

Unified Public Assistance Project Decision Team  
Eligibility Decision  
Decision Date: June xx, 2009

Dispute #: 9  
Subgrantee: Department of Natural Resources (DNR)  
DR: 1603, 1607, 1786, 1792  
PW(s): Multiple  
Project: Multiple under Coastal Wetlands Planning, Protection, and Restoration Act (CWPPRA)

Description of Dispute

Eligibility of funding for CWPPRA Projects.

Unified PAPDT Decision

The FEMA TRO has determined that work performed related to CWPPRA projects is eligible only in situations in which the work is necessary to save lives, protect public health and safety, and to protect improved property, as authorized under Section 403 of the Stafford Act and Section 206.225 of Title 44 C.F.R.

The FEMA TRO has determined that permanent work, and other work not considered emergency protective measures, is not eligible. This is due to specific other federal agency (OFA) authorities under CWPPRA, further specified in the Cost Sharing Agreements or Cooperative Agreements for each project, as required in Section 206.226(a) of Title 44 C.F.R. Although agreements related to the CWPPRA authorities denote OFA funding is subject to availability of funding, such work remains ineligible under the Stafford Act.

For example, the Cost Sharing Agreement between USDA/NRCS and the State of Louisiana stipulates that DNR is responsible for the operations, maintenance, and rehabilitation of the projects and that NRCS will reimburse DNR for 75% of such costs (including maintenance and rehabilitation) subject to the availability of funds. In the Cost Share Agreement, maintenance is defined as work less than 20% of original construction and rehabilitation is defined as work greater than or equal to 20% of original construction. It should be noted that each project has its own agreement and specifies differing cost shares ranging from 50% to 85% federal.

In accordance with the FEMA Public Assistance Guide (FEMA-322/October 1999), page 17 under "Other Federal Agencies," the following language is applicable:

*However, the other Federal agency may determine the work is not eligible for assistance because:*

- *the agency does not have funds for the particular program at the time; or*
- *the work is the responsibility of the applicant either by statute or by agreement with the agency.*

*If either of the above reasons apply, public assistance will not be available because the work is within the authority of the other agency and the eligibility was determined under the agency's regulations.*

Since the work is under the specific authority of other federal agencies, permanent work is not eligible for FEMA funding, regardless of the availability of funding.

Additionally, projects constructed under CWPPRA, such as barrier islands, are commonly not facilities as defined in Section 206.201(c) of Title 44 C.F.R.

The Unified Public Assistance Project Decision Team concurs with the TRO's eligibility determinations related to CWPPRA projects.

*DRAFT ONLY*

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Charles R. Axton  
FEMA Lead  
Unified PA Project Decision Team

*DRAFT ONLY*

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Mark DeBosier  
Acting Assistant Deputy Director  
Disaster Recovery

- Concur
- Non-Concur
- Acknowledged