

**Staff Working Group Agenda
Pajaro River Watershed Flood Prevention Authority**

**September 19, 2023
10:00 a.m.**

Zoom Meeting

<https://us06web.zoom.us/j/82680802946?pwd=jXdLAYsulGHLYPBqhEf3hpQGvAXq7z.1>

**Or Telephone: US: +1 669 900 6833
Meeting ID: 826 8080 2946
Passcode: 272166**

- 1. Willoughby Farms Claim**
 - **Maura Twomey, RAPS, Inc.**

Receive a report from Maura Twomey. (Page 3)

- 2. Other Items**
- 3. Adjournment**

Next Meeting:

BOD: TBD

SWG: October 17, 2023, Zoom Meeting @ 10 AM

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August 24, 2023

VIA EMAIL AND U.S. MAIL

Pajaro River Watershed Flood Prevention
Authority
Attn: Ana Flores, Clerk of the Board
PO Box 2453
Seaside, California 92955

Re: Damages Claim Regarding Pajaro Levee Failure and Wastewater Contamination

To Whom it May Concern:

We write on behalf of Willoughby Farms, Inc. to file a claim of damages against the Pajaro River Watershed Flood Prevention Authority under California Government Code section 910.

Willoughby Farms cultivates row crops in the Pajaro Valley. In March 2023, floodwaters and wastewater inundated and contaminated several of its properties that are under cultivation. The flooding and contamination that Willoughby Farms has suffered, and continues to suffer, resulted from negligent management of flood control systems and a sanitary sewer system. The damages amount totals well over ten thousand dollars and, should this claim be rejected, Willoughby Farms would file an unlimited civil suit in order to recover its losses. Please see the attached narrative for full details of the claim.

Willoughby Farms' business address is 261 Coward Rd., Watsonville, California 95076. Please direct all notices, however, to Hanson Bridgett LLP, care of Andrew Bassak, Esq., at 425 Market Street, 26th Floor, San Francisco, California 94105.

Thank you in advance for your timely attention to this matter.

Very truly yours,

Andrew A. Bassak
Partner

Encl.
cc: Willoughby Farms, Inc.

Attachment to Claim – Willoughby Farms Inc.

I. Summary of Claims

Willoughby Farms, Inc., hereby submits this claim for damages to the County of Monterey, Monterey County Water Resources Agency, County of Santa Cruz, Santa Cruz County Zone 7 Flood Control and Water Conservation District, City of Watsonville, Pajaro Regional Flood Management Agency, Pajaro River Watershed Flood Prevention Authority, Pajaro County Sanitation District, and the California Department of Transportation (“Caltrans”).

Willoughby Farms cultivates row crops in Pajaro Valley. As a result of the negligent management of flood control systems and a sanitary sewer system, in March 2023, floodwaters and wastewater inundated several of Willoughby Farms’ agricultural properties, causing material flood damage and contamination to Willoughby Farms’ properties, and resulting economic damage. Willoughby Farms is providing this claim notice to the governmental entities that own, operate, or control the flood control and sanitary sewer facilities that failed and caused the flooding and contamination of, and the resulting harm to, Willoughby Farms. As each such governmental entity had the knowledge, opportunity, and ability to prevent the unreasonable risk of harm that Willoughby Farms suffered, each breached its duty of care to Willoughby Farms.

Willoughby Farms has suffered substantial harm, including crop losses, real property damage, and mitigation costs. This harm will continue into the future until the flooding and contamination is reasonably abated. The flooding and contamination also caused a taking of private property under Article I, section 19, of the California Constitution.¹

II. Background

A. Willoughby Farms, Inc.

Willoughby Farms has farmed Pajaro Valley for over a hundred years. It began farming in the Great Depression with chickens and apples, and later expanded in the 1950s to growing vegetables. Today, David and Chris Willoughby work with nearly one-hundred employees to grow vegetables in Pajaro Valley for many of the largest vegetable shippers in the country.

Relevant to its claims in this notice, Willoughby Farms leases and farms the following properties:

¹ The Government Claims Act does not require a pre-suit notice for inverse condemnation claims. (Gov. Code, § 905.1.)

- The Willoughby Farms O'Connell Ranch covers about 65 acres of farmland and is commonly referred to as 1401 San Juan Road in unincorporated Monterey County, and includes but is not limited to APN 267-011-002-000:



Figure 1. Rough depiction of Willoughby Farms' O'Connell Ranch.

- The Willoughby Farms Trafton Ranch covers about 312 acres of farmland and is located in unincorporated Monterey County, and includes but is not limited to APN 117-061-001-000:



Figure 2. Rough depiction of Willoughby Farms' Trafton Ranch.

- The Willoughby Farms Cox Ranch covers about 86 acres of farmland and is located in unincorporated Monterey County, and includes but is not limited to APN 117-061-009-000 and APN 117-061-004-000:



Figure 3. Rough depiction of Willoughby Farms’ Cox Ranch.

B. The Pajaro River Levee

The United States Army Corps of Engineers designed and constructed the Pajaro River Levee in or about 1949. The Army Corps built the earthen Levee to reduce flood risk to the City of Watsonville, the town of Pajaro, and surrounding areas by reducing flooding over the channel banks. The properties surrounding the Levee consist mostly of agricultural land like Willoughby Farms’ properties, including O’Connell Ranch that is adjacent to the Levee.

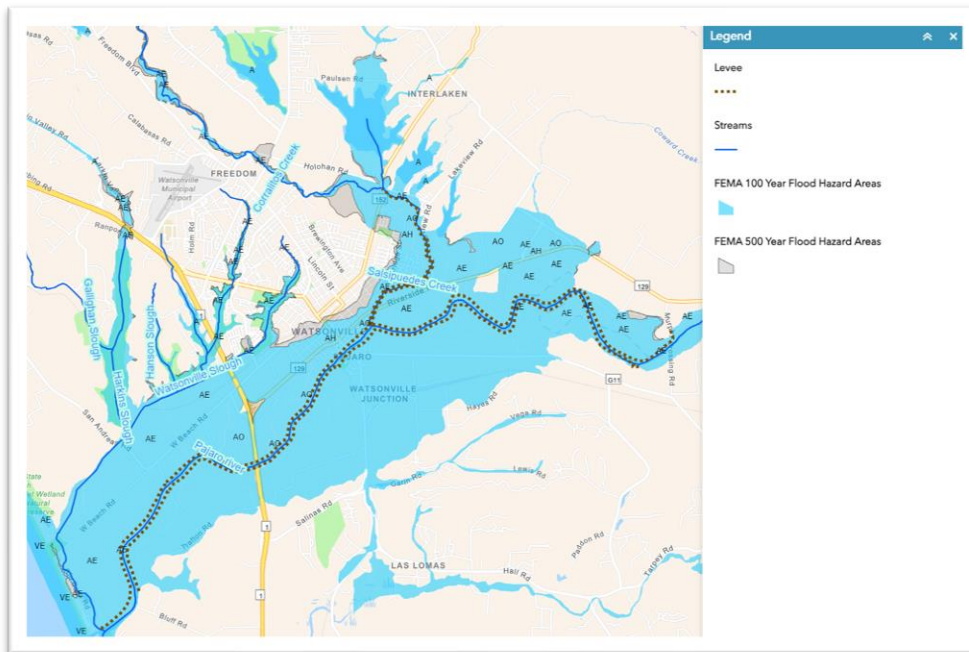


Figure 4. The Pajaro River Levee. Source <https://scgcs.maps.arcgis.com/apps/webappviewer/index.html?id=c42ccff0167488593c529c2e8b60e18>.

The Levee is owned, operated, sponsored, maintained, or otherwise controlled by the County of Monterey, Monterey County Water Resources Agency, County of Santa Cruz, Santa Cruz County Zone 7 Flood Control and Water Conservation District, City of Watsonville, Pajaro Regional Flood Management Agency, and Pajaro River Watershed Flood Prevention Authority.

The Pajaro River Watershed Flood Prevention Authority is a governing body that identifies, evaluates, funds, and implements flood prevention and control strategies in the Pajaro River Watershed. Its Board is composed of one representative from each of the eight following agencies: County of Monterey, County of San Benito, County of Santa Clara, County of Santa Cruz, Monterey County Water Resources Agency, San Benito County Water District, and Santa Clara County Flood Control and Water Conservation District Zone 7. The Pajaro Regional Flood Management Agency is a joint powers authority comprising the County of Monterey, Monterey County Water Resources Agency, County of Santa Cruz, Santa Cruz County Zone 7 Flood Control and Water Conservation District, and the City of Watsonville. The agencies formed the Pajaro Regional Flood Management Agency in about January 2021 to acquire, construct, improve, operate, and maintain infrastructure to control, manage, and conserve waters to protect life and property from flooding. The Pajaro River Levee is among the infrastructure over which the Pajaro Regional Flood Management Agency shares control with the County of Monterey, Monterey County Water Resources Agency, County of Santa Cruz, Santa Cruz County Zone 7 Flood Control and Water Conservation District, and the City of Watsonville.

The Pajaro River has a long, well-known history of floods. For instance, Pajaro River has flooded in 1955, 1958, 1995, 1998, and 2017, which has resulted in the river cresting at between 32.2 and 33.74 feet and causing significant damage to the area.

C. March 2023 Levee Breach and Flooding

About midnight on March 10, 2023 into the morning of March 11th, water breached the Pajaro River Levee near Willoughby Farms' O'Connell Ranch.



Figure 5. The Pajaro River Levee Breach. Source Ken James, Department of Water Resources, March 13, 2023, published at [Monterey Herald](#).

Unlike the several prior floods, however, on March 10 and March 11, 2023, the water elevation in the Pajaro River neither topped the minor, moderate, nor major flood stages. Nor did the river rise to any historic level typically associated with flooding in the area. Nevertheless, the levee failed due to lack of proper maintenance. In other words, if the agencies had properly maintained the Levee system, the Levee should not have breached.

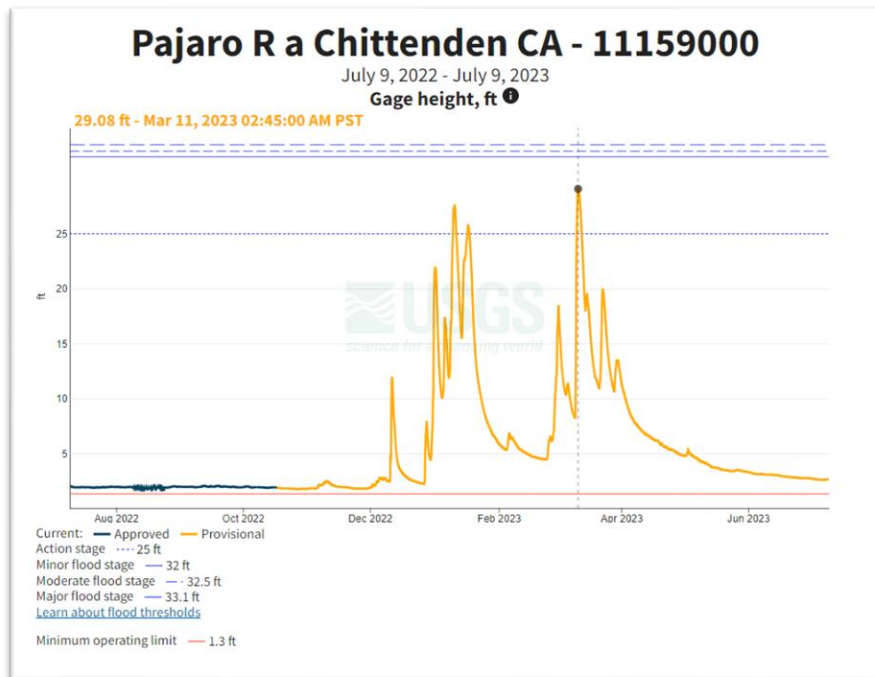


Figure 6. Pajaro River Gage Height on March 11, 2023. Source <https://waterdata.usgs.gov/monitoring-location/11159000/#parameterCode=00065&period=P365D>

Willoughby Farms understands that the Levee breached and thus flooded its properties because of inadequate and sub-standard maintenance, management, repair, and operation. Examples of required maintenance, management, repair, and operation that were wrongly deferred include, but are not limited to, tree removal, shrub removal, vegetation removal, sedimentation removal, rodent control, slope rehabilitation, prevention of illegal encampments along channel banks and levee embankments, river channel maintenance to remove materials like silt buildup, and construction of further flood controls, among other examples.

The Levee lies in both Monterey and Santa Cruz counties. After the Levee breached, floodwaters inundated Willoughby Farms' properties—including the O'Connell Ranch—along with the town of Pajaro and surrounding areas. This inundation caused substantial damage to Willoughby Farms' properties, including but not limited to crop losses and soil erosion.



Figure 7. Erosion on Willoughby Farms' O'Connell Ranch caused by Levee breach.

D. The Watsonville Wastewater Treatment Facility and Pajaro County Sanitation District Collection System

The City of Watsonville owns and operates the Watsonville Wastewater Treatment Facility at 401 Panabaker Road, Watsonville. The Facility receives and treats domestic, commercial, and industrial wastewater from several collection systems, including from Pajaro County Sanitation District. As part of this wastewater treatment process, the Pajaro County Sanitation District sends untreated wastewater through force mains to the Facility.

Willoughby Farms understands that one of the force mains runs along Pajaro River and under Highway 1, near Willoughby Farms' Trafton Ranch and Cox Ranch properties.

Previously, Willoughby Farms suffered harm from wastewater discharged onto its properties from the Pajaro County Sanitation District's collection system. In February 2017, the Pajaro County Sanitation District's sanitary sewer pipeline released untreated wastewater onto Willoughby Farms' properties at a manhole and from pipeline breaks. The County of Monterey's failure to contain floodwaters with containment berms and the Monterey County Water Resources Agency's failure to maintain the Pajaro River Levee and related flap-gate infrastructure resulted in that wastewater contaminating Willoughby Farms' properties. The contamination from this release had been remediated before March 2023.

E. Highway 1

Caltrans designed, constructed, and now owns, operates, and maintains Highway 1 near Willoughby Farms' properties. Beginning in March 2023, Highway 1 blocked floodwaters migrating down the Pajaro River, which increased pressure on the river embankments. As water elevation in the Pajaro River at Highway 1 increased, the water overtopped the embankments

and caused floodwaters to spread onto Willoughby Farms' Trafton Ranch and Cox Ranch. The force from these floodwaters also caused significant boulders, rocks, and other rubble to spread onto the Cox Ranch. Caltrans' design, construction, operation, and maintenance of Highway 1 exacerbated the harms the floodwaters caused to the Trafton and Cox Ranches.



Figure 8. Erosion under Highway 1 from floodwaters overtopping and entering Willoughby Farms' Trafton and Cox Ranches.

F. March 18, 2023 Sewer Force Main Break and Contamination

On or before March 18, 2023, the Pajaro County Sanitation District's sewer force main connected to the City of Watsonville Wastewater Treatment Facility ruptured. The rupture discharged untreated sewage from the force main onto Willoughby Farms' properties. Willoughby Farms is still investigating the cause of the rupture, which on information and belief resulted from poor maintenance, the floodwaters, and Highway 1 blocking and increasing the flow of floodwaters. But because the rupture happened around the same time that the Pajaro River Levee breached and the levee system failed, floodwaters migrated downriver and spread the untreated wastewater farther onto Willoughby Farms' Trafton Ranch and Cox Ranch properties. The untreated sewage now contaminates these properties, rendering them unfit for agricultural use until the contamination is mitigated.

CLAIM ONE

Flooding Willoughby Farms' Properties By (1) County of Santa Cruz, (2) Santa Cruz County Zone 7 Flood Control and Water Conservation District, (3) County of Monterey, (4) Monterey County Water Resources Agency, (5) City of Watsonville, (6) Pajaro Regional Flood Management Agency, (7) Pajaro River Watershed Flood Prevention Authority, and (8) Caltrans.

Willoughby Farms is informed and believes and on that basis alleges that:

1. In about 1949, the United States Army Corps of Engineers designed the levee system along the Pajaro River. In its 1963 report, the Army Corps found that the levee system could not handle water discharged from the Corralitos and Salsipuedes Creeks, and from the Pajaro River. As a result of this design flaw, the levee system created an unreasonable flood risk for the area around the Pajaro River. An arbitrary and discriminatory benefit-cost ratio system employed to allocate flood control resources led to an unreasonable delay in projects that would have improved the levee system and avoided the harm that Willoughby Farms and others have suffered;
2. For decades, the County of Monterey, Monterey County Water Resources Agency, County of Santa Cruz, Santa Cruz County Zone 7 Flood Control and Water Conservation District, and City of Watsonville have known or should have known that the levee system “[n]o longer provides the designed level of protection.” As these governmental entities knew that these flaws existed for decades, they had ample opportunities to repair or otherwise to address the flaws and prevent the unreasonable risk of flooding. These opportunities continued during and after they formed the Pajaro River Watershed Flood Prevention Authority in 2000, and the Pajaro Regional Flood Management Agency in 2021. Yet each of the governmental entities failed to take necessary actions, which resulted in the Levee breaching on about March 11, 2023;
3. Caltrans has likewise known or should have known that the design and maintenance of Highway 1 impedes the flow of the Pajaro River and increases the risk of harm posed by floodwaters. Caltrans knew or should have known that the design and maintenance of Highway 1 was flawed for decades, and had ample opportunities to repair, maintain, or otherwise address those flaws. Yet Caltrans failed to take any reasonable actions, which resulted in significant harms to Willoughby Farms and others;
4. Willoughby Farms understands that the Levee breached and thus flooded its properties because of inadequate maintenance, management, repair, and operation by the County of Monterey, Monterey County Water Resources Agency, County of Santa Cruz, Santa Cruz County Zone 7 Flood Control and Water Conservation District, City of Watsonville, Pajaro Regional Flood Management Agency, Pajaro River Watershed Flood Prevention Authority, and Caltrans. Examples of required maintenance, management, repair, and operation that were wrongly deferred include, but are not limited to, tree removal; shrub removal; vegetation removal; rodent control; slope rehabilitation; prevention of illegal encampments along channel banks and levee embankments, encampments; river channel maintenance to remove materials like silt buildup; and construction of further flood controls, among other examples;

5. The County of Monterey, Monterey County Water Resources Agency, County of Santa Cruz, Santa Cruz County Zone 7 Flood Control and Water Conservation District, City of Watsonville, Pajaro Regional Flood Management Agency, Pajaro River Watershed Flood Prevention Authority also failed to design, construct, maintain, repair, upgrade, and change the levee system, as necessary to mitigate or avoid the unreasonable risk of flooding. These failures include the agencies' inaction in raising the levee system's height or otherwise reinforcing the levee's integrity;
6. Caltrans also failed to reasonably design, construct, maintain, repair, upgrade, and change Highway 1 as necessary to mitigate or avoid the unreasonable risk of flooding;
7. These governmental entities each knew or should have known for decades about the unreasonable risk of harm to Willoughby Farms and others near the levee system. For instance, the area around the levee system has flooded and the Levee breached previously in 1955, 1958, 1995, 1998, and 2017. The agencies thus each owed a duty to operate and design, construct, and maintain the levee system, Pajaro River Levee, and Highway 1 to avoid creating an unreasonable risk of harm to Willoughby Farms and its properties;
8. By unreasonably failing to address the unreasonable risk of flooding from their flood control facilities, the County of Monterey, Monterey County Water Resources Agency, County of Santa Cruz, Santa Cruz County Zone 7 Flood Control and Water Conservation District, City of Watsonville, Pajaro Regional Flood Management Agency, Pajaro River Watershed Flood Prevention Authority, and Caltrans each breached their duty to Willoughby Farms. Each agency's breach of their respective duties led to the levee system failing, and led to the Pajaro River Levee breaching in about March 2023 and which, exacerbated by Highway 1, flooded Willoughby Farms' properties. Willoughby Farms did not consent to the agencies flooding its properties; and
9. The County of Monterey, Monterey County Water Resources Agency, County of Santa Cruz, Santa Cruz County Zone 7 Flood Control and Water Conservation District, City of Watsonville, Pajaro Regional Flood Management Agency, Pajaro River Watershed Flood Prevention Authority, and Caltrans's respective breaches of their duties to Willoughby Farms were each a substantial factor in causing Willoughby Farms to suffer significant damages. While the total amount of damages has not yet been determined, Willoughby Farms understands that it has suffered damages in excess of seven million dollars arising from lost profits, loss of use, business interruption, and clean-up fees, as further explained in Claim 2. Floodwater eroded soils on Willoughby Farms' properties, causing substantial depressions. It also uprooted trees from a neighboring property and deposited them on Willoughby Farms, resulting in removal fees that have yet to be quantified. The floodwaters also caused rip-rap from the levee system to be strewn across Willoughby Farms' property, resulting in removal fees that have yet to be quantified. These damages are different in kind from the type of harm suffered by the public. Willoughby Farms seeks through this claim to recover the damages that it has suffered, as well as its reasonable attorneys' fees and other costs it may recover under Code of Civil Procedure section 1021.9.

Claim Two
Contaminating Willoughby Farms' Properties By
(1) County of Santa Cruz, (2) Santa Cruz County Zone 7 Flood Control and Water Conservation District, (3) County of Monterey, (4) Monterey County Water Resources Agency, (5) City of Watsonville, and (6) Pajaro Regional Flood Management Agency, (7) Pajaro County Sanitation District, (8) Pajaro River Watershed Flood Prevention Authority, and (9) Caltrans.

Willoughby Farms is informed and believes and on that basis alleges that:

1. The City of Watsonville owns and operates the Watsonville Treatment Facility, which in part receives and treats wastewater through a sewer force main from the Pajaro County Sanitation District. That sewer force main runs west from the town of Pajaro to the Treatment Facility. This force main is on the south side of the Pajaro River and crosses beneath California Highway 1, continuing south along the levee system toward Willoughby Farms' Trafton Ranch and Cox Ranch properties. From those Willoughby Farms' properties, the force main then crosses the Pajaro River to the Watsonville Wastewater Treatment Facility on the north side of the Pajaro River in Santa Cruz County;
2. The City of Watsonville and the Pajaro County Sanitation District each owed to Willoughby Farms a duty to design, construct, and maintain sewer infrastructure in a way that does not pose an unreasonable risk of harm to Willoughby Farms and its properties;
3. The City of Watsonville and the Pajaro County Sanitation District's respective failures to maintain their sewer infrastructure in this area has resulted in sewer line breaks previously, such as a sanitary sewer pipeline release from a manhole and pipeline break in February 2017 (since remediated) and several gravity line breaks around Trafton Ranch in January and February 2023. These sewer line breaks generally reflect the City of Watsonville's and the Pajaro County Sanitation District's failure to adequately maintain the sewer system infrastructure, including the sewer force main near Willoughby Farms' Trafton Ranch and Cox Ranch properties;
4. By failing to adequately maintain the sewer infrastructure—including the force main near Willoughby Farms' Trafton Ranch and Cox Ranch properties—to mitigate the unreasonable risk of discharging untreated wastewater from their sewer infrastructure, the City of Watsonville and the Pajaro County Sanitation District each breached their duties of care to Willoughby Farms. Those breaches of duty led to the force main near Trafton Ranch rupturing on or about March 18, 2023, which contaminated Willoughby Farms' properties. Willoughby Farms did not consent to the City of Watsonville and the Pajaro County Sanitation District contaminating its properties;
5. As further explained in Claim One above, the County of Monterey, Monterey County Water Resources Agency, County of Santa Cruz, Santa Cruz County Zone 7 Flood Control and Water Conservation District, City of Watsonville, Pajaro Regional Flood Management Agency, and Pajaro River Watershed Flood Prevention Authority each failed to design, construct, maintain, repair, upgrade, and change the Pajaro River levee system as necessary to mitigate or to avoid the unreasonable risk of flooding to Willoughby Farms' properties;

6. As further explained in Claim One above, Caltrans failed to reasonably design, construct, maintain, repair, upgrade, and change Highway 1 as necessary to mitigate or to avoid the unreasonable risk of flooding to Willoughby Farms' properties;
7. As a result of the County of Monterey, Monterey County Water Resources Agency, County of Santa Cruz, Santa Cruz County Zone 7 Flood Control and Water Conservation District, City of Watsonville, Pajaro Regional Flood Management Agency, Pajaro River Watershed Flood Prevention Authority, and Caltrans' respective failures to address the unreasonable risk of flooding, excess floodwaters reached Willoughby Farms' downstream properties at Trafton Ranch and Cox Ranch. Those floodwaters spread the untreated wastewater released onto Willoughby Farms' properties from the City of Watsonville and the Pajaro County Sanitation District's sewer system. Willoughby Farms did not consent to the County of Monterey, Monterey County Water Resources Agency, County of Santa Cruz, Santa Cruz County Zone 7 Flood Control and Water Conservation District, City of Watsonville, Pajaro Regional Flood Management Agency, Pajaro River Watershed Flood Prevention Authority, and Caltrans exacerbating the contamination of its properties; and
8. The County of Monterey, Monterey County Water Resources Agency, County of Santa Cruz, Santa Cruz County Zone 7 Flood Control and Water Conservation District, City of Watsonville, Pajaro Regional Flood Management Agency, Pajaro River Watershed Flood Prevention Authority, and Caltrans's respective breaches of their duties of care to Willoughby Farms were each a substantial factor in causing Willoughby Farms to suffer significant damages at its Trafton Ranch and Cox Ranch properties. Willoughby Farms has incurred or will incur damages in excess of seven million dollars in lost revenue for 2023 and 2024 growing seasons. These lost profits result from untreated sewage contaminating farmland on which crops are cultivated. Lost profits also may result from a moratorium on farming Willoughby Farms' properties given the properties' exposure to untreated sewage contamination, which creates a food safety risk. That contamination may also impact crop cultivation beyond 2024, which would further increase the amount of Willoughby Farms' lost revenue. Willoughby Farms also has suffered damages exceeding \$10,000 in lost preplant fertilizer applied to farmland that was later contaminated with untreated sewage. Willoughby Farms further expects to incur more than a million dollars in costs for groundwork (e.g., disking, laser leveling, etc.), increased weeding, and other actions necessary to mitigate and to remediate the contamination on its properties. These damages are different in kind from the type of harm suffered by the general public. Willoughby Farms seeks through this claim to recover the damages that it has suffered, as well as its reasonable attorneys' fees and other costs it may recover under Code of Civil Procedure section 1021.9.

Date: 08/23/2023

Claimant: Willoughby Farms, Inc.


David Willoughby, Chief Executive Officer