



# Santa Clara Valley Water District

File No.: 23-0062

Agenda Date: 1/10/2023

Item No.: \*10.1.

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## BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☐ No ☒  
(If "YES" Complete Attachment A - Gov. Code § 84308)

### SUBJECT:

Update on the Countywide Flood Emergency and Determination that the Countywide Flood Emergency Conditions Continue to Constitute an Emergency.

### RECOMMENDATION:

- A. Receive an update on the January 4, 2023, atmospheric river event; and
- B. Determine by a four-fifths vote of the Board that there is a need to continue the emergency action declared by the Chief Executive Officer (CEO) on January 4, 2023, pursuant to California Public Contract Code §22050 to address the countywide flood emergency.

### SUMMARY:

According to Public Contract Code §22050, in order for the emergency action to remain in place, the Board must determine, by four-fifths vote at every regularly scheduled Board meeting until the emergency action is terminated, that there is a need to continue the emergency action; this agenda item recommends the Board make such a finding.

Pursuant to Resolution No. 05-67, the Santa Clara Valley Water District (Valley Water) Board of Directors delegated authority to the CEO to declare emergencies pursuant to certain conditions meeting statutory requirements.

On January 4, 2023, the CEO declared that the gusting winds, large volume of rain, and impacts of severe, ongoing stormy weather, resulted in a Countywide flood emergency pursuant to California Public Contract Code §22050 (PCC). The CEO further determined that Valley Water staff may take any and all actions necessary to protect against property damage and threat to life and public safety associated with flooding and high winds throughout the County of Santa Clara, California.

In the case of an emergency, PCC §22050 provides that a public agency "...may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice

for bids to let contracts.”

The CEO’s emergency declaration will give Valley Water the authority to take immediate action necessary to protect against or mitigate flooding, including but not limited to procuring necessary equipment, services, and supplies without giving notice for bids to let contracts and following its standard competitive bidding procedures.

The emergency conditions necessitating the CEO’s declaration continue to exist as robust atmospheric rivers are expected to continue moving through the County of Santa Clara at various time during the next two weeks, at least. They are likely to result in additional, ongoing flooding, resulting in the need for Valley Water staff to continue emergency response actions and cleanup activities following these significant storm events.

#### **BACKGROUND:**

On December 31, 2022, Valley Water activated its Emergency Operations Center (EOC) due to the impacts of heavy rainfall and flooding, necessitating relief operations throughout the County. Localized flooding occurred along San Francisquito Creek, Upper Penitencia Creek, West Little Llagas Creek and Uvas Creek, and spilling occurred at Uvas Reservoir and Almaden Reservoir.

Due to the December 31, 2022 atmospheric river, coupled with forecasted heavy, persistent rainfall on January 4 and 5, along with extreme high winds (gusts were estimated at 60-70 miles per hour), flooding and rapid accumulation of sedimentation and debris was expected along creeks throughout Santa Clara County.

Due to the January 4 heavy rainfall event and forecasted, ongoing severe weather, countywide flood emergency conditions continue to exist. Staff recommends the Board find there is a need to continue the emergency declared by the CEO so that immediate actions can be taken as authorized by PCC §22050; the applicable Public Resources Codes pertaining to environmental review and permitting; and in accordance with Valley Water’s own governance policy requiring competitive procurement, which provides as follows:

“Executive Limitation 5.3.4. Financial commitments resulting from the purchase of services, supplies, and equipment that are essential to promptly attend to an emergency as defined in Public Contract Code Section 1102 or Government Code section 8558(c) defining “local emergencies.”

Per Public Contract Code Section 1102, an emergency is “a sudden, unexpected occurrence that poses a clear and imminent danger, requiring Immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.” District staff needs to remediate sedimentation and debris accumulation, procure and deliver sandbags, repair areas along various creeks and canals, and, if necessary, procure soils or materials to create temporary barriers to prevent water from overflowing in certain areas, as well as to acquire services, and other materials and equipment required to address these emergency flood conditions.

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**ENVIRONMENTAL JUSTICE IMPACT:**

Valley Water acknowledges that disadvantaged communities are disproportionately impacted by the effects of flooding. To address these impacts, Valley Water equitably distributes and stocks sandbag distribution sites throughout the county; provides flood awareness materials countywide and in multiple languages; and supports and coordinates with the county and all cities throughout Santa Clara County during activation of emergency operation centers to equitably protect against property damage and threat to life and public safety.

**FINANCIAL IMPACT:**

Staff expects a one-time unbudgeted expenditure associated with the operational activities related to the ongoing emergency action declared by the CEO. Operational activity expenses are captured in Project 60601015 EOC - Storm 2023 in the General Fund for Fiscal Year 2022-23, which will incur these unbudgeted costs. After this emergency declaration, Staff will work to submit a Request for Public Assistance to FEMA and Cal OES related to reimbursement for debris removal and emergency protective measures and public services.

**CEQA:**

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment. The recommended action does not authorize any physical activities. However, CEQA provides a statutory exemption for emergency projects, which include specific actions necessary to prevent or mitigate an emergency (Public Resources Code §21080(b)(4) and CEQA Guidelines §15269(c)). To the extent any future activities are proposed to prevent or mitigate an emergency that meets the definition of the Public Resources Code and CEQA Guidelines, those activities would be statutorily exempt from CEQA review.

**ATTACHMENTS:**

Attachment 1: Declaration of Emergency

**UNCLASSIFIED MANAGER:**

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