



Public Assistance Eligibility Guidelines for Floods

Completed in compliance with the Flood
Emergency Action Team (FEAT): Initiative
Number 10

Governor's Executive Order W-156-97
Approved by the Standardized Emergency

Management System (SEMS) Advisory Board
on November 21, 1997

Arnold Schwarzenegger, Governor
State of California

Henry R. Renteria, Director
California Governor's Office of Emergency Services

The contents of this document have not been changed from the original document;
however, the guidelines have been reformatted to meet the
Americans with Disabilities Act (ADA) 508 standards.

Table of Contents

Introduction	5
Part One.....	6
Regional Inspections.....	7
Levee Working Group	7
Levee Database	8
Expedited DSRs.....	8
Legal Delta Procedure.....	9
Joint FEMA/OES DSR Reviews	9
Procedures for <i>Section 406</i> Required Hazard Mitigation Proposals.....	9
Repetitive Damage.....	10
Part Two.....	12
Public Assistance Overview	12
Role of Local Government and OES	12
The Standardized Emergency Management System (SEMS).....	12
The Declaration Process	13
The Public Assistance Process	13
Application Process.....	14
Assignment of Project Application Number and Inspection Team.....	15
Review and Approval of Damage Survey Reports	15
Payment of State Share (for local government and special district subgrantees only)..	16
Part Three	16
1155-DR Eligibility Issues.....	16
Overview of FEMA Policy on Levees and Flood Control Works.....	16
Eligible FEMA costs under the Policy include:	17
Ineligible FEMA costs include:	18
Recommendation	19
Issues Related to the FEMA Levee Policy:	20
Funding "Gap" in Assistance Available from the Corps of Engineers and FEMA.....	20
Excess Pumping Costs Incurred During Flood Fight Operations.....	21
Placement of Riprap as an Emergency Protective Measure	22
Differing Definitions of Emergency Work.....	24
Five Year Level of Protection	25
Eligibility of All-Weather Gravel Roads.....	25

Temporary Emergency Levee Repairs.....	26
Additional Public Assistance Eligibility Issues	27
Alligator Cracks in Roads/Deferred Maintenance.....	27
Chemical Testing for Contaminated Wells	28
Debris Removal from Natural Streams.....	29
Emergency Operations Center (EOC) Meal Costs.....	30
Environmental Compliance	30
Execution of "Verbal Contracts" in Emergency Situations.....	31
Flood Insurance	32
Improved Projects	33
Landslide Policy	34
Mutual Aid	36
National Environmental Policy Act (NEPA) Review of Emergency Work	37
Notice of Interest (NOI)	38
Small Project Overruns	38
Technical and Consulting Engineering Cost Eligibility.....	39
Time Extensions.....	40
Tree removal/replacement	41
Use of Local Equipment Rates.....	41
List of Acronyms and Terms.....	42
Important Addresses and Phone Numbers	44
List of Authorities.....	45
Administration of Grants and Cooperative Agreements	46
Cost Principles	46
Audits	47

Introduction

The floods of late December 1996 and January 1997 were among the worst in California history. On January 4, 1997, President Clinton declared California a major disaster area (FEMA-1155-DR).

Ultimately, 48 counties were included in this declaration. The Preliminary Damage Assessment (PDA) conducted by the Governor's Office of Emergency Services (OES) and the Federal Emergency Management Agency (FEMA) initially estimated over \$200 million in Public Assistance flood costs alone.

In addition to the overall magnitude of the 1996 floods, recovery was difficult because many jurisdictions had not fully recovered from the January and March 1995 (1044 and 1046-DR) floods. In many respects, the floods of 1995 represented the nadir of disaster recovery in California. Because of the bureaucratic nature of the federal disaster program, inconsistent management and coordination by FEMA, the exclusion of OES from important elements in the administrative process, and the first time implementation of federal levee polices which limited federal reimbursements for the repair of levees, recovery from the 1044/46 proceeded at a snail's pace. Therefore, many projects were still under construction when they were damaged in the 1996 floods.

Recognizing that improvements were needed, FEMA and OES officials agreed upon a new set of guidelines for the joint administration of the 1155 recovery effort, which re-emphasized federal/state coordination and cooperation. This document details some of those agreements which worked, and which will be emphasized in the administration of the next disaster. This document also details those aspects of the recovery which did not work well, or where FEMA and OES could not reach an agreement on the appropriate interpretation of federal disaster regulations, or the eligibility of certain projects. OES will continue to work with FEMA and other federal agencies to resolve these issues.

However, every agency in California with flood response or recovery responsibilities should carefully review the enclosed issues and recommendations, in order to minimize actions, which may not be eligible for federal reimbursement in future, flood disasters.

This document should be considered as guidance based on current information at the time of printing. State and federal regulations always take precedence over general program guidance. OES will update this document as necessary. Please direct any comments or questions to:

Mr. D. A. Christian, State Public Assistance Officer,
Governor's Office of Emergency Services
Disaster Assistance Program Branch Public Assistance Section
Post Office Box 419023
Rancho Cordova, CA 95741-9023

Part One

The following are steps, which were taken following 1155-DR, which will be built upon in future disaster events:

Joint Office of Emergency Services (OES)/Federal Emergency Management Agency (FEMA) Inspector/Reviewer Training

Prior to 1155-DR, discussions were held on how to avoid some of the problems that plagued the 1044/46 disasters. It was recognized that OES and FEMA inspectors, reviewers, and analysts, needed to work together more closely, and from the same set of rules. FEMA recently completed an overhaul of their inspector-training course. Therefore, with the onset of 1155-DR, OES and FEMA initiated steps to ensure that all members of the Public Assistance Disaster Field Office (DFO) would receive the same program training.

A policy was developed which stated that all employees (federal and state) must complete the “joint” training sessions in order to work on 1155- DR. During these training sessions, OES and FEMA officials emphasized that the disaster would be handled as an OES/FEMA team effort. In addition, newly trained inspectors were assigned to experienced staff, and were not permitted to work independently until they demonstrated an acceptable level of competence.

Regional Inspections

Inspections for 1155-DR were performed on a regional basis. Rather than immediately dispatch all inspection teams to all affected areas, a specific region or area was designated and all available inspection teams were deployed to prepare Damage Survey Reports (DSRs). When that area was completed, the teams then moved to another designated area. These “strike teams” were divided into three groups: a levee inspection group, an immediate response group to prepare emergency DSRs, and the remaining teams deployed within a designated region. This process allowed OES and FEMA to effectively manage staff resources, while accommodating those subgrantees who required additional time to transition from response to recovery.

Levee Working Group

To minimize the time required to inspect eligible levee damages, a multi-agency Levee Working Group was established for 1155-DR. The Levee Working Group was formed as a joint effort to assist subgrantees by identifying the appropriate federal funding authority for levee projects. The Group was comprised of federal and state personnel, including OES, FEMA, the Department of Water Resources (DWR), the U.S. Army Corps of Engineers (USACE) and the National Resources Conservation Service (NRCS). The group resided in the DFO and worked in conjunction to identify and resolve issues related to Flood Control Works (FCW) projects.

While this process worked well and provided for the coordination of state and federal efforts, serious problems remain in the application of federal policies. Many projects remain unfunded by the federal government. These issues will be discussed further in Part 3 of this document.

Levee Database

Part of the mission of the DFO Levee Task Force was to coordinate the collection of information from various sources to input into a definitive database of all levees located throughout Northern California area. This database was essential in providing necessary and timely information to the Levee Working Group in their decision making process, by clearly identifying levee authority and responsibility. The database was also used in Geographic Information System (GIS) applications. The levee database project has been completed and will be maintained and updated by DWR for use in future events.

Expedited DSRs

Many applicants require immediate cash flow following a disaster through funding advances or an expedited DSR process. For 1155-DR, FEMA agreed to participate in the preparation of expedited DSRs for debris removal and emergency protective measure (Category A and B) costs. These DSRs were calculated based on 50 percent of the Preliminary Damage Assessment (PDA) estimates for those categories of work. Subgrantees that received DSRs based on estimates were required to sign an agreement stating that the expedited DSRs would be offset against actual cost DSRs prepared in the future for Category A and B work, and permanent work if necessary. If subgrantees knew their actual costs for Categories A and B, they also had the option to receive expedited DSRs for the actual costs. This was beneficial because there is no need to offset such DSRs in the future. The expedited DSR process was extremely well received by subgrantees.

DSRs were obligated within three (3) days from completion and payment was usually issued within seven-to-ten working days.

Legal Delta Procedure

Following the 1986 flood disaster, certain “hazard mitigation” requirements were established by FEMA for Reclamation Districts (RDs) within the legally defined delta area (levees in the Sacramento/San Joaquin Delta). These RDs were required to have complied with these hazard mitigation requirements before receiving any future federal disaster assistance. OES initiated a joint procedure with FEMA and DWR to review documentation pertaining to the RDs hazard mitigation compliance, and to issue recommendations to FEMA concerning eligibility for federal funding in 1155-DR floods. To date, documentation for 57 Legal Delta RDs have been reviewed and forwarded to FEMA with an OES/DWR recommendation for eligibility.

Joint FEMA/OES DSR Reviews

In past disasters, DSRs were separately reviewed by FEMA and OES. A joint DSR review process was established for the 1155 disaster, which required that the FEMA and OES reviewers conduct their reviews simultaneously. This allowed for immediate discussion of any items of concern, and in turn accelerated the review process. This process helped to reduce the number of appeals and has resulted in the subgrantees receiving a level of service that was absent from 1044/46, when OES was not included in the review process.

Procedures for *Section 406* Required Hazard Mitigation Proposals

In accordance with *Section 406* of the *Stafford Act* and *Title 44 Code of Federal Regulations (CFR), Section 206.226*, FEMA has the authority to “...require cost effective hazard mitigation measures not required by applicable standards.”

However, funding approval for these Hazard Mitigation Proposals (HMPs) is discretionary by FEMA. OES and FEMA recognized the need to expedite this process for the 1155 disaster.

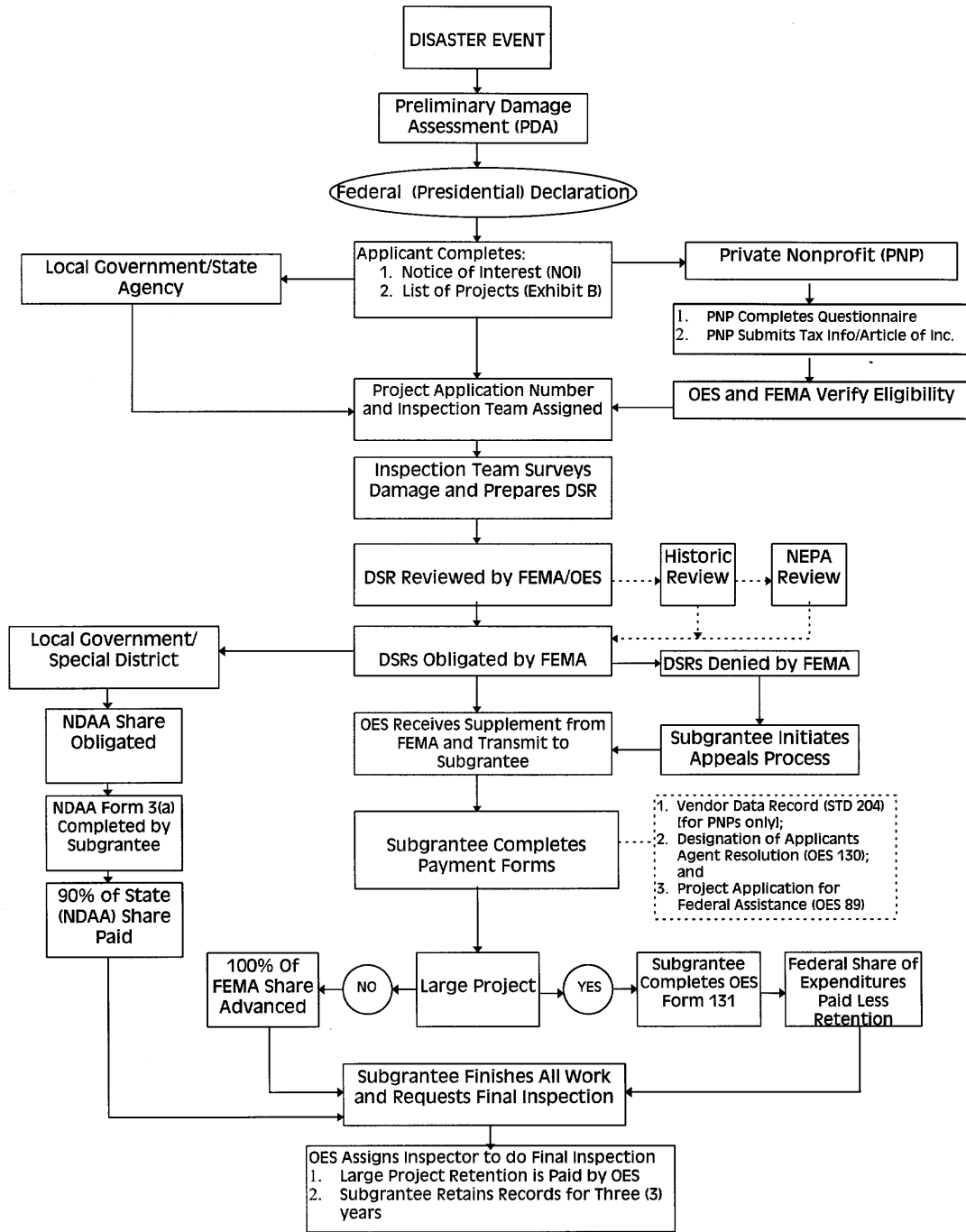
In past disasters, HMPs submitted during the DSR process have resulted in significant delays in the review and approval of the non-HMP portion of the DSR, in addition to the low approval rate of the HMPs.

To expedite DSR approvals for 1155-DR, OES agreed to limit its participation in this discretionary FEMA program. Instead of having, the OES/FEMA inspection team complete a hazard mitigation proposal as part of their original DSR; the joint OES/FEMA inspection team completed a checklist to identify possible HMP opportunities, and attached the checklist to the DSR. Later in review, a special FEMA Hazard Mitigation Review Team evaluated the checklist and DSR to determine if there appeared to be a reasonable and cost effective hazard mitigation opportunity. If so, a FEMA inspection team was dispatched to prepare a hazard mitigation supplement to the original DSR. This process allowed the original DSR to proceed through review and to be funded expeditiously, while a proposal for a discretionary hazard mitigation component was evaluated and approved separately.

Repetitive Damage

Following the 1155 disaster, DSRs were prepared for sites that had also been damaged in the 1044/46 disasters, but were placed in suspension. In order to release the DSRs from suspension, subgrantees were required to submit information regarding the status of completion of the 1044/46 projects. If the work was not completed, the DSRs for the previous disasters were deobligated and new DSRs written under 1155 as if no previous DSRs had been prepared. If a portion of the repairs had been completed for 1044/46, and the 1155 disaster destroyed the completed work, the verified costs expended were covered under 1155 DSRs, along with the costs associated with the incomplete work.

Public Assistance Overview



Part Two

Public Assistance Overview

Role of Local Government and OES

Local government has the primary responsibility to prepare for, respond to, recover from and mitigate against the effects of a disaster. State and federal assistance is provided only when disaster conditions are beyond the control of the local government. The role of the Governor's Office of Emergency Services (OES) is to assist local and state government and the private sector to mitigate, plan and prepare for, respond to and recover from the effects of emergencies.

The Standardized Emergency Management System (SEMS)

Effective December 1, 1996, all local government entities in California were required to be in compliance with the Standardized Emergency Management System (SEMS) as a condition of receiving state funds for certain costs. SEMS is an emergency response system, which is designed for the management of multi- agency or multijurisdictional emergencies. SEMS incorporates five organizational levels—field response, local government, operational area, region and state—for facilitating the flow of information and coordination of responding agencies during emergencies. When SEMS is used during emergency response, local government's initial contact with OES, via the Operational Area (or County), is at the OES Region level. Disaster response needs are addressed by OES and are ultimately phased into available recovery programs, which include Individual Assistance, Public Assistance and Hazard Mitigation Assistance. The following is an overview of the Public Assistance recovery process:

The Declaration Process

Once it is determined that disaster conditions are beyond the local government's control, a local emergency proclamation can be executed by the governing board of a city or county. Using the SEMS system, a State of Emergency Proclamation can be requested through OES and granted by the Governor as the next step if it is determined that the affected local government(s) are unable to cope with the emergency.

If the Governor determines that the severity and magnitude of the disaster is beyond the capabilities of the state and local governments and that supplemental federal assistance is needed, a Presidential Declaration of a major disaster or emergency can be requested. As a component of this request, a Preliminary Damage Assessment (PDA) is usually required. Joint federal and state representatives perform the PDA in an effort to collect initial cost estimates from the affected jurisdictions in the state. Upon receipt of a Presidential declaration, Public Assistance funds from the Federal Emergency Management Agency (FEMA) are made available. Funds through the state's Natural Disaster Assistance Act (NDAA) Program, which may also be available at the local and state proclamation level, will provide a cost share to the FEMA funds for certain applicants.

The Public Assistance Process

By regulation, OES serves as the administrator (i.e. grantee) of the FEMA Public Assistance grant funds.

This role includes providing technical advice and assistance to eligible applicants (known as "subgrantees" for the purposes of this program), providing state support for damage survey activities, ensuring that all potential applicants are aware of assistance available, and submission of all documents related to the grant.

The entities that are eligible to apply for federal Public Assistance include:

- state agencies
- local government
- special districts
- certain private non-profit (PNP) organizations

Eligible non-profit organization facilities include non-profit educational, utility, emergency, medical or custodial care facilities, or other facilities providing essential governmental services of a health and safety nature.

Application Process

There are two application forms that must be completed by all applicants for the federal Public Assistance program:

- Notice of Interest (NOI)
- List of Projects (Exhibit B) Form

The NOI must be submitted to OES within 30 days of the declaration date. Private non-profit organizations must also submit documentation to verify non-profit status, including:

PNP Questionnaire (part two of the NOI form)

Articles of Incorporation

Certificate of tax exempt status

Assignment of Project Application Number and Inspection Team

After OES and FEMA evaluate the completed application and determine that the organization is eligible for the Public Assistance program, FEMA assigns a project application (PA) number to each eligible applicant, or subgrantees. An inspection team consisting of an OES and FEMA representative is assigned to prepare Damage Survey Reports (DSRs) for eligible disaster-related costs. DSRs are prepared in accordance with the following work categories:

Category A - Debris Removal

Category B - Emergency Protective Measures

Category C - Road System Repairs

Category D - Water Control Facilities

Category E - Buildings and Equipment

Category F - Public Utility Systems

Category G - Other

For all DSR categories, items of work must be 1) required as a result of the disaster event, 2) located within a designated disaster area and 3) the legal responsibility of the subgrantee to be eligible.

Review and Approval of Damage Survey Reports

The DSR undergoes review by both FEMA and OES, including historic and environmental reviews if necessary. When the review process is complete and FEMA approves the DSRs, OES will be notified of the approved dollar amount, or obligation. OES will then notify each subgrantee of the DSR approvals, as well as procedures for receiving payment. If FEMA denies any or all parts of a DSR, or if the subgrantee does not agree with any FEMA determination, the appeals process can be initiated.

Payment of State Share (for local government and special district subgrantees only)

In most disasters, FEMA will fund 75% of eligible Public Assistance costs. For local government and special districts, the state's Natural Disaster Assistance Act (NDAA) program will fund 75% of the remaining non-federal share (18.75% of the total). The remaining 25% of the non-federal share (6.25% of the total) is the responsibility of the subgrantee. **State agencies and PNPs are not eligible for the NDAA program, and are therefore responsible for the entire non-federal share.**

Part Three

1155-DR Eligibility Issues

Overview of FEMA Policy on Levees and Flood Control Works

FEMA's policy regarding flood control works (FCWs) and the role of other federal agencies, including the U.S. Army Corps of Engineers (USACE) and Natural Resources Conservation Service (NRCS) in repair of these facilities, has limited the financial assistance available to local governments and special districts. A Federal Levee Policy was issued following the 1993 Midwest Floods, which designates two federal agencies -- USACE and NRCS -- as having primary responsibility for the repair of FCWs. FEMA interprets the Federal Levee Policy and other federal regulations as restricting FEMA from funding work, which is under the authority of other federal agencies, including the USACE and the NRCS. Since the Federal Levee Policy requires that the USACE and the NRCS designate FCWs, FEMA refuses to fund virtually all work associated with FCWs. The USACE defines an FCW as a structure designed and constructed to have appreciable and dependable effects in preventing damage by irregular and unusual rises in water. The NRCS also uses this definition.

Subsequently, FEMA published Policy No. 4511.300, dated September 11, 1996, entitled “Policy for Rehabilitation Assistance for Levees and Other Flood Control Works.”

Eligible FEMA costs under the Policy include:

- Flood fight work (sand bags, fill, etc.) when the water is overtopping the levee or a breach is in process. This policy excludes reasonable shoring in anticipation of an emergency, which does not eventually occur. FEMA shall limit disaster assistance for emergency repairs to flood control works on a one-time basis, however, the applicant must subsequently join the USACE program. FEMA may provide funding for flood fighting activities and debris removal for subsequent disasters.
- Water control structures (including earthen levees) that are ineligible to join the USACE programs or receive assistance from the NRCS may be eligible for emergency protective measures under Section 403 of the Stafford Act.
- Dewatering of areas behind levees by breaching the levees or pumping is eligible if there is a threat to health and safety or to improved property; or, if required to facilitate the initiation of a federal repair project or if the water threatens the integrity of the levee itself.
- The costs of removal of flood fight measures can be eligible if such removal is necessary to eliminate a health or safety threat, to operate the flood control work or to repair the facility.
- The costs of debris removal, emergency repairs and permanent repair of non-USACE, non-flood control levees, such as reclamation levees or berms protecting vital public facilities.

Ineligible FEMA costs include:

- Permanent repair of flood control works that are eligible to join the USACE PL 84-99 Rehabilitation and Inspection Program, whether or not they are actively participating in the program.
- Emergency repairs to flood control works that are participating in the USACE PL 84-99 Rehabilitation and Inspection Program.
- Subsequent emergency repairs to previously damaged flood control works (which include the entire levee system).
- Damages to eligible flood control works that do not meet the USACE PL 84-99 Rehabilitation and Inspection Program minimum threshold amount for permanent repair.
- Damages that do not meet the criteria for funding for permanent repairs under the NRCS/EWP Program.
- Dewatering areas behind levee for the primary purpose of drying land and where there are no life, safety or health issues.
- Secondary levees riverward of the primary levees unless they protect human life.
- Increasing the height of flood control works.
- Permanent repairs to private levees

The Policy marks a change in how FEMA views the eligibility of FCWs. Under the policy, USACE is charged with determining whether or not a facility is an FCW. However, in the opinion of OES, FEMA does not consistently accept USACE's written

determination that a particular facility does not fall under its authority or comply with USACE's definition of an FCW. In addition, FEMA has failed to be responsible for ensuring coordination with USACE, NRCS, or other federal programs in previous disasters.

At the onset of 1155-DR, the Northern California Floods of 1997, OES faxed an urgent bulletin to local jurisdictions, stating that USACE and NRCS should be contacted immediately, for disaster assistance related to damaged FCWs. Local governments and special districts were subsequently reminded of this fact at the public official and applicant briefings, which included presentations by USACE and NRCS. OES and FEMA also immediately created a multi-agency Levee Working Group (OES/FEMA/DWR/USACE/NRCS), to coordinate processing requests for disaster assistance related to FCWs.

Recommendation

OES strongly believes that the Federal Levee Policy, and FEMA's interpretation of that policy, is invalid to the extent that it excludes federal responsibility for public facilities that should otherwise be eligible under the Stafford Act. Moreover, while the Federal Levee Policy prescribes a preeminent role for the USACE and NRCS, however to date, no federal agency has provided sufficient leadership or coordination to ensure that all eligible FCW projects are federally funded. Instead, the Federal Levee Policy is used as a "loop hole" to exclude federal funding. Therefore, OES recommends that local governments and special districts coordinate with DWR, the USACE and/or NRCS prior to the initiation of any flood fighting efforts, emergency work or permanent repairs to any FCW or levee.

In addition, OES will continue to support local governments and special districts that performed emergency work related to damage FCWs, in accordance with the *Stafford Act* and federal regulations.

OES also supports eligibility for permanent work performed on an FCW that has been denied assistance under USACE or NRCS, regardless of FEMA's Levee Policy. OES considers this disaster-related work to be eligible for FEMA funding without jeopardy of duplicating assistance.

Issues Related to the FEMA Levee Policy:

Funding "Gap" in Assistance Available from the Corps of Engineers and FEMA

Issue: The USACE does not provide for reimbursement for temporary emergency repairs, while FEMA will not fund projects that are eligible for federal funding from another federal agency.

The USACE regulations state that temporary emergency repairs are not eligible for direct assistance, unless completed under emergency contract. However, FEMA's regulations state that:

"In making an eligibility determination, the FEMA Regional Director, in the case of federally operated programs, or the state, in the case of state operated programs, shall determine whether assistance is the primary responsibility of another agency to provide, according to the delivery sequence; and determine whether that primary response agency can provide assistance in a timely way." FEMA has denied funding for USACE levees based on this section.

The FEMA Public Assistance Guide, dated September, 1996, states: "Because the USACE does not reimburse an applicant for work it has done itself or by contract, FEMA will consider such work only if it is truly emergency work necessary to meet immediate threats to improved property."

Here FEMA contradicts itself from the previous paragraph and is sending the grantee and subgrantee mixed signals regarding eligibility determinations.

Recommendation: FEMA and the USACE already have existing authority to fund the emergency repair of the levees. The conflict is created by inconsistent application of the sometimes mutually conflicting FEMA authorities and acceptance of responsibility between FEMA and USACE.

To date, an agreement has not been executed between FEMA and USACE as to how these projects are to be funded in the future and how existing authorities will be applied. However, OES will continue to support FEMA funding for local governments and special districts that performed emergency work related to damaged FCWs, in accordance with the *Stafford Act* and federal regulations.

Excess Pumping Costs Incurred During Flood Fight Operations

Issue: Often during high river stages, pumps must operate continuously to prevent flooding of improvements within the boundaries of a Reclamation District. Reclamation Districts usually consist of land well below sea level, which would be inundated by water if not for the existing levees and drainage system. The maintenance and operation of the reclamation area for the protection of life, safety and property is the responsibility of the District.

FEMA's "Policy for Rehabilitation Assistance for Levees and other Flood Control Works" states that "Dewatering of areas behind levees by breaching the levees or pumping is eligible if there is a threat to health and safety or improved property; or, if required to facilitate the initiation of a federal repair project." Since agricultural land does not meet, FEMA's regulatory definition of "improved property," dewatering for the sole purpose of protecting such land is ineligible.

The following are examples of situations in which dewatering was necessary to eliminate a threat to health, safety or improved property:

Excess pumping was necessary to keep the seep ditch levels under control and maintain the stability of the levee through the period of high river stages. If allowed to go uncontrolled, the ditches would overflow and place water against the land side slope of the levee. Wind action would then erode these unprotected slopes and fail the levee.

Removal of ponded seepage was critical to preserving the stability of the levee and to maintain the ability to flood fight the seeps, boils and slumps that continued to appear at the toe of the levee throughout the disaster incident period. More specifically, the ponded seepage created conditions that were detrimental to the stability of the levee and that seriously hindered the District's ability to effectively flood fight problem areas that developed during the course of the flood event.

Recommendation: Subgrantees should be aware of the limitations on funding eligibility for dewatering costs to those measures necessary to eliminate a threat to health, safety or improved property. Subgrantees should obtain funding approval from OES and FEMA prior to initiating such work, if reimbursement is essential.

Placement of Riprap as an Emergency Protective Measure

Issue: In accordance with *Section 403* of the *Stafford Act* and federal policy for levees outside the "Legal Delta," FEMA has the authority to fund emergency protective measures on flood control works (FCWs) to counter immediate threats to lives, public health or safety and to prevent, by cost effective measures, significant additional damage to improved private or public property. These projects are generally limited to: 1) minimal work, which is immediately necessary to ensure the structural integrity of the facility, 2) restoring disrupted services, and 3) providing protection against a five-year storm event. As a general rule, levees considered to be a FCW are not eligible for funding under *Section 406* of the *Stafford Act* (permanent repair work). However, FEMA

has the authority to reimburse local jurisdictions for flood fighting measures.

FEMA has often limited reimbursement of flood fighting work to the placement of sandbags and visquine, and has determined that placement of riprap is generally ineligible for funding, since FEMA considers it to be a permanent restorative measure. Placement of sandbags and visquine is a viable flood fighting technique, particularly in a slow-rise incident. However, the 1155-DR event was very dynamic, and required an aggressive approach to prevent the failure of levees. In many cases, local jurisdictions attempted to prevent or minimize levee breaks by installing riprap, particularly in those areas where the volume and speed of water required immediate action. The use of riprap was preferred for several reasons: Since access is almost always difficult on narrow, muddy levee roads, side dumping trucks can deliver 10 or 12 cubic yards of riprap per load without having to assume the risk of backing up to turn around or dump their load. Sandbags were used extensively as a flood fight measure against boils in levees. However, scouring of the waterside of levees caused erosional voids that required a different approach. In most cases, riprap was required to mitigate the erosional voids.

Often the local jurisdiction argued the cost effectiveness of the use of riprap verses sandbags and visquine. The procurement of an emergency contract for riprap placement was also evidence of the urgency of the situation. Another determining factor is whether or not the repair was designed. A permanent repair of a damaged levee utilizing the placement of riprap will always call for a key to be excavated at the toe of the levee to buttress the rock. Nevertheless, FEMA generally determined that the use of riprap was permanent restorative work, and therefore ineligible for FEMA funding under the Federal Levee Policy.

Recommendation: Local jurisdictions should consider the adoption of an ordinance specifying riprap as a standard method for an emergency repair to mitigate against ongoing levee erosion.

Such a policy must be in effect at the time of the next disaster, and be uniformly applied throughout the jurisdiction (but the policy cannot apply only to federally declared disasters). Additionally, subgrantees should consult with DWR, the USACE and/or NRCS prior to utilizing riprap in the next disaster.

OES will recommend the eligibility of these projects as emergency floodlighting measures on the basis of operational needs as determined by responsible authorities on scene at the time of the work.

Differing Definitions of Emergency Work

Issue: On the basis of its levee policy, FEMA has applied a very narrow definition to the term "flood fighting" as opposed to "emergency repair" work. FEMA defines flood fighting as only those steps taken to actually stop water from flowing over, through, or around a levee. Any other work that is done in anticipation of high water, such as shoring of a levee or measures (other than sandbags and visquine) to stop erosion, are considered to be emergency repair. According to the policy, "emergency repair" is not eligible for levees actively participating in the USACE program. However, FEMA has authority under the *Stafford Act* and *44 CFR* to fund emergency protective measures.

Recommendation: OES has, and will continue to argue, that any measures taken to avoid a breach or flooding situation is by definition "flood fighting" and should be eligible under the policy.

Subgrantees should be aware of the differing definitions of emergency work, and should obtain funding approval from OES and FEMA prior to initiating such work on USACE levees, if reimbursement is essential.

Five Year Level of Protection

Issue: FEMA eligibility for emergency work is limited to that required to provide "five year level of protection." This definition is important because any work that exceeds that level of protection is considered permanent repair, and therefore not eligible for FEMA funding. The term "five year level of protection" is, however, operationally meaningless since it establishes a limit based on a five-year storm event, which is statistically indistinguishable from normal precipitation and water flow. Furthermore, FEMA has alternately stated that emergency measures include only that level of protection immediately necessary to prevent floodwaters from over-topping levees (see paragraph 4, above). Therefore, when an applicant exceeds that standard because flows are forecasted to be higher than are eventually realized, that work also becomes ineligible for FEMA funding.

Recommendation: No agreements were reached between FEMA and OES on this issue following the 1155 disaster. FEMA should abandon the "five year level of protection standard" in favor of a policy, which allows applicants to perform necessary and reasonable emergency work to prevent the loss of a levee, or over-topping, based on the worst case forecast for that site. In the interim, OES will continue to support the eligibility of emergency work, which is demonstrated to be necessary and reasonable, however subgrantees should obtain funding approval from OES and FEMA prior to initiating such work, if reimbursement is essential.

Eligibility of All-Weather Gravel Roads

Issue: Due to conflicts between FEMA and USACE regulations, several Reclamation Districts (RDs) were denied reimbursement of levee road resurfacing costs following the 1155-DR event. In these cases, the roads were located on USACE levees and were used for access to the levee to conduct flood fighting measures.

Heavy rains caused the gravel surface on many levee roads to sink and wash away from continual vehicle usage. In order for the RD staff to adequately patrol levees, monitor floodwaters and potential levee damage, the gravel on the levee road surfaces required replacement. The road also served as the only emergency exit route for the RD and government agencies in the event of a levee break.

FEMA denied reimbursement of these costs because their regulations do not allow the funding of projects that are the responsibility of another federal agency. The USACE also denied funding for this work due to their policy that the resurfacing of the levee roads is not a flood fighting or protective measure.

Recommendation: Subgrantees should be aware that these costs are generally not eligible for federal reimbursement, and should take appropriate actions to minimize such losses.

Temporary Emergency Levee Repairs

Issue: Several Reclamation Districts (RDs) have requested and were denied reimbursement for temporary emergency repairs to levees damaged during 1155-DR. The repairs were necessary to protect lives and prevent further erosion to the levee facilities. The levees in these cases are the responsibility of the USACE.

The USACE does not provide for reimbursement for temporary emergency repairs, and FEMA will not fund projects that are eligible for federal funding from another federal agency.

Due to rising waters during the first week of January, several subgrantees performed emergency repairs to levees. These temporary emergency repairs were associated with flood fighting activities and were necessary to protect lives and to protect the levee, a public facility, from further erosion.

Emergency repairs are eligible for FEMA funding. The FEMA Public Assistance Guide, dated September 1996 states: "Emergency repairs may be made to protective facilities damaged by the disaster. Eligible work is limited to that which would provide protection from a five-year event or the pre-disaster level, whichever is less." In addition, the Guide further states: "Emergency measures to prevent further damage to the facility are eligible." The repairs to the levees were done under emergency conditions.

Facilities that present an immediate threat to life and property are eligible for FEMA funding. FEMA's "Policy for Rehabilitation Assistance for Levees and Other Flood Control Works" states: "When other federal agencies have the authority to repair facilities that are also eligible under the *Stafford Act*, FEMA generally defers to the other federal agencies **unless** there is an immediate threat to life and property." The damaged levees presented an immediate threat to life and property.

Recommendation: Based on the information above, OES has and will continue to support the eligibility of similar emergency repair projects for FEMA funding. FEMA has sufficient existing authority to fund the emergency repair of levees. The conflict is created by inconsistent application of the sometimes mutually conflicting FEMA authorities and acceptance of responsibility between FEMA and USACE. Subgrantees should be aware of this conflict, and should be prepared to document that the emergency repairs were immediately necessary to protect life and/or improved property.

Additional Public Assistance Eligibility Issues

Alligator Cracks in Roads/Deferred Maintenance

Issue: On numerous occasions, FEMA has determined that potholes and "alligator cracks" in roadways are the result of deferred road maintenance, and were not caused by the disaster. FEMA has sometimes declared debris removal from debris basins as ineligible for the same reason.

Federal regulations state that in order to be eligible, work must be required as a result of the disaster event. Since FEMA considers the above-referenced damage deferred maintenance, rather than disaster-related, the associated road repair costs have been ruled ineligible.

In some cases, heavy traffic and excessive road use during a flood incident, added to underground water saturation, can cause potholes and alligator cracks. In these instances, the repair costs should be eligible. As discussed at the 1155-DR, Public Official's and Applicant's Briefings, subgrantees must have their maintenance records readily available at the time of the initial inspection. This may prevent delays in approving disaster-related, road repairs and/or debris removal.

Recommendation: OES supports subgrantee claims when it can be demonstrated that potholes and alligator cracks were caused by heavy traffic and excessive use during a flood incident, or when a roadway was under water for a prolonged period of time, resulting in the deterioration of underlayment. Subgrantees should be prepared to furnish road maintenance records in support of these claims. With regard to debris removal, OES also strongly supports subgrantee appeals when it can be demonstrated, through maintenance records, that the debris basins (for example) were sufficiently maintained.

Chemical Testing for Contaminated Wells

Issue: When subgrantees have reported costs associated with contaminated water wells due to a disaster event, FEMA has taken the posture that if the wellhead was not inundated by surface water, no disaster damage occurred and therefore no eligible costs exist.

In saturated soils, which are usually present in a flood disaster, bacteria migrate quite easily through the soil. Subgrantees are not allowed to use well water for human consumption when turbidity levels reach pre-determined thresholds pursuant to state health and safety regulations. This turbidity can consist of both organic and inorganic particles. The costs associated with contaminated wells include state-mandated testing and chemicals used for decontamination.

Recommendation: In a recent meeting between FEMA and OES, this issue was discussed, and FEMA agreed that certain well testing costs were eligible. FEMA maintained that it would fund those costs that were above and beyond the normal testing and chemical costs. In one case, FEMA has asked for backup documentation for three previous years of non-disaster testing and chemical costs. In the case of some small and or rural water districts, however, this represents a vast administrative and financial burden. Subgrantees should be prepared to document these conditions when requesting such funding.

Debris Removal from Natural Streams

Issue: FEMA does not fund debris removal from natural streams because (according to FEMA) natural streams do not meet the regulatory definition of a "facility." Under rare circumstances, FEMA will fund debris removal from natural streams if it represents an "imminent threat" to life and improved property. Imminent threat is effectively defined as *immediate* threat, however, making virtually all such debris clearance ineligible. Applicants therefore cannot remove obstructions in waterways in anticipation of future floods from later storms, snow pack melt, etc.

Recommendation: Although no agreements were reached on this issue, OES will recommend that FEMA fund limited disaster-related debris removal from natural streams when there is a bona fide expectation of later flooding due to the obstruction of water flow in natural channels. Subgrantees should be prepared to document these conditions when requesting such funding.

Emergency Operations Center (EOC) Meal Costs

Issue: Historically, FEMA has funded meals that were provided to staff working in local Emergency Operations Centers (EOCs). However, in the 1155-DR floods, FEMA denied eligibility of these costs for subgrantees that did not have a written meal policy in place at the time of the disaster event. FEMA's position is that subgrantees should have a written policy which describes their EOC operating procedures, and that specifically addresses the provision of complimentary meals for EOC staff.

Recommendation: OES has supported appeals of these denials on the basis that the costs were approved in prior disasters and that subgrantees were not informed of this requirement prior to the 1155 event. However, if FEMA upholds these determinations, it is likely that EOC meal costs will not be eligible in future disasters unless the subgrantee provides a written policy or other documentation, which outlines a requirement to furnish meals. OES therefore recommends that subgrantees review their emergency and/or EOC plans to ensure that this requirement is addressed.

Environmental Compliance

Issue: Public Assistance projects funded by FEMA and/or OES must be in compliance with all applicable federal, state and local environmental laws and regulations including, but not limited to, the *National Environmental Policy Act (NEPA)*, the *Federal Endangered Species Act*, the *National Historic Preservation Act*, the *Federal Clean Water Act*, the *California Environmental Quality Act (CEQA)*, the *California Endangered Species Act*, etc. Subgrantees are often unaware that FEMA may require information for NEPA review that is not required under state environmental laws. Subgrantees often assume that compliance with CEQA and Department of Fish and Game requirements will also satisfy NEPA requirements, which may in turn result in a delay of DSR processing, or the denial of federal funding.

Therefore, be aware that FEMA must determine that all projects are in compliance with the applicable federal environmental requirements before construction is started. In addition, any changes to the scope of work of a previously approved project must be reviewed by FEMA to ensure environmental compliance requirements are met.

Recommendation: Any projects with potential environmental compliance issues should be identified as such by subgrantees on the List of Projects (Exhibit "B") form. The FEMA/OES inspection team can also assist in identifying these projects. If you need to take emergency actions, please attempt to have FEMA approve the need for emergency actions before proceeding.

OES will include information on these requirements in subgrantee briefings, and will continue to notify subgrantees on the current status of DSR environmental review. In addition, please see the issue below, entitled: "National Environmental Policy Act (NEPA) Review of Emergency Work."

Execution of "Verbal Contracts" in Emergency Situations

Issue: Local jurisdictions often find themselves in the position of responding to emergency situations by initiating contracts that are not competitively bid or ideally documented. At times, depending on the severity of the situation, this may include verbal contracts.

Emergency situations develop in every disaster. Response to earthquakes, floods and firestorms create a state of urgency for many local jurisdictions. Their ability to contain the damage using their own materials and resources is quickly diminished, while the ability to replenish them is hampered by the needs of other entities in the area experiencing the same situation. Their personnel resources, deployed to numerous areas at the same time to perform tasks that are not necessarily within their area of expertise, are stretched to the limit, making it impossible to conduct "business as usual" during the emergency and in many instances, for some time thereafter.

Many times during these emergency situations, the only way to effectively repair or contain damage caused by the disaster is by securing outside help in the form of a contract. Sometimes, however, a contract between the parties may be verbal and subsequently formalized as soon as possible after the emergency has passed.

The legality of verbal contracts is not discussed in *44 CFR* or Office of Management and Budget (OMB) Circulars, although there are procedures outlined in the California Water and Public Contracts Codes.

Recommendation: Local jurisdictions should carefully document steps that they have undertaken during a disaster event to secure emergency work contracts, whether oral or written. Guidelines on contract and other cost documentation are available through OES.

Flood Insurance

Issue: Subgrantees will be unable to obtain Public Assistance funds if FEMA's insurance requirements are not met.

Insurance is a requirement of the *Stafford Act* and *44 CFR* for insurable facilities that incurred over \$5,000 in damage and are either located within a Special Flood Hazard Area (SFHA) or have previously been damaged in a federally declared disaster. Buildings and contents within an SFHA are required to be covered by flood insurance prior to receiving FEMA assistance regardless of previous disaster damage. To reduce the flood disaster costs experienced by FEMA, Congress established the National Flood Insurance Program (NFIP). Pursuant to *44 CFR, Section 206.252(a)*, FEMA is required to reimburse a subgrantee for a facility located in a SFHA as if it had a Standard Flood Insurance Policy (SFIP) issued by NFIP, regardless of the type of flood insurance it actually carries. In other words, FEMA assistance will be reduced by the amount that was, or would have been, covered by NFIP, whether or not the required insurance was in effect at the time of the disaster.

For 1155-DR and subsequent disasters, FEMA requires that an NFIP insurance policy be "in place" rather than a mere commitment to purchase insurance (for facilities located in an SFHA only), as a condition of receiving disaster assistance funding for the current disaster. Previously, FEMA would permit federal funds to be paid for the current disaster, if the subgrantee agreed to obtain an insurance policy when the project was complete, and prior to the next disaster.

For those facilities located *outside* of the SFHA, there is no requirement to be insured in order to receive FEMA assistance the first time (the so-called "first bite free"). However, FEMA can only provide reimbursement with the condition that the subgrantee obtain and maintain insurance in the amount of the disaster assistance for the type of damage that had occurred in the disaster. For damage *other than flood*, FEMA can accept a blanket insurance policy, an insurance pool arrangement, or some combination of these options. "However, if the same facility is damaged in a similar future disaster, eligible costs will be reduced by the amount of eligible damage sustained on the previous disaster." [44 CFR, Section 206.253(b) (2)]

Recommendation: OES recommends that subgrantees contact the NFIP or OES before a disaster occurs to receive assistance in determining whether their facilities are located in a SFHA. Following disasters, information on existing insurance policies or proceeds for damaged facilities should be provided to OES/FEMA.

Improved Projects

Issue: An Improved Project consists of restoring the pre-disaster function of a facility, while adding betterments. A betterment is work performed beyond current applicable codes and standards (44 CFR, Section 206.226(b)), and beyond the approved scope of work in a DSR. The subgrantee must submit a written request for an improved project to OES for approval pursuant to 44 CFR, Section 206.203(d) (1). In addition, the request must assure that the subgrantee will restore the pre-disaster function of the facility.

The advantage of an Improved Project is that it gives additional flexibility, while confirming the federal/state funded share. The subgrantee must be able to identify the federal/state funded work from the non-funded work. The disadvantage of an Improved Project is that FEMA generally caps the eligible funding.

Federal regulations state that the Grantee (OES) is responsible for approving Improved Project requests. Recently, however, FEMA has unilaterally imposed Improved Project status on some projects because the subgrantee appears to be exceeding the approved scope of work. FEMA maintains that it is imposing this status in order to protect the subgrantee from future deobligations because of ineligible work. FEMA has affirmed that it will continue this practice.

Since Improved Project status results in a cap on FEMA funding for eligible work, OES is concerned that this may violate the subgrantee's right under the *Stafford Act* to be reimbursed for actual repair costs. Every subgrantee should protect themselves by ensuring that they follow the approved scope of work, or request a supplemental DSR to adjust the scope of work, when appropriate. Any "betterments" should always be clearly identified and tracked separately from approved work.

Recommendation: If FEMA unilaterally imposes Improved Project status on your project, OES recommends that you carefully consider whether it is in your interest to appeal FEMA's decision. In addition, if the subgrantee wishes to retain Public Assistance funding, **construction on improved projects cannot begin until FEMA has completed the review of the improvements for compliance with NEPA and NHPA.**

Landslide Policy

Issue: In November 1995, FEMA published Response and Recovery Directorate Policy No. 4511.300 A, EX entitled "Landslide Policy Relating to Public Facilities." This policy sets forth the following eligibility restrictions for landslides (such as slipouts or road embankment failures):

Debris Removal

Emergency debris removal may be eligible if necessary to reduce immediate threats to public health and safety or eliminate threats to improved public or private property.

Emergency Protective Measures

Emergency protective measures to stabilize slopes and hills that were damaged may be eligible only if necessary to eliminate or lessen immediate threats to life, public health, safety, or significant additional damage to improved public or private property. Technical investigations may be eligible to determine appropriate engineering methods for reducing the immediate threats.

Permanent Restoration

Damaged and destroyed facilities and the related “integral ground mass” underneath the facility may be eligible for federal funding. Please note that FEMA defines “integral ground mass” as “...the ground necessary to physically support a facility.” Before funding efforts to restore the facility at the original site is approved, the stability of the site must be ascertained. FEMA may approve a geotechnical study to determine 1) the stability of the site before restoration and 2) the stability of the site after restoration. If the site is found to be stable, the cost to restore the facility at the original site (including integral ground restoration underneath the site) is generally eligible. If the site is found to be unstable due to an identified, pre-existing condition (e.g. a deep-seated slip plane), the applicant is responsible for stabilizing the site before any federal funding will be provided to rebuild the facility.

Recommendation: Subgrantees should be aware of their responsibility for landslide stabilization costs under the circumstances referenced above.

Mutual Aid

Issue: A Mutual Aid or Cooperative Agreement is defined as a legal agreement between two or more jurisdictions to assist each other during disaster response. The Agreements outline the procedures and cost reimbursement criteria by which either (or any) of the entities may request disaster response/recovery assistance from any other entity that is part of the agreement.

According to FEMA, mutual aid costs are normally eligible on the basis of cooperative agreements that are in place at the time of the disaster. The mutual aid provider normally bills costs to the requesting entity, and a request for FEMA reimbursement is filed by the requesting entity.

FEMA states that this procedure ensures that the requesting entity is responsible for the non-federal share and receives the subgrantee administrative allowance. In the absence of a mutual aid agreement, FEMA states that mutual aid costs will be reviewed and considered on the basis of eligible work performed, reasonableness and need on a case-by-case basis.

FEMA has recently questioned whether state agencies that provided mutual aid in response to the 1155 disaster are eligible to claim the associated costs under their own applications. FEMA has stated that, in the case of one state agency, the assistance was requested by OES and local jurisdictions for work throughout the state's entire declared area, and is therefore the legal responsibility of the requesting entities. However, it is the OES position that in accordance with the California Emergency Services Act and the State Emergency Plan, state agencies are legally responsible for their assigned disaster response activities.

Recommendation: Subgrantees should review their existing mutual aid agreements and billing procedures in light of the above-referenced FEMA reimbursement process.

When mutual aid is requested, discussions should be held between the requesting party and the responding party will reimburse the responding party, as to what costs, if any, to the responding party. If this reimbursement is outside existing mutual aid agreements, a special agreement should be committed to writing as soon as possible after the event, detailing any reimbursement provisions.

National Environmental Policy Act (NEPA) Review of Emergency Work

Issue: FEMA has utilized Environmental Policy Memo #3 to deny funding when a subgrantee has decided to expand or revise their original DSR, and the expanded portion of the work has not been cleared through additional NEPA review, even though the original portion had been cleared. Many subgrantees are not aware that an expanded scope of work must go through this additional NEPA review.

In one 1155-DR case, a subgrantee changed the method of repair for a project in order to meet regional environmental requirements from state and federal environmental agencies. However, the project was denied because FEMA did not initiate NEPA review in advance. Due to the impending onset of winter and need for immediate construction, the subgrantee was forced to proceed with construction of the entire project and was not able to wait for FEMA to complete the NEPA review process.

Recommendation: Subgrantees should be aware of the stringent requirements for environmental review as referenced above, and also the fact that FEMA has used Policy Memo #3 as a mechanism to deny project funding. It is recommended that in future disasters, subgrantees formally obtain OES and FEMA concurrence that a project is an emergency work undertaking and obtain the necessary environmental clearances **before any work is initiated**. In the case referenced above, FEMA retroactively determined that the project did not constitute emergency work. Also, please see the previous issue related to Environmental Compliance in general.

Please note that OES does not concur with FEMA Policy Memo #3, and we do not recognize FEMA's authority to implement such policies prior to complying with the federal regulatory process.

Notice of Interest (NOI)

Issue: In past disasters, FEMA has allowed cities and counties to file multiple Public Assistance applications, or Notices of Interest (NOIs), for their various departments. Each of these NOIs was assigned a separate project application (PA) number. However, on February 1, 1997, FEMA issued a determination stating that, effective for 1155-DR, each city and county may file one NOI only for all of its respective departments. According to FEMA, filing a single NOI is consistent with federal regulations. *Title 44 Code of Federal Regulations (CFR), Section 206.201(a)*, states that an eligible applicant is "...a local government." According to FEMA, this procedure will reduce the allocation of excess administrative allowance costs.

Recommendation: Although this policy was appealed by several subgrantees in the 1155 disaster, FEMA will likely apply the same requirement in future disasters. OES will support subgrantees with extenuating circumstances, which warrant multiple applications, such as city or county departments, or districts, which are overseen by separate governing boards, etc.; however, FEMA has not granted an exception based on these issues to date.

Small Project Overruns

Issue: In accordance with *44 CFR Section 206.204*, a subgrantee must request reimbursement for net small project overrun within 60 days following the completion of **all** of its small projects for each disaster. For the 1155 disaster, a small project was defined as any DSR approved for \$46,000 or less. All subgrantees were reminded of this requirement in a letter from OES dated February 21, 1997.

FEMA is now denying requests that do not comply with this deadline or do not contain adequate supporting documentation of all small project costs. FEMA defines project completion as the completion of construction. If the subgrantee is successful in the appeal, the DSR will be adjusted accordingly, and FEMA will grant a time extension, if needed. As always, a decision to deny funding by FEMA can be appealed.

Recommendation: A small project overrun request must not be delayed because of an unresolved appeal; the subgrantee must complete the approved scope of work before the last approved project completion deadline and submit their request for additional funding within 60 days.

Technical and Consulting Engineering Cost Eligibility

Issue: Consulting costs incurred by Reclamation Districts during flood fight operations have in most cases been denied by FEMA on the grounds that they are not reasonable, necessary, and cost effective. In these cases, consulting engineering firms acted on an "on call" basis, providing services only when requested by the Reclamation District.

During disaster response, consulting firms provided technical and engineering support services that were not within the capabilities and technical expertise of the District Trustees, the contractors, or the volunteers assisting the District in the flood fight effort.

OES recognizes that in many cases, Reclamation Districts do not have the time or technical expertise to coordinate flood fight efforts with the local and state agencies and contractors, since supervising sandbag crews and levee inspections teams take precedent. The consulting engineering firm's familiarity with and contacts at the state and local agencies allowed for quicker and more efficient use of valuable time during the emergency.

Recommendation: Subgrantees should be prepared to document the necessity of technical and engineering services and the associated costs. OES will continue to support the eligibility of these services where the subgrantee has provided adequate documentation.

Time Extensions

Issue: Public Assistance projects funded by FEMA must be completed within the timeframes defined in *44 CFR Section 206.204(c)*. Emergency work (categories A and B) DSRs must be completed within six months of the disaster declaration date, while permanent work DSRs must be completed within 18 months of this date. OES has authority to grant an additional six months for emergency work projects and 30 months for permanent work. Beyond that, time extensions to complete projects must be approved by FEMA.

FEMA is now strictly enforcing the regulatory requirements related to DSR completion deadlines. Specifically, all time extension requests must be received by FEMA (via OES) on or before the last approved completion date. According to FEMA, time required for “frivolous” appeals, lack of staff, long range planning and approval processes, etc. would not be considered justification for extensions of construction deadlines.

Recommendation: Subgrantees should submit time extension requests as soon as it becomes apparent that the approved completion deadline will not be met. In addition, time extension requests must include the dates and provisions of all previous time extension(s), a detailed justification for the delay, and a projected completion date. Without the required information, FEMA will deny the time extension and eligible costs will be limited to those incurred only up to the last approved completion date.

Tree removal/replacement

Issue: Effective for the 1155 disaster, FEMA determined that costs related to tree replacement would no longer be eligible for funding. FEMA's February 20, 1997, "Ineligibility of Trees and Shrubs Interim Policy" states that this exclusion applies to "any measures taken with respect to trees and shrubs", including "remedial actions taken to abate disaster damage, tree replacement and non-emergency tree removal for the purposes of replacement." However, the policy does not affect the eligibility of debris removal and emergency measures necessitated as a result of the disaster.

Recommendation: Subgrantees should be aware of this eligibility restriction for future disaster events, and be prepared to provide documentation that tree removal costs were necessary as emergency measures.

Use of Local Equipment Rates

Issue: The circumstances under which Local Equipment Rates are eligible for reimbursement is somewhat unclear. *44 CFR* says that rates established under state guidelines are to take precedence over FEMA rates. OES interprets this to mean that the rates were developed under California Department of Transportation (CalTrans) guidelines. However, there are no clearly defined procedures for using these "guidelines."

Recommendation: Until resolution is reached on this issue, OES will continue to work with subgrantees to support eligibility of local rates when adequate documentation is provided.

List of Acronyms and Terms

CAA	Clean Air Act
CERCLA	Comprehensive Environmental Response Compensation and Liability Act
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CPI	Consumer Price Index
CWA	Clean Water Act
DFO	Disaster Field Office
DSR	Damage Survey Report
DWR	Department of Water Resources
EIR	Environmental Impact Review
EOC	Emergency Operation Center
ESA	Endangered Species Act
EWP	Emergency Watershed Protection
Exhibit "B"	List of Projects to be claimed to the Public Assistance Program
FCO	Federal Coordinating Officer
FCW	Flood Control Work
FEAT	Governor's Flood Emergency Action Team
FEMA	Federal Emergency Management Agency
FIPS NUMBER	Same as Project Application Number
FONSI	Finding of No Significant Impact
GAR	Governor's Authorized Representative
HMGP	Hazard Mitigation Grant Program
HMP	Hazard Mitigation Plan or Hazard Mitigation Proposal
IA	Individual Assistance
Legal Delta	Sacramento/San Joaquin Delta
NDAA	Natural Disaster Assistance Act
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
NHPA	National Historic Preservation Act

NOI	Notice of Interest (Initial FEMA Application Form)
NRCS	Natural Resources Conservation Service
Obligate	When FEMA approves a dollar amount for an individual DSR
OES	Office of Emergency Services (State of California)
OMB	Office of Management and Budget (Federal)
PA	Public Assistance
PA#	Project Application Number
PAO	Public Assistance Officer
PAPED	Project approved for payment (unofficial term used by FEMA)
PDA	Preliminary Damage Assessment
PNP	Private Nonprofit Organization
RD	Reclamation District
SCO	State Coordinating Officer
SFHA	Special Flood Hazard Area
SFIP	Standard Flood Insurance Policy
SHPO	State Historic Preservation Officer
Stafford Act	The law which established FEMA disaster assistance
Subgrantee	An eligible applicant in federally declared disasters
Title 19, Chapter 7.5	Regulations that implement the Natural Disaster Assistance Act
TSCA	Toxic Substances Control Act
USACE	United States Army Corps of Engineers

Important Addresses and Phone Numbers

OES Public Assistance Offices

Northern California:

D.A. Christian, State Public Assistance Officer
Office of Emergency Services
Disaster Assistance Program Branch, Public Assistance Section
Post Office Box 419023-9023
Rancho Cordova, CA 95741
Phone: (916) 464-1013; Fax: (916) 464-1038

Southern California:

Gilbert Najera, Public Assistance Manager, South
Office of Emergency Services,
Disaster Assistance Program Branch, Public Assistance Section
74 North Pasadena Avenue, 2nd Floor
Pasadena, CA 91103
Phone: (626) 431-3444; Fax: (626) 431-3844

U.S. Army Corps of Engineers:

Sacramento District:

1325 J Street, Sacramento, CA 95814-2922
(916) 557-6911

San Francisco District

333 Market Street, Room 902, San Francisco, CA 94105-2197
(415) 977-8728 or 8730

Los Angeles District:

Post Office Box 2711 Los Angeles, CA 90053
(213) 452-3440

USDA Natural Resources Conservation Service:

State Headquarters: 2121-C 2nd Street, Suite 102 Davis, CA 95616-5475
(916) 757-8200

National Flood Insurance Program:

General Information: Federal Emergency Management Agency
Federal Insurance Administration 500 C Street, S.W.
Washington, DC 20472
Insurance Questions: (800) 638-6620

List of Authorities

- Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended
- Title 44, Code of Federal Regulations, Part 206 - Federal Disaster Assistance for Disasters Declared on or after November 23, 1988
- Government Code Chapter 7.5, Sections 8680 through 8692, Natural Disaster Assistance Act, as amended
- Title 19, California Code of Regulations, Sub-chapter 5, Natural Disaster Assistance Act
- Title 19, California Code of Regulations, Chapter 1, Standardized Emergency Management System
- FEMA Response and Recovery Directorate Policy No. 4511.300 PO, EX - "Policy for Rehabilitation Assistance for Levees and Other Flood Control Works," September 11, 1996

- FEMA Response and Recovery Directorate Policy No. 4511.300 A, EX - "Landslide Policy Relating to Public Facilities," November 30, 1995
- FEMA "Ineligibility of Trees and Shrubs Interim Policy," February 20, 1997
- FEMA "Environmental Policy Memo #3," March 24, 1995
- U.S. Army Corps of Engineers Non-Federal Flood Control Works Rehabilitation Program, Public Law 84-99, as amended
- U.S. Department of Agriculture, Natural Resources Conservation Services Emergency Watershed Protection Program, Public Laws 81-516 and 95-344
- Office of Management and Budget Publications

Administration of Grants and Cooperative Agreements

State and Local Governments: 44 CFR Part 13

Public and Private Institutions of Higher Education,

Hospitals, Private Non-Profit Organizations: OMB Circular A-110

Cost Principles

State and Local Government: OMB Circular A-87

Public and Private Institutions of Higher Education: OMB Circular A-21

Hospitals Affiliated with Institutions of Higher Education: 45 CFR Part 74

Private Non-Profit Organizations: OMB Circular A-122

Public and Private Hospitals: 45 CFR Part 74

Audits

State and Local Governments: OMB Circular A-133

Public and Private Institutions of Higher Education: OMB Circular A-133

Hospitals Affiliated with Institutions of Higher Education: OMB Circular A-133

Private Non-Profit Organizations: OMB Circular A-133

Public and Private Hospitals: OMB Circular A-133