

June 5, 2023

VIA E-MAIL AND U.S. MAIL

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Re: ***Notice of Breach and Notice of Termination***

Dear Mr. Hastings and Mr. Jones:

As you are aware, this office represents the Santa Maria Valley Water Conservation District (“SMVWCD”) as District Counsel. This correspondence constitutes Notice of Breach as to the Twitchell Dam and Reservoir Mitigation Contract (“Mitigation Contract”), Notice of Breach as to the Twitchell Dam and Reservoir Reimbursement Agreement (“Reimbursement Agreement”), and Notice of Termination under the Mitigation Contract.

MITIGATION CONTRACT REQUIREMENTS

Section 2.1(a) of the Mitigation Contract references a “technical remediation and mitigation plan for dredging the Project Site,” which was required under the Feasibility Contract. That remediation and mitigation plan should have been attached to the Mitigation Contract as Exhibit A.

Section 2.2(d) of the Mitigation Contract obligates MSL to reimburse expenses incurred by SMVWCD “with respect to contract engineering services, legal review, administrative support, and oversight costs.

Section 2.2(h) of the Mitigation Contract obligates MSL to obtain “adequate written permissions, as necessary from third parties who may own or control certain portions of land adjacent to or comprising the Project Site before taking any action on those lands.”

Section 2.2(i) of the Mitigation Contract obligates MSL to pay for third party oversight/monitoring activities.

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Section 8 of the Mitigation Contract binds all successors and assigns of MSL to the terms of the agreement. MSL is a wholly owned subsidiary of Western Resource Management Company.

Section 9 of the Mitigation Contract states that MSL may assign or subcontract work under the agreement “upon written consent of such assignment by SMVWCD and so long as said assignee or subcontractor agrees, in writing” to hold harmless, indemnify, and defend SMVWCD against losses.

MITIGATION CONTRACT BREACHES

As of the date of this correspondence, MSL stands in breach of each of the above provisions (except Section 8) of the Mitigation Contract, and for the reasons stated below:

Section 2.1(a): failure to provide the technical remediation and mitigation plan.

Section 2.2(d): failure to provide reimbursement for expenses incurred by SMVWCD, including for legal services (Aleshire & Wynder, LLP) and third party oversight costs (Synergy).

Section 2.2(h): failure to obtain written permission for access to Suey Ranch prior to the deposit of debris from January through April of 2023.

Section 2.2(i): failure to pay for third party oversight/monitoring by Synergy.

Section 9: failure to obtain written consent of SMVWCD prior to assigning/subcontracting work under the Mitigation Contract to Barnett Southern Corporation; failure to provide written agreement by subcontractors to hold harmless, indemnity, and defend SMVWCD against losses.

NOTICE OF TERMINATION OF MITIGATION CONTRACT

Due to the current and ongoing breaches set forth above, and pursuant to Section 6 of the Mitigation Contract, SMVWCD hereby provides notice of termination of the Mitigation Contract. As of Sunday, September 3, 2023, the Mitigation Contract will terminate.

REIMBURSEMENT AGREEMENT REQUIREMENTS

Section 2 of the Reimbursement Agreement obligates MSL to be responsible for, and to reimburse SMVWCD for “all direct and indirect costs, fees and expenses of District related to review and District’s undertaking of any planning, design, Oversight Services” and other fees and expenses for the Project.

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Section 2.1 of the Reimbursement Agreement requires SMVWCD to submit invoices to MSL, on the first business day of each month, with payment due no later than the last business day of the same month as invoiced. Those invoices must be paid “within five (5) calendar days of the due and payable date.” Failure to make payment incurs a ten percent (10%) penalty of the outstanding invoiced amount, with the total amount due and payable immediately. If the invoices are not paid by the last day of the month invoiced, MSL is subject to an additional penalty of fifteen percent (15%) of the invoice plus the initial penalty. For every day thereafter, MSL is subject to a liquidated damages penalty of \$3,000 per day until received in full.

Section 2.5 of the Reimbursement Agreement provides a reimbursement rate of \$400 per hour for District Counsel services associated with the Mitigation Contract and Oversight Services.

Section 11 of the Reimbursement Agreement prohibits assignment unless agreed to in writing by SMVWCD.

REIMBURSEMENT AGREEMENT BREACHES

The District’s CPA dispatched invoices for payment under the Reimbursement Agreement on April 14, 2023 in the total amount of **\$23,360**. As of the date of this correspondence, the invoices remain outstanding. Since the invoices were sent after the first of the month, the District is willing to consider the dispatch date as May 1, 2023. Accordingly, payment was due on or before May 6, 2023.

Since payment was not made by May 31, 2023, the total outstanding amount now has a 15% penalty, for a total of **\$26,864**. Further, starting June 1, 2023, and each day thereafter, MSL is subject to liquid damages in the amount of \$3,000 until received and paid in full. As of the date of this correspondence, liquidated damages are due in the amount of **\$15,000**.

Please contact District Treasurer Casey Conrad to arrange for making payments immediately.

Very truly yours,

ALESHIRE & WYNDER, LLP



G. Ross Trindle, III
Partner

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cc: Keith Haddick, Board President - SMVWCD
Casey Conrad, Treasurer - SMVWCD