

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT
AND RECORD OF ACTION**

November 15, 2022

FROM

BRENDON BIGGS, Chief Flood Control Engineer, Flood Control District

SUBJECT

Grant Award Agreements with United States Department of Agriculture – Natural Resources Conservation Service for Financial Assistance to Address Flooding Risk from the El Dorado Fire

RECOMMENDATION(S)

Acting as the governing body of the San Bernardino County Flood Control District:

1. Authorize the Chief Flood Control Engineer, subject to review and approval by County Counsel, to execute the United States Department of Agriculture – Natural Resources Conservation Service exigency grant award **Agreement No. 22-1145** and any related documents, under which the United States Department of Agriculture – Natural Resources Conservation Service will contribute up to \$241,940 and the San Bernardino County Flood Control District will provide up to \$73,315 in unbudgeted, matching funds, to install emergency watershed protection measures to mitigate flood risks and damages created by the storms after the El Dorado Fire in the Yucaipa, Oak Glen, and Forest Falls areas.
2. Authorize the Chief Flood Control Engineer, subject to review and approval by County Counsel, to execute the United States Department of Agriculture – Natural Resources Conservation Service non-exigency grant award **Agreement No. 22-1146** and any related documents, under which the United States Department of Agriculture – Natural Resources Conservation Service will contribute up to \$784,851 and the San Bernardino County Flood Control District will provide up to \$237,834 in unbudgeted, matching funds, for debris removal and culvert cleaning to mitigate flood risks and damages created by the storms after the El Dorado Fire in the Yucaipa, Oak Glen, and Forest Falls areas.
3. Authorize the Chief Executive Officer or the Chief Flood Control Engineer, subject to review and approval by County Counsel, to execute both form funding agreements, including a non-standard term, with the United States Department of Agriculture – Natural Resources Conservation Service under which the United States Department of Agriculture – Natural Resources Conservation Service will contribute up to \$1,026,791, cumulatively, under both exigency and non-exigency agreements to install emergency watershed protection measures, debris removal, and culvert cleaning to mitigate flood risks and damages created by the storms after the El Dorado Fire in the Yucaipa, Oak Glen, and Forest Falls areas.
4. Direct the Chief Executive Officer or the Chief Flood Control Engineer to transmit exigency and non-exigency grant award agreements, and the form funding agreements with United States Department of Agriculture – Natural Resources Conservation Service to the Clerk of the Board of Supervisors within 30 days of execution.

(Presenter: Brendon Biggs, Chief Flood Control Engineer, 387-7906)

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COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Provide for the Safety, Health, and Social Service Needs of County Residents.

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The District is funded by property tax revenue, fee revenue, and local, state, and federal funding. The estimated cumulative construction cost for the flood mitigation work required to address the impacts of the storms after the El Dorado Fire is \$1,337,940. The United States Department of Agriculture – Natural Resources Conservation Service (NRCS) will reimburse the San Bernardino County Flood Control District (District) up to \$1,026,791, which includes 7.5% for construction administration. The District will fund the remaining \$311,149 with the use of Available Reserves from Zone 3 (1930002526). Approval of the necessary budget adjustments are not requested at this time but will be included in a future quarterly budget report presented to the Board of Supervisors (Board) for approval.

BACKGROUND INFORMATION

The heavy rains that fell throughout the County on September 12, 2022, particularly concentrated in the recent burn areas in Oak Glen and Forest Falls, created historic flows of mud and debris in various areas. Subsequent to the El Dorado Fire, NRCS representatives met with District staff to evaluate the impact of debris flows and develop Emergency Watershed Protection (EWP) measures in the subject area, such as the installation of k-rails, interlocking portable barriers, hydro-mulch and sandbags. NRCS is a federal agency authorized to financially assist the District in addressing the flooding and debris flow risk and, under the proposed agreements with the District, would fund up to \$1,026,791 of the total construction and construction administration costs. The District will fund the remaining \$311,149 of costs.

NRCS' EWP program provides that the District may apply for EWP funding on an exigency (urgent need) or non-exigency (non-urgent need) basis, triggering different procedural requirements depending on which approach is selected by the District. The District is recommending that EWP measures be undertaken on both an exigency and non-exigency basis due to the significance of the post-fire flood risks created by the El Dorado Fire.

Since the District is applying for EWP funds on an exigency and non-exigency basis, NRCS requires the District execute both agreements immediately upon receipt and begin work the day after execution of the funding agreement. All work must be completed within 10 calendar days for the exigency basis and within 220 calendar days for the non-exigency basis. The District anticipates receiving both agreements from NRCS by the end of November and completing the exigency work by mid-December 2022 and the non-exigency work by mid-April 2023.

County Policy 05-13 SP1 requires the approval of the Board for any grant award agreements, which require additional matching funds not previously budgeted or allocated for program-related activity. The proposed NRCS grant award agreement requires the District to provide matching funds, anticipated to be approximately \$311,149, which was previously unbudgeted.

The anticipated form funding agreements with NRCS are a federal template agreement that includes the following non-standard term that differs from the standard District contract terms:

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The anticipated form NRCS funding agreements require the District to indemnify the NRCS to the extent permitted by State law for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the District in connection with its acquisition and management of the EWP funds.

- The standard District contract does not include any indemnification or defense by the District of the contractor.
- Potential Impact: By agreeing to indemnify NRCS, the District could be contractually waiving the protection of sovereign immunity. Claims that may be otherwise barred against the District, time limited, or expense limited could be brought against NRCS without such limitations, and the District would be responsible to defend and reimburse NRCS for costs, expenses, and damages, which could exceed the total amounts of the agreements.

The District has reviewed the non-standard term and determined that the benefit to the District outweighs the potential risks the non-standard term poses, and recommends that the Chief Executive Officer or the Chief Flood Control Engineer be authorized to execute the anticipated form funding agreements with NRCS.

The proposed funding agreements with NRCS aligns with the County and the Chief Executive Officer's goals and objectives working with the NRCS to provide for the safety, health and social service needs of County residents by providing safety measures from debris flows.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Sophie A. Akins, Deputy County Counsel, 387-5455) on November 9, 2022; Risk Management (Victor Tordesillas, Director, 386-8623) on November 3, 2022; Finance (Carl Lofton, Administrative Analyst, 387-5404) on October 11, 2022; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on October 11, 2022.

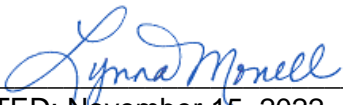
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Record of Action of the Board of Supervisors
San Bernardino County Flood Control District

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Janice Rutherford
Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Curt Hagman, Joe Baca, Jr.
Absent: Dawn Rowe

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: November 15, 2022



cc: File- w/agree
LA 11/21/2022