UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 27, 2026

CBCA 9028-FEMA

In the Matter of COUNTY OF SACRAMENTO, CALIFORNIA

Amanda L. McDermott, Deputy County Counsel, County of Sacramento, Sacramento, CA, counsel for Applicant; and John Shalowitz, Emergency Operations Manager, Sacramento County Office of Emergency Services, McClellan Park, CA, appearing for Applicant.

Carl DeNigris, Assistant Chief Counsel, Jasmine Jones, Senior Counsel, and Laura Garcia Cid, Senior Counsel, California Governor's Office of Emergency Services, Mather, CA, counsel for Grantee; and Robert Larsen, Public Assistance Officer, Eli Owen, Assistant Director, Fan Jia, Program Manager III, Tama Harville, Associate Governmental Program Analyst II, Destiny Saechou, Associate Governmental Program Analyst II, California Governor's Office of Emergency Services, Mather, CA, appearing for Grantee.

Jasmyn Allen, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **GOODMAN**, **SHERIDAN**, and **SULLIVAN**.

SULLIVAN, Board Judge, writing for the Panel.

County of Sacramento, California (Sacramento), applied for public assistance (PA) funds for the repair of a landfill liner following severe winter storms in California. The Federal Emergency Management Agency (FEMA) determined that Sacramento had not established that the damage was the direct result of the storms, and Sacramento seeks arbitration of that determination. Because Sacramento has not established why the liner was damaged, we deny the request for PA funds.

Background

Sacramento owns the Kiefer Landfill, a municipal solid waste disposal facility. FEMA Response to Request for Arbitration (RFA) at 7. The landfill is an engineered system designed to contain deposited waste. RFA at 3; Reply Exhibit HH (design requirements approved by the California Regional Water Quality Control Board in 2016).[1] According to the design requirements, the landfill liner was required to be constructed with a geosynthetic clay liner (GCL) that was covered with a high-density polyethylene (HDPE) geomembrane that was sixty millimeters thick and topped with a minimum of two feet of sand. Reply Exhibit HH at 18. According to the construction drawings, there was also a geosynthetic ballast system placed between the geomembrane and the sand layer in the southwest corner of Module 4 near the corner where the liner was damaged. *See* RFA Exhibit B at 3; Reply Exhibit FF at 18, 22.[2]

On January 14, 2023, the President declared the severe winter storms, and their resulting flooding, landslides, and mudslides, to be a major disaster. FEMA Response at 6-7. The incident period for the disaster was December 27, 2022, through January 31, 2023. *Id.* at 7.

Just prior to the onset of the storms, on December 24, 2022, landfill employees reported a tear in the geomembrane caused by construction equipment placing material on the south slope of Module 4 (Phase 1) of the landfill. RFA Exhibit F at 2. The tear was six feet by eight feet. RFA Exhibit B at 3. The tear was "weatherproofed with tarps and sand during the storm event." Reply Exhibit P at 4. On January 6, 2023, a team returned to undertake repairs of the first tear and discovered that the GCL under the geomembrane had separated. RFA Exhibit F at 2-3. On January 12, 2023, during the investigation of the separated GCL, the team discovered a second tear in the geomembrane that is the subject of Sacramento's request for PA funds. RFA Exhibit G at 2.

The second tear, approximately seventy feet long, was located in the southwest corner of Module 4 (Phase 1). RFA Exhibit G at 2. This tear was located three hundred feet from the first tear and about twenty feet higher up the slope. RFA Exhibit B at 3. No construction

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[1] "RFA Exhibit xx at xx" or "Reply Exhibit xx at xx" indicates an exhibit submitted by Sacramento and the page number(s) of the .pdf. "FEMA Exhibit xx at xx" indicates an exhibit submitted by FEMA and page number(s) of the .pdf.

[2] Based upon pictures of the repair, it does not appear that the area was covered by sand. RFA Exhibit G at 9. It also appears that the geomembrane is the top layer on the lower part of the slope. *Id.*

equipment was operating in the area of the second tear. *Id*. After the tear was discovered, the "area surrounding the tear in the geomembrane was cleaned of sediment, deteriorated sandbags, mud, and standing water." RFA Exhibit G at 3. In addition, after repairs were made, the tensile strength of the welds was tested to ensure that the welds would hold. *Id*. (citing attachment B).

Following repair of the tear, Sacramento submitted its request for PA funds. Reply Exhibit S. With its request, Sacramento provided, among other documentation, a visual inspection log, dated December 27, 2022, that noted the first tear as the only damage. RFA Exhibit A at 2.[3] Sacramento explained that a landfill employee conducts a visual inspection at least once a month of the exposed liner area and documents any issues. RFA at 3-4. Sacramento also provided weather data for the airport closest to the landfill, which showed sustained winds of thirty miles per hour or greater on two different days (December 31, 2022, and January 7, 2023). RFA Exhibit C at 21, 38. The weather table also shows gusts of forty or more miles per hour on four different days. *Id*. at 21, 31, 38.

In addition, Sacramento provided the reports of its expert, a firm that designed this section of landfill, *see* Reply Exhibit FF at 2, and provided quality control monitoring during the repairs of the two tears. RFA Exhibits F, G (both dated January 2023). In an opinion prepared in October 2024, the expert reported that "[t]he large tear in the liner was believed to be caused by the extreme wind and storm events *in the months preceding the initial repair*." Reply Exhibit M at 4 (emphasis added). The expert also noted that the "geosynthetic ballast layer was removed from the slope due to previous damage and the need to access the repair area. A sand bag and rope ballast system were installed over the repaired slope rather than the geosynthetic ballast layer which was not reusable after removal." *Id*.

In a report dated August 14, 2026, applicant's expert opined that, "[b]ased on observations of the shape and edges of the tear, location of the tear, and the extent of the tear," the team assembled to repair the tears "concluded the cause was the extreme storm events" that occurred beginning on December 27, 2022. RFA Exhibit B at 3. In the same report, the expert noted that "[m]ovement of the ballast is an indication of excessive wind speeds causing uplift and movement of the geomembrane." *Id*. at 4.

In response to the opinion of FEMA's expert, Sacramento's expert opined in October 2026 that the severe winter storms caused the tear:

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[3] The log is titled "Monthly Visual Inspection of Bare Liner Areas." RFA Exhibit A. Sacramento did not explain the descriptor "bare liner area."

4.2 Cause of the Damage

> It is the experience of [the expert's firm] that severe wind events such as those that occurred during the December 27, 2022 through January 12, 2023 storms . . . can cause unpredictable and unmanageable forces on the geomembrane that may exceed the advertised tensile properties of geomembrane in localized areas. These unpredictable forces could be the result of, or a combination of, wind gusting, wind vortexes, shifting wind directions, intense rainfall, fluctuating ambient temperature, and physical geometries of the site.

Applicant's Supplemental Expert Report (Oct. 15, 2026) at 3. With regard to the pre-existing condition of the liner, the expert noted that the visual inspection report provided by Sacramento (RFA Exhibit A) "did not note any preexisting deterioration, missing or inadequate anchoring, maintenance issues, displacement of the geotextile wind ballast system, movement or shifting of the geomembrane, or damage to any components in the area." *Id*.[4]

FEMA's expert noted that the geomembrane was designed to withstand wind gusts of ninety to 150 miles per hour. FEMA Exhibit 3 at 3 n.5. FEMA's expert opined that, "[i]f the documented wind speeds during the incident were below the applicable design threshold, the failure of the [geomembrane] may indicate other contributing causes, such as installation deficiencies, pre-existing deterioration, inadequate anchoring, maintenance issues, or other external factors." *Id*. at 4 (footnote omitted). FEMA's expert noted that Sacramento had not provided documentation "identifying the applicable anchoring, sealing, seaming, or wind-uplift protection measures for the damaged area." *Id*. at 3. FEMA's expert opined that a "reliable determination that wind caused failure of a particular installed liner system would require a site-specific assessment of the liner geometry, exposed area, slope, restraint system, ballast, wind direction, local wind conditions, seams, anchors, and the liner's condition immediately before the event." FEMA Exhibit 5 at 6.

FEMA, in its determination memo, found that Sacramento had established neither that the damage was the direct result of the storms nor the pre-disaster condition of the liner.

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[4] The expert noted that two other inspection reports, prepared by Sacramento County prior to the disaster, did not note any damage to the liner system, whereas the inspection report prepared in January 2023 observed that the large tear "appeared to be caused by severe winds related to recent storm events." Applicant's Supplemental Expert Report at 3 (quoting Attachment 1 to report at 13). The source and basis for this observation is not noted. *See id*., Attachment 1 at 13.

RFA Exhibit I at 4. Sacramento filed a first-level appeal, which included further evidence regarding the locations of the two tears and an explanation that one tear was caused by the storms and the other by construction equipment. FEMA Exhibit 2 at 3. FEMA denied the appeal, finding that Sacramento had not established that the damage claimed was a direct result of the storms. *Id*. at 4. Sacramento filed its RFA with the Board on August 17, 2026. On October 20, 2026, the parties notified the panel that the record was complete and requested that the panel decide the matter on the written record.

Discussion

For the work to be eligible for PA funds, an applicant must establish that the work is "required as a result of the declared incident." Public Assistance Program and Policy Guide (PAPPG) (June 2020) at 51.[5] FEMA requires that applicants provide information to establish eligibility of the project:

> **A. Damage Information**
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> FEMA requests information and documentation required to substantiate the eligibility of a project. The Applicant is responsible for providing this information and documentation to support that its facilities, work, and costs are eligible based on the applicable laws, regulations, [Executive Orders (EOs)], and policies. At a minimum, FEMA usually requires the "who, what, when, where, why, and how much" for each item claimed.

Id. at 63. "The applicant must demonstrate that damage was caused directly by the declared incident. FEMA does not provide PA funding for repair of damage caused by: [d]eterioration; [d]eferred maintenance; [t]he Applicant's failure to take measures to protect a facility from further damage; or, [n]egligence." *Id*. at 52.

The documentation that Sacramento has provided is not sufficient to establish that the damage was caused directly by the storms. Sacramento has provided a visual inspection log, weather data, and the opinion of its expert that the damage was caused by the severe storms. In an October 2024 opinion, however, Sacramento's expert noted that the geosynthetic ballast layer, which covered the geomembrane, had "previous damage." Sacramento does not explain whether this previous damage had any effect upon the integrity of the geomembrane

[5] An applicant must also establish that the damage is located within the designated area of the disaster and that the facility to be repaired is the legal responsibility of the applicant. PAPPG at 51. FEMA does not dispute that Sacramento meets these criteria.

before the storm. In that same report, Sacramento's expert also described the cause of the damage as storms that occurred in the "months preceding" the repair, rather than the storms in the period between December 27 and January 31. In a second opinion two years later, Sacramento's expert opined that the storms caused the damage, without any analysis or explanation as to how the wind was able to tear the geomembrane. Given the evidence that the geomembrane and the liner was designed to withstand greater wind speeds, Sacramento's expert needed to explain why the damage occurred. In the third opinion, in response to FEMA's expert's questions about whether the geomembrane was adequately secured, Sacramento's expert merely opined that "severe wind events . . . can cause unpredictable and unmanageable forces," rather than explaining how the wind acted in this instance. While Sacramento provided a visual inspection log, that visual inspection log is not sufficient to determine when the geomembrane was damaged prior to its discovery on January 12.[6]

Without a more specific analysis of what happened and why the winds caused the damage to the geomembrane, we conclude that Sacramento has not met its burden to establish that the damage was the direct result of the storms, rather than some intervening cause like a failure to properly secure the membrane.

Decision

The request for PA funds is denied.

Marian E. Sullivan
MARIAN E. SULLIVAN
Board Judge

Allan H. Goodman
ALLAN H. GOODMAN
Board Judge

[6] In its response, FEMA noted that the liner was to be covered by two feet of sand, FEMA Response at 17, which should have provided protection from the wind. As noted, it does not appear that the area was covered in sand, and Sacramento provided no explanation in response to FEMA's observation.

Patricia J. Sheridan

PATRICIA J. SHERIDAN
Board Judge