



# San Bernardino County

## Legislation Text

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**File #: 7971, Agenda Item #: 63**

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

**May 9, 2023**

#### **FROM**

**BRENDON BIGGS, Chief Flood Control Engineer, Flood Control District**

#### **SUBJECT**

Grant Award Agreement with the 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. Approve United States Department of Agriculture - Natural Resources Conservation Service non-exigency grant award agreement template, including non-standard terms, for grant awards to mitigate flood risks and damages from the El Dorado Fire in the Yucaipa, Oak Glen, and Forest Falls areas.
2. Authorize the Chief Flood Control Engineer to execute a grant award agreement with the United States Department of Agriculture - Natural Resources Conservation Service, utilizing the template referenced in Recommendation No. 1, for contribution of up to \$90,420, with the San Bernardino County Flood Control District providing up to \$27,400 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, subject to review and approval by County Counsel.
3. Direct the Chief Flood Control Engineer to transmit the United States Department of Agriculture - Natural Resources Conservation Service non-exigency grant award agreement to the Clerk of the Board of Supervisors within 30 days of execution.

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

#### **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 estimated construction cost for the flood mitigation work required to address the impacts of the storms after the El Dorado Fire is \$117,820. The United States Department of Agriculture - Natural Resources Conservation Service (NRCS) will reimburse the San Bernardino County Flood Control District (District) up to \$90,420, which includes 7.5% for construction administration. The District will fund the remaining \$27,400 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 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 grant award agreement with the District, would fund up to \$90,420 of the total construction and construction administration costs. The District will fund the remaining \$27,400 of costs. The project scope of work includes placing K-rail in the Oak Glen area and channel clearing in the Forest Falls area.

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 has conducted a thorough assessment and analysis of the situation and has determined that non-exigency EWP measures are appropriate and effective for this given scope of work. A grant agreement with NRCS requires the District to complete all work related to the proposed grant project within 220 calendar days (approximately seven months) from the date of full execution by both parties to avoid loss of grant funding. The bidding process may take one to two months, while the actual work may require three to four months to complete. An additional month may be needed to finalize the closing report. Therefore, to meet the 220-day deadline, the District seeks approval of NRCS non-exigency grant award agreement template (Recommendation No. 1) and authorization for the Chief Flood Control Engineer to execute the NRCS non-exigency grant award agreement, upon receipt from NRCS, for a grant award to mitigate flood risks and damages from the El Dorado Fire in the Yucaipa, Oak Glen, and Forest Falls areas, subject to review by County Counsel (Recommendation No. 2), pursuant to the approved grant award template.

County Policy 05-13 SP1 requires the approval of the Board for any grant award agreement, which requires 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 \$27,400, which was previously unbudgeted.

The anticipated grant award agreement with NRCS is a federal template agreement that includes the following non-standard term that differs from the standard District contract terms:

1. The NRCS grant award agreement requires 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 grant 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 amount of the agreement.

The District has reviewed the non-standard term and determined that the benefit to the District outweighs the potential risk of the non-standard term, and recommends that the Chief Flood Control Engineer be authorized to execute the grant award agreement with NRCS, once received from NRCS.

The proposed grant agreement 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. Curtis, Deputy County Counsel, 387-5455) on May 4, 2023; Risk Management (Victor Tordesillas, Director, 386-8623) on April 3, 2023; Finance (Carl Lofton, Administrative Analyst, 387-5404) on April 10, 2023; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on April 10, 2023.