director Joseph Engler at Joseph.Engler@fema.dhs.gov if you have any questions or require further assistance.

Sincerely,

Handwritten signature of Robert J. Fenton in black ink.

Robert J. Fenton
Regional Administrator
FEMA Region 9

Enclosures:

1. Appeal Analysis
2. Administrative Record Index

FIRST APPEAL ANALYSIS
Santa Maria Valley Water Conservation District, PA ID 083-UE5BU-00
FEMA-4683-DR-CA, Grants Manager Project 716224
Result of Declared Incident

Background

During the incident period of December 27, 2022, through January 31, 2023, severe storms and flooding caused damages throughout the State of California, including Santa Barbara County.² The Santa Maria Valley Water Conservation District (Applicant) requested funding under the Federal Emergency Management Agency (FEMA) Public Assistance (PA) program for contract services for emergency pumping and associated work to remove sediment from the Twitchell Dam Reservoir outlet works, including a stilling basin, keyhole pond, and drying area (referred to collectively as “settling basins”), and for pre-positioning of equipment for debris removal.³ All work was performed between January 16, 2023, and February 25, 2023, for a total project cost of \$14,858,798.15.⁴ In a Determination Memorandum (DM) dated October 16, 2023, FEMA determined that the Applicant did not follow federal procurement and contracting requirements; noted that a duplication of benefits would occur if PA funding were used to reimburse the Applicant; and that the Applicant did not provide sufficient documentation to demonstrate how much sediment, if any, was deposited by the event.⁵ This determination echoes a second appeal analysis dated December 5, 2022, when the same Applicant requested funding for sediment removal that it claimed was the result of the DR-4308-CA event. FEMA denied this second appeal, determining that the Applicant did not demonstrate that the sedimentation deposited in the settling basins was the result of the declared incident.⁶

First Appeal

The Applicant submitted an appeal for \$14,858,798.15 on December 15, 2023. The Applicant contends that it is eligible for PA funding and claims that emergency pumping services and pre-positioning of equipment to facilitate removal of sediment and debris was required to stabilize Twitchell Reservoir and Dam in response to flooding beginning on December 27, 2022. The Applicant submitted 46 attachments including, but not limited to, a 2023 Light Detection and Ranging (LiDAR) Sediment Accumulation Survey,⁷ a Twitchell Reservoir Results of 2018 Aerial Survey and Sedimentation Update,⁸ and the 2020 Twitchell Dam Project Manual.⁹ In a

² The President issued a major disaster declaration (FEMA-4683-DR-CA) on January 14, 2023.

³ Grants Manager Project (GMP) 716224, Damage Inventory (DI) 1320446 [hereinafter GMP 716224, DI 1320446].

⁴ See GMP 716224, DI 1320046, Documents, Invoice I .pdf. (While the project Scope states the "CRC is still validating/confirming the correct cost claim amount," the total project amount is based upon the certified Project Net Cost in the Applicant's Streamlined Project Application. There is a 20-cent discrepancy between the certified Project Net Cost and the cited invoice of \$14,858,798.35.)

⁵ Determination Memorandum (DM), *Santa Maria Valley Water Conservation District*, FEMA-4368-DR-CA, at 17 (Oct. 16, 2023).

⁶ FEMA Second Appeal Analysis, *Santa Maria Water Conservation District*, FEMA-4308-DR-CA, at 4 (Dec. 5, 2022).

⁷ Juan Beltran, LiDAR America Inc. Sediment Accumulation Analysis using Global Mapper, Santa Maria Water Conservation District, Single Beam Bathymetric Survey for, the AOI known as “Twitchell Reservoir Dam,” (Aug. 2023) [hereinafter *LiDAR Survey*].

⁸ The Santa Maria Valley Water Conservation District & MNS Engineers, INC, Twitchell Reservoir, Results of 2018 Aerial Survey and Sedimentation Update (Aug. 5, 2019), [hereinafter *Aerial Survey and Sedimentation Update*].

⁹ Twitchell Management Authority & MNS Engineers, Inc., *Twitchell Project Manual* (Aug. 2020).

letter dated February 2, 2024, Cal OES (Recipient) transmitted the first appeal, with a letter concluding that it could not support the appeal.¹⁰ The Recipient reviewed the 2018 Aerial Survey and Sedimentation Update, the 2020 Twitchell Dam Project Manual, and the 2023 LiDAR Sediment Accumulation Survey and concluded that all information demonstrates preexisting damage at the facility and fails to indicate how much sedimentation resulted from the DR-4683-CA event.¹¹ The Recipient concludes that the designed reserve capacity of the Reservoir was compromised by years of inaction and that the Applicant has not provided sufficient documentation demonstrating the work was required as a direct result of the incident. Cal OES agrees with FEMA that the emergency pumping and pre-positioning of equipment for debris removal is ineligible for PA funding and therefore the Recipient does not support the Applicant's appeal.¹²

Discussion

FEMA has authority to fund the restoration of damaged public facilities to their predisaster capacity and condition.¹³ To be eligible, work must be required as the result of the declared incident.¹⁴ It is the Applicant's responsibility to demonstrate that damage was caused directly by the declared incident.¹⁵ When pre-existing damages exist, it is the Applicant's responsibility to separate such damages for the purposes of grant consideration under the PA program.¹⁶ FEMA does not provide PA funding for the repair of damage caused by deterioration, deferred maintenance, the Applicant's failure to take measures to protect a facility from further damage, or negligence.¹⁷ Restoration of sediment basins, reservoirs, and other water control facilities may be eligible for assistance, but only if the applicant provides documentation to establish the predisaster capacity of the facility and that the applicant maintains the facility on a regular schedule.¹⁸ This documentation may be in the form of a written maintenance plan and/or activity logs documenting regular intervals of activity.¹⁹

¹⁰ *Letter from Cal OES*, at 6.

¹¹ *Id.*, at 5.

¹² *Id.*, at 6.

¹³ Robert T. Stafford Disaster Relief and Emergency Assistance (Stafford) Act § 406(a), Title 42, United States Code § 5172(a) (2012); Title 44 Code of Federal Regulations (C.F.R.) §§ 206.201(i)-(j); 206.226 (2016).

¹⁴ Title 44 of the Code of Federal Regulations (44 C.F.R.) § 206.223(a)(1) (2018); *Public Assistance Program and Policy Guide*, FP 104-009-2, at 51-52 (June, 2020) [hereinafter *PAPPG*].

¹⁵ *See, e.g., PAPPG*, at 184 (“[I]t is the Applicant's responsibility to substantiate its claim as eligible. If the Applicant does not provide sufficient documentation to support its claim as eligible, FEMA cannot provide PA funding for the work.”).

¹⁶ *PAPPG*, AT 169-170.

¹⁷ 44 C.F.R. § 206.223(e); *PAPPG*, at 52.

¹⁸ *PAPPG*, at 171; *see also* FEMA Second Appeal Analysis, *Brunswick, City of*, FEMA-4451-DR-MO, at 2 (Mar.21, 2022).

¹⁹ *PAPPG*, at 171.

FIRST APPEAL ANALYSIS
Santa Maria Valley Water Conservation District, PA ID 083-UE5BU-00
FEMA-4683-DR-CA, Grants Manager Project 716224
Result of Declared Incident

Here, the Applicant claims sediment and debris in the Facility was deposited by the event, however, the available evidence does not support the claim.²⁰ The documentation establishes that the Applicant allowed the sediment level to exceed the Facility's design tolerance of 40,000 acre-feet and was surveyed to have 45,892 acre-feet of sedimentation in 2018, prior to the incident.²¹ The Applicant states that due to budgetary constraints, it did not maintain the Facility on a regular schedule and did not complete repairs to predisaster damages occurring from increased sedimentation between 2017 and 2023.²² The LiDAR Sediment Accumulation Survey from January 2023 did not show that the sedimentation resulted from the disaster event, but rather demonstrated the increase in sedimentation levels near the intake structure from 2012 to January 2023.²³ In addition, the December 2022 photograph of the sediment engulfed intake structure demonstrated that the level of sediment prior to the disaster was similar to the structure's condition after the DR-4308-CA storms.²⁴

Consequently, the Applicant has not demonstrated disaster-related damages from DR-4683-CA to the Facility, nor has it separated any such damages from damages resulting from lack of maintenance, negligence, etc.²⁵ Therefore, it is impossible for FEMA to determine how much, if any, sediment was deposited as a result of the declared incident.²⁶ The Applicant's failure to distinguish between pre-existing damage and damage caused by the incident renders the remaining ineligibility issues cited in FEMA's DM moot.

Conclusion

The Applicant has not demonstrated that the requested work to repair the Facility was required as a result of the declared incident. Accordingly, this appeal is denied.

²⁰ First Appeal Letter from Treasurer, Santa Maria Valley Water Conservation District to Cal OES OR Dir., Recovery Div., FEMA Region 9, at 2, (Dec. 15, 2023) [hereinafter *First Appeal Letter*]; FEMA Second Appeal Analysis, *Nutwood Drainage and Levee District*, FEMA-4461-DR-IL, at 2 (May 10, 2023) [hereinafter *Nutwood Drainage and Levee District*, FEMA-4461-DR-IL].

²¹ *Aerial Survey and Sedimentation Update*, at 19.

²² *First Appeal Letter*, at 7.

²³ *LiDAR Survey*, at 16-17.

²⁴ *First Appeal Letter*, at 13.

²⁵ *PAPPG*, AT 169-170.

²⁶ FEMA Second Appeal Analysis, *Big Slough Drainage District*, FEMA-4461-DR-IL, at 5 (Jan. 17, 2023); FEMA Second Appeal Analysis, *Green River Special Drainage District #3*, FEMA-4461-DR-IL, at 3 (Jan. 27, 2022); *Nutwood Drainage and Levee District*, FEMA-4461-DR-IL, at 2.

ADMINISTRATIVE RECORD INDEX

The following documents are contained within the Administrative Record and have been considered in the review and analysis of the referenced first appeal.

Document Number	Document Description/Subject	Document Date	Pages
1	First appeal transmittal package – Cal OES to FEMA	02/02/24	Total 95
2	FEMA Determination Memorandum	10/16/2023	Total 26
3	Grants Manager Project 716224	Source	Source
End of Record			