

Correspondence Detail Report

Date : 12/15/20
Page 1 of 1

Log Id	723855	Fema Log Id		Originator	SUBGRANTEE
Decl Number	4308	Address	300 FAIR LANE, PLACERVILLE, CA 95667		
Organization	El Dorado County	Contact	JON DEVILLE		
PA Id	017-00000				
Subject	2ND APPEAL	Type	REQUEST		
Comments	On 12/3/2020, Cal OES received an NSPO 2nd Appeal letter from El Dorado County for PWs 430, 599, 614, 653, and 1307.				
Originator Letter Date	12/03/20	Date Mailed/Closed			
Originator Received Date	12/03/20	FEMA Response Date			
OES Letter Date					

Office	N	Entered By	DOHERTYB	Entered Date	12/03/20	Updated By	IMMERD	Updated Date	12/09/20
DSR		Supp DSR		Facility		Category Eligibility		Obligated	
430									
599									
614									
653									
1307									

Process	Assigned To	Start Date	End Date	Days	Comments
ASSIGN TO AREA COORDINATOR	IMMERD	12/03/20			

Completed by : Diane Ammer Date : 1/12/2021 Comments : For Review

Reviewed by : _____ Date : _____ Comments : _____

Reviewed by : _____ Date : _____ Comments : _____

Reviewed by : [Signature] Date : 1/13/21 Comments : _____

Date Mailed : _____



January 27, 2021

Mr. Keith Turi
Assistant Administrator, Recovery Directorate

Via: Mr. Robert J. Fenton, Jr., Regional Administrator
Federal Emergency Management Agency, Region IX
U.S. Department of Homeland Security
1111 Broadway Street, Suite 1200
Oakland, California 94607

Subject: Second Appeal – NSPO for PWs 430, 599, 614, 653, and 1307
FEMA-4308-DR-CA, February 2017 Storms
Cal OES ID: 017-00000 FEMA ID: 017-99017-00
Subrecipient: El Dorado County
Cal OES Log: 723855 FEMA Log: 391649

Dear Mr. Turi:

On December 3, 2020 the California Governor's Office of Emergency Services (Cal OES) received the enclosed letter of the same date from El Dorado County (Subrecipient). This letter and supporting documentation appeals the total amount of \$686,650.41 as the result of the Federal Emergency Management Agency's (FEMA) determination to deny Net Small Project Overrun (NSPO) funding for Project Worksheets (PW) 430, 599, 614, 653, and 1307 (Enclosure 1). FEMA states that the Subrecipient submitted its request 17 months after the completion of its final small project, which is beyond the 60-day timeframe required. In addition, FEMA states that the overruns for PWs 430, 653, and 1307 are not eligible.

Background

FEMA Determination Memo (DM) Summary

In a letter dated December 13, 2019, Cal OES submitted an NSPO Appeal for PW's 430, 599, 614, 653, and 1307 in the amount of \$686,650.41, under Cal OES Log No. 691837.1 (Enclosure 2, pages 2-3). FEMA states in a DM dated September 14, 2020 that the appeal is untimely as, for referenced PWs, the last small project was completed on May 23, 2018 (Enclosure 3, pages 8-13). FEMA denied the appeal as it was submitted 17 months after the completion of the final small project.



In addition, FEMA also adds to the DM the following issues:

1. For PW 430, the Subrecipient doesn't explain why a change in scope of work (SOW) was not formally submitted nor why the entire culvert was replaced instead of being repaired.
2. For PW 653, the Subrecipient claimed cost overruns for primarily mitigation measures without requesting approval for a change in SOW request. This includes installing four new culverts and replacing/upsizing culverts that exceeded the mitigation measures approved for PW 653.
3. For PW 1307, the Subrecipient included a replacement of a culvert with a larger sized culvert and included rock slope protection at the inlets and outlets that was not reviewed and approved by FEMA.

Timeliness

On January 13, 2021, Cal OES received a letter dated January 11, 2021 from FEMA, under FEMA Log No. 401035 (Enclosure 11). This letter states, "In conclusion, PWs that have not been approved, PWs that have not been obligated, PWs awaiting insurance proceed information, and PWs that FEMA has received a SOW change for toll the NSPO submission timelines." The letter indicates that the term "for toll" means pause. The last instance regarding SOW changes is exactly the case with PW 2. PW 2 was originally written for Engineering and Design Services only, in the amount of \$30,000, initially making this PW a small project. On July 3, 2018, Cal OES submitted a PW Version Request to FEMA for PW 2 in the amount of \$1,270,143.00, under Cal OES Log No. 658005.

On July 16, 2018, Cal OES received the Subrecipient's Project Completion Certification Report (P.4) for PWs 430, 599, 614, 653, and 1307. For the PWs referenced on the P.4, the final small project completion date was May 23, 2018, making the receipt of this P.4 within the 60-day deadline for all of the small projects except for PW 2. The Public Assistance Program and Policy Guide (PAPPG) April 2017, page 144, states "FEMA categorizes projects as large or small based on the final approved amount of eligible costs...A Small Project is a PW with a cost below the threshold." (Enclosure 6). The threshold for DR-4308 is \$123,101.00. Therefore, at the time of the submission of the P.4, PW 2 was a small project that was not complete (Enclosure 1, page 197). It was awaiting FEMA's determination of the PW Version request. Cal OES directed the Subrecipient to hold off on submitting the NSPO until a determination could be made on the PW Version Request for PW 2.

On September 5, 2019, Cal OES received FEMA approval for the PW Version for PW 2 in the amount of \$1,294,387.55 (Enclosure 5, page 5). This Version 1 approval now officially changed the PW from a small project to a large project. It is at this point that all small projects are officially known to be completed for the Subrecipient. On October 24, 2019, Cal OES received the Subrecipient's NSPO

Appeal letter dated October 18, 2019, within 60-days of the receipt of FEMA's approval of the PW Version request for PW 2 (Enclosure 2, page 4). On December 13, 2019, Cal OES submitted a First Appeal NSPO to FEMA, within 60-days of the receipt of the Subrecipient's NSPO Appeal letter (Enclosure 2, page 2). On September 29, 2020, Cal OES received FEMA's DM (Enclosure 3, page 8). On October 13, 2020, the Subrecipient received Cal OES's letter of FEMA's denial to the NSPO appeal (Enclosure 3, page 4). On December 3, 2020, Cal OES received the Subrecipient's 2nd NSPO Appeal, within the 60-day deadline (Enclosure 1, page 2).

The Subrecipient has worked actively with Cal OES to submit the necessary documents on time within the regulatory deadlines. The Subrecipient did not seek to interpret or redefine FEMA regulations, but relied on guidance from Cal OES.

Project Worksheet 430 – Evelyn Way

During the 4308 February 2017 Storms, significant rainfall inundated the inlet, resulting in erosion and failure of the roadside embankment on Evelyn Way. Water flows bypassed the riser inlet and pipe crossing causing loss of soil, concrete curb, gutter, and undermining the existing roadway. High flows and erosion around the riser, uplift at the base of the riser occurred and caused the culvert to break. The damages listed on the PW are 111 CY shoulder erosion, 2.78 SY Curb/Gutter, and 8 inches road base by 3 inches asphalt surfacing. PW 430 was approved on March 20, 2018 for \$15,623.18 of Contract work and \$6,054.06 for Hazard Mitigation (HM) for an estimated total of \$21,677.24. The Subrecipient's claimed costs in the NSPO First Appeal was for \$289,897.53, for a difference of \$268,220.29.

FEMA's argument for PW 430 is that the Damage Description and Dimensions (DDD) did not include the damage to the culvert, and the Subrecipient did not request a change in SOW to amend it (Enclosure 3). In addition, FEMA objects to the full replacement of the culvert instead of repairing it. FEMA states that they do not understand why the Subrecipient did not request a change in SOW due to inadvertent errors and omissions. FEMA was, therefore, unable to review these changes for compliance with environmental and historic preservation (EHP) requirements. The actual work completed for just the culvert work included replacing the 42" Corrugated Metal Pipe (CMP) culvert with 42" High Density Polyethylene (HDPE) culvert and constructing a new concrete headwall with a weir structure.

Damage to culvert not listed in PW

The damaged culvert was listed in the PW, but not in detail; and it was not included in any cost estimates. There are several references to the damaged culvert in the PW (Enclosure 2, pages 17-18). The DDD's main description states, "...due to the high

flows and erosion around the riser, uplift at the base of the riser occurred and caused the culvert to break.", yet the replacement of a culvert is not listed in the specific list of items to be repaired. In the PW, under Project Notes, it states "If a road is over-topped, the county will then bring the drainage system up to code, regardless of the damage to the CMP." Per the PW, the road was over-topped. The Project Notes also state, "The waterway crossing consisted of a 42" CMP with a 43" CMP riser and atrium rack at the inlet. Culvert dimensions: 55 ft. (L) X 42 inches (Diameter). The extent of the damage at the break cannot be seen due to the break location and current cover." The damages could not be seen because the area was covered with snow. And finally, in the PW within the Notes area of the Work to Be Completed section, it states, "Scope of work covers in kind repairs and the DDD references damages to a 42 in. CMP. However, there is no description or dimension of damages. Site photos do not identify any damage to culvert or riser."

In summary, the damaged culvert was listed in the PW at a high level, but it was never included within the detailed SOW or costs. The Subrecipient reiterates that the extent of the damage was unknown at the time the PW was written due to the material failure of the slope, concrete curb, and roadway section.

Codes and standards requirements

The PAPPG April 2016 on page 86-87 states, "Facility repairs and new construction may "trigger" upgrade requirements established by standards. Upgrades required by Federal, State, Territorial, Tribal, or local repair or replacement standards are eligible only if the standard: 1) Applies to the type of restoration required; 2) Is appropriate to the pre-disaster use of the facility; 3) Is reasonable, in writing, formally adopted by the State, Territorial, Tribal, or local government, and implemented by the Applicant on or before the declaration date, OR is a legal federal requirement; 4) Applies uniformly; and 5) Was enforced during the time it was in effect." The Subrecipient's codes and standards are published in the County Drainage Manual which was Board adopted March 14, 1995.

The Subrecipient commissioned a Hydrologic and Hydraulic (H&H) analysis of all of the sites for the disaster. The Subrecipient's Department of Transportation (DOT) analyzed the damage, the H&H report, and the County Drainage Manual to prepare a DOT Drainage Memo for each PW that includes a repair recommendation and justification for each of the PWs for this disaster.

For PW 430 the DOT Drainage Memo, Enclosure 8, pages 2-7, states that "A. Based on the El Dorado County Drainage Manual, the culvert should be sized to convey a 100-year storm event (over 100 acre watershed) and B. The existing 42" CMP can convey a 100-year storm event, and is therefore sized correctly for the configuration and design standard." Though the DOT Drainage Memo does not state it

specifically, the Drainage Manual states on page 1-12, "Roadway cross culverts maintained by El Dorado County placed in drainage ways shall have flared end sections, beveled end sections or PCC concrete headwalls on the inlet side. The outlet side shall have such end sections or slope protection that will return water to the normal flow without causing erosion." (Enclosure 7, page 11). The Drainage Manual also states, "Provisions for overtopping during larger events must be made." (Enclosure 7, page 14). And finally, the PW, under Project Notes, states "If a road is over-topped, the county will then bring the drainage system up to code, regardless of the damage to the CMP." (Enclosure 2, page 17). So, according to the Drainage Manual the replacement of the 42" CMP culvert with the headwall and weir meets codes and standards.

CMP vs. HDPE

The Subrecipient evaluated the use of CMP pipe vs. HDPE pipe. HDPE is a preferred material as it is longer lasting, has a smooth interior which allows for material to flow through more easily, is lighter and easier to work with, and costs less. The Subrecipient provided a quote for an equivalent sized (24" x 20') culvert in both CMP and HDPE (Enclosure 4). The CMP pipe costs \$18.40 per foot and the HDPE pipe costs \$14.62 per foot. As the use of HDPE costs less than CMP, the use of HDPE is cost-effective.

Notification Sent to FEMA

The Subrecipient sent an email with a Draft Plans and Estimate for Evelyn Way report to Scott Trezona of FEMA on August 7, 2017, within four months of the April 1, 2017 declaration date (Enclosure 1, page 210). Cal OES is not listed on the distribution of this email. The Emergency Management Mission Integrated Environment (EMMIE) system does not show the receipt of this email nor was the PW updated as a result of it. In addition, the Subrecipient does not show a response from FEMA with the acceptance of the plans or their incorporation into the PW.

In summary, PW 430 noted very clearly that the culvert was damaged and needed to be repaired, yet the details of that were not included in the PW only because the complete damage was covered with snow at the time. The Subrecipient's DOT prepared a DOT Drainage Memo with recommendations and justifications. The report was sent directly to FEMA in good faith within 4 months of the event. The PW requires a resolution to the culvert damage, and yet when submitted, it was not incorporated; nor did FEMA notify the Subrecipient that they should formally submit this report directly to Cal OES. Despite this, all of the work required for this culvert meets the codes and standards of the Subrecipient's County Drainage Manual, and the use of HDPE vs. CMP has been shown to be cost-effective. Therefore, the work is eligible.

PW 653 – Fallen Leaf Road

Severe storms caused damage to Fallen Leaf Road, a bituminous road. The dimensions of the road vary from 16' to 20', with compacted native base and 3" of existing asphalt. High water flows also damaged 5 culverts at Sites 1, 2, 5, 8, and 9.

FEMA states that 1) the overruns are almost entirely from mitigation measures undertaken without consulting with or requesting approval of a change in SOW from FEMA, 2) the Subrecipient installed 4 new culverts and replaced/upsized culverts that exceeded the HM measures contemplated and approved for this PW, and 3) the Subrecipient also cites mistakes made in initial field evaluation, but again did not request "errors and omissions" (Enclosure 3, page 13).

Installed 4 new culverts and replaced/upsized culverts that exceeded HM measures approved for this PW

The Drainage Manual states that "The minimum culvert size for street crossings shall be 18 inches in diameter including street cross culverts with grate covered drop inlets. No storm drain conduit shall have a diameter less than that of the conduit upstream from it." (Enclosure 7, page 11). Therefore, for sites 1 and 2, the Subrecipient replaced a 12" culvert with an 18" culvert, which meets current codes and standards. The culvert for site 8, was a 12" CMP pipe. It was replaced with three 18" culverts. The DOT Drainage Memo states that "Culverts for Site 8 should be sized to eliminate overtopping of the roadway during 100-year events (page 3-11 of Drainage Manual)" (Enclosure 7, page 4). The DOT Drainage Memo for PW 653 recommends three 18" culverts to meet codes and standards.

For site 9, the DOT Drainage Memo states, "2. Culverts for Sites 2, 5, 9, and 10 should be sized to convey a 100-year storm event (over 100-acre watershed) (page 1-8 of Drainage Manual)" and "Culverts at Site 9 should be 24" (page 1-12 Drainage Manual). Since not able to work with current inverts, County plans to install additional 18" HDPE at this location." In summary, the two 18" culverts for site 9, in order to meet codes and standards, needed to be 24" diameter, but the current inverts did not allow for this. Therefore, the Subrecipient used four 18" pipes. Therefore, the completed work was done in order to meet codes and standards.

The Subrecipient did not request "errors and omissions" and the overruns are almost entirely mitigation measures undertaken without consulting with or requesting approval of a change in SOW from FEMA

In a letter dated March 1, 2019, under Cal OES Log No. 674374, Cal OES submitted a PW Version Request to consolidate the approved SOW and costs for PW 653 into PW 480 in order to close the project under a combined single large project under PW 480. Cal OES recommended this request as the damage sites identified in PW 653 were the very same sites in PW 480 and included the same list of project

numbers. The road repair and culvert repair were separated into two PWs, for some reason. The Subrecipient, in the PW Version Request, did not request any changes to PW 653; only that the two PWs be combined. FEMA denied this request, and, in addition, stated that "all appropriate funding adjustments will be made during the closeout process."

The Project Notes on PW 653's 90-91 state 1) "the Applicant has requested mitigation", 2) "the Applicant has adopted the El Dorado County Drainage Manual which specifies a need to determine if a drainage system is meeting current codes and standards. If a road is over-topped, the County will then bring the drainage system up to code, regardless of the damage to the CMP", and 3) the "Hydrology and Hydraulics study attached and cost for study to be claimed at closeout" (Enclosure 2, pages 23-25).

In an email chain dated between October 5, 2017 and October 18, 2017, from the Subrecipient to Ricardo Morales of FEMA, the Subrecipient clearly states the changes needed for the culverts and the potential impact on costs (Enclosure 1, page 217-221). The email specifically mentions additional sizes, additional number of culverts, and that the culverts should be HDPE. The Subrecipient asks if they can make the changes on the signed 90-91 in order to meet the deadline imposed by Mr. Morales to get the signed 90-91 in on time. Mr. Morales then states that they are able to make some adjustments to their estimate, but he needs the H&H report, so the mitigation department has an opportunity to add some pieces to FEMA's estimate.

The Subrecipient submitted the H&H report on October 16, 2017, and Mr. Morales replied that he had forwarded it to their mitigation department, and they would take a look at it. Cal OES was not included in this email distribution list. FEMA, therefore, received the information for all the requested changes, and submitted them to the mitigation department. The Subrecipient worked directly with FEMA with very specific requests. EMMIE shows no receipt of this new information. On October 11, 2017, prior to this email submittal, a note on PW 653's Workflow History from EMMIE, states under Mitigation Review, "No cost effective feasible mitigation opportunities were identified, no further action required. James Robertson HM 406". On March 12, 2018, the same note is stated indicating that the information the Subrecipient submitted was not forwarded and integrated in the PW.

CMP vs. HDPE

As stated previously in the PW 430 section, the use of HDPE is less expensive than CMP and, therefore, cost-effective. The use of HDPE should be eligible.

PW 1307 – Tahoe Mountain Road

During the 4308 February 2017 Storms, high surface and subsurface flows inundated Tahoe Mountain Road. The roadway aggregated subbase, estimated at 18.2 cubic yards (CY), the asphalt road surface, estimated at 9.2 tons, and two 24" x 26 Linear Feet (LF) culverts were damaged. PW 1307 was approved on March 27, 2018 for \$19,280.78 of Contract work and \$2,063.92 for HM for an estimated total of \$21,344.70. The Subrecipient's claimed costs in the NSPO First Appeal was for \$118,410.76, for a difference of \$97,066.06.

FEMA's argument for PW 1307 is that the Subrecipient did not get approval for the change in SOW including 1) the replacement of two "mistakenly identified" 24" culverts with 30" HDPE culverts, and 2) the installation of rock slope protection at both the inlets and outlets of the culverts (Enclosure 3, page 13).

Size of culverts

The Subrecipient states that FEMA's characterization that the Subrecipient replaced a 24" CMP culvert with a 30" HDPE culvert is incorrect. The Subrecipient replaced 24" wide CMP culverts with 24" wide HDPE culverts. What was different was the length of the culverts. In addition, the damaged culverts were incorrectly identified as 26 LF long in the DDD. The correct length should have been 30 LF long. The difference of 4 LF for each culvert is a relatively small difference and should be eligible.

CMP vs. HDPE

As stated previously in the PW 430 section, the use of HDPE is less expensive than CMP and, therefore, cost-effective. The use of HDPE should be eligible.

Installation of rock slope protection at the inlet and outlet of the culverts

The County Drainage Manual, states "Roadway cross culverts maintained by El Dorado County placed in drainage ways shall have flared end sections, beveled end sections, or P.C.C. concrete headwalls on the inlet side. The outlet side shall have such end sections or slope protection that will return water to the normal flow without causing erosion." (Enclosure 7, page 11). The County Drainage Manual, under 7.3.3 Erosion Protection, "Culverts often create areas of concentrated velocity as the flow contracts or expands. The culvert design must address this and mitigate potential erosion problems by the placement of wing walls, rock slope protection and downstream energy dissipators." (Enclosure 7, page 16). Therefore, rock slope protections are a required code or standard.

Notification Sent to FEMA

While the justification for the changes in the PW meet eligibility because of codes and standards and cost-effectiveness, it should be noted that the Subrecipient notified FEMA that the length of the culvert on the DDD was incorrect when they

submitted their signed 90-91 via email on December 11, 2017 (Enclosure 1, pages 226-227). The email was sent to Scott Trezona at FEMA. Cal OES was not included in the email distribution. The Subrecipient included a note at the bottom of the 90-91 that states the length of the pipe should be 30 LF instead of 26 LF. The email only notes that the 90-91 is attached. It does not point out the requested changes in scope. This signed 90-91 with the notes was added to EMMIE on December 13, 2017. FEMA accepted the signed 90-91 with notes requesting changes to the PW. This error should have been formally submitted through Cal OES to FEMA as a PW Version/Change in SOW. Once again, FEMA received changes from the Subrecipient, but did not recommend the Subrecipient formally submit the changes through Cal OES.

Analysis

The primary issue FEMA cites is the timeliness of receiving the appeal. Regulation states that Subrecipients must submit an NSPO Appeal once all small projects are complete. While the last small project was actually completed on May 23, 2018, there was one PW, PW 2, that was still considered a small project. PW 2 was considered an incomplete small project until PW Version 1 was approved and changed to a large project in September 2020. A PW cannot firmly be considered a large project until it is approved. Neither Cal OES nor the Subrecipient could presume that FEMA would approve the PW Version, but instead had to wait for a firm confirmation. Once the Subrecipient received notification of the PW Version approval, they submitted the NSPO Appeal within the 60-day deadline.

For FEMA's second issue, that the overruns for PWs 430, 653, and 1307 are not eligible, there is a common theme among all three of the PWs. First, each PW clearly notes that additional damage and analysis is needed; essentially stating that the PW was not complete. Second, the Subrecipient supplied FEMA directly with the H&H report and the El Dorado County DOT Drainage Memo summarizing the regulations and recommended changes for each PW. Third, FEMA did not update the PWs with this information nor did they recommend the Subrecipient submit a formal PW Version through Cal OES. Fourth, each of the PWs' overruns are justified by cost-effectiveness and the codes and standards of the County Drainage Manual.

Recommendation

In accordance with Title 44 of the Code Federal Regulations (44 CFR) § 206.206, and after careful review and evaluation of the documentation provided by the Subrecipient, Cal OES supports the appeal and recommends FEMA's approval of the NSPO Appeal in the amount of \$686,650.41 for PWs 430, 599, 614, 653, and 1307. In accordance with 44 CFR § 206.206(c)(3), Cal OES respectfully requests a response to this appeal within 90 days from receipt of this letter.

Mr. Keith Turi
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If you require additional information regarding this correspondence, please contact Mr. David Gillings, State Public Assistance Officer, at (916) 845-8224 or Mr. Peter Crase, Program Manager, at (916) 869-2769.

Sincerely,



RYAN BURAS
Deputy Director, Recovery
Alternate Governor's Authorized Representative

Enclosures:

1. Subrecipient's 2nd Appeal Letter and Supporting Documentation
2. Subrecipient's 1st Appeal NSPO Letters, Narrative and 90-91s
3. FEMA's Response to 1st Appeal NSPO
4. Subrecipient email dated 01.12.21 with CMP vs. HDPE quote
5. FEMA Response to PW 2 Version Request
6. PAPPG April 2017
7. EDC DOT Drainage Memo for PW 653 Fallen Leaf
8. EDC DOT Drainage Memo for PW 430 Evelyn
9. EDC DOT Drainage Memo for PW 1307 Tahoe Mountain
10. CD ROM of 1st Appeal Files
11. FEMA letter dated January 11, 2021

cc: John D'Agostini, Sheriff, El Dorado County
Robert Pesapane, Recovery Division Director, FEMA Region IX

dmi

Enclosure 1



JOHN D'AGOSTINI
SHERIFF - CORONER - PUBLIC ADMINISTRATOR
COUNTY OF EL DORADO
STATE OF CALIFORNIA

December 3, 2020

RECEIVED

723855

03 DEC 2020

PUBLIC ASSISTANCE

Mr. David Gillings, Public Assistance Officer
California Governor's Office of Emergency Services
3650 Schriever Avenue
Mather, CA 95655

Subject: Request for 2nd Appeal Net Small Project Overrun / Small Project Closeout
FEMA-4308-DR-CA
Subgrantee: El Dorado County
Cal OES ID: 017-00000-00 FEMA ID: 017-99017-00

Dear Mr. Gillings,

This letter is in response to the Federal Emergency Management Agency (FEMA) determination regarding the 1st appeal NSPO for FEMA-4308-DR-CA dated October 9, 2020. El Dorado County (EDC) is hereby submitting a request for a 2nd Appeal Net Small Project Overrun (NSPO), in accordance with Title 44 Code of Federal Regulations (CFR) sections 206.206, Appeals. The previously submitted documentation in support of the 1st Appeal along with documentation in support of this 2nd Appeal is available via the following FTP link:

<https://sftp2.edcgov.us/public/folder/fXMj7A9qzUeC2cvdrR32gg/4308%20NSPO%202nd%20Appeal>

With the 1st NSPO appeal, EDC requested an aggregate overrun amount of \$686,650.41 which includes \$268,220.29 for PW #430, \$17,590.67 for PW #599, \$1,836.00 for PW #614, \$301,937.39 for PW #653, and \$97,066.06 for PW #1307. As was noted in the determination letter, there was no cost overrun for PW #245 as the project was reduced to zero dollars and the damages were addressed on PW #255. The aggregate overruns were based on the documentation submitted as part of the 1st NSPO appeal. It is EDC's

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view based on the supporting information shown below that the requested aggregate overrun amount of \$686,650.41 is still valid.

The FEMA determination letter highlighted two arguments for denying the 1st appeal: 1) submittal of the 1st appeal beyond the NSPO/Appeal deadline and 2) questions regarding eligibility of claimed overruns. Below is a discussion of the reasons cited by FEMA for denial followed by an explanation given by the County as to why the prior determination should be found to be incorrect:

(1) NSPO/Appeal deadline

- **The appeal letter was received beyond the 60 day regulatory limit.**

For storm event 4308 construction of the last "Small" Project was finished on May 23, 2018, 60 days after which would be July 22, 2018. The County submitted a draft Net Small Project Overrun (NSPO) request to the California Office of Emergency Services (CalOES) on July 16, 2018 requesting review of the NSPO documents for storm event 4308¹. These documents were submitted within the 60-day window of completing construction on the last "small" project. CalOES directed the County to hold off on submitting an NSPO until a determination had been made on the versioning request for the Starkes Grade Road Repair Project (PW 2)².

The County made the attempt to meet the 60-day requirement if the last working day of construction is assumed to be "project completion". FEMA did not officially define "project completion" until the most recent version of the Public Assistance Program and Policy Guide (PAPG, released June 1, 2020). It is our understanding that the first edition of the PAPG applies as Storm Event 4308 was declared prior March 31, 2017 (PAPG V3.1, 2018, Pg vii). FEMA has ruled previously that an applicant should not be penalized for a delay by OES³.

- **CalOES has not confirmed that staff participated in discussion in regards to 60-day regulatory limit Notice of Obligation of PW 2 version 1.**

The County and CalOES held regular meetings during 2018, 2019, and 2020 to facilitate project closeout⁴. The close out of "large" projects and "small" projects through NSPO's were discussed at each meeting. Once PW 2 was nearing approval

¹ County to CalOES email dated 7/16/2018

² CalOES to County email dated 06/22/2018

³ FEMA, Second Appeal Analysis, City of Big Bear Lake, FEMA-1577-DR, PA 071-06434-00 (09/23/2008)

⁴ EDC/CalOES meetings held: 6/11/18, 6/28/18, 11/2/18, 12/6/18, 1/10/19, 1/31/19, 3/7/19, 4/26/19, 6/20/19, 10/29/19, 10/8/20, 10/22/20, 11/2/20, 11/10/20.

for obligation CalOES reiterated that the 60-day regulatory clock would not begin until confirmation that PW 2 would be converted from a "small" project to a "large" project⁵. As stated earlier, FEMA has ruled previously that an applicant should not be penalized for a delay by OES⁶.

- **FEMA states sub recipient characterization of PW 2 was incorrect.**

Neither the County nor CalOES has the authority to assign a project as "small" or as "large" as it is based on the amount approved by FEMA. Per the PAPG, "FEMA categorizes projects as large or small based on the **final approved amount** of eligible costs after any cost adjustments." (PAPPG January 2016, Page 137).

The County submitted the versioning request for the change of scope and additional funding for PW 2. The P-4s received from FEMA via CalOES showed the approved amount corresponded with a "small" project⁷. FEMA notified Cal OES of the version request approval for PW 2 in a letter dated 8/30/2019 (Cal OES Log: 658005 FEMA Log: 390688). Prior to this date, the PW 2 was still a small project based on 44 CFR §206.203 (C)(2), and to the best knowledge of the Subrecipient. 44 CFR §206.203 (C)(2) states

Small projects. When the approved estimate of costs for an individual project is less than \$120,000, Federal funding shall equal the Federal share of the approved estimate of eligible costs. Such \$120,000 amount shall be adjusted annually as indicated in paragraph (c)(1) of this section.

Because PW 2 was initially approved for \$30,000.00, by definition, it could be only characterized as a small project until FEMA's version request approval letter, dated 8/30/2019, was received.

- **Sub recipient offers no explanation why PW 2 version 1 obligation date should be considered equivalent to "project completion"**

Language in Section 44 C.F.R. § 206.206(e)2 states:

The normal procedure for small projects will be that when a subrecipient discovers a significant overrun related to the total final cost for all small projects, the

⁵ CalOES to County email dated 10/03/2019

⁶ FEMA, Second Appeal Analysis, City of Big Bear Lake, FEMA-1577-DR, PA 071-06434-00 (09/23/2008)

⁷ FEMA Project Completion and Certification Report (P.4) for FEMA-4308-DR-CA, 11/01/2018

subrecipient may submit an appeal for additional funding in accordance with §206.206, within 60 days following the completion of all its small projects.

As stated earlier, FEMA did not define “project completion” until the most recent version of the PAPG (released June 1, 2020). Since one of the “small” projects (PW 2) was actively going through a versioning request from “small” to “large” the County was unable to submit a cost overrun related to the total for all small projects. This is consistent with direction given by CalOES to delay final submittal of the NSPO until the versioning request had been approved or denied by FEMA.

The total final cost for all small projects for DR-4308 El Dorado County could not have been determined until PW 2 Version 1 was approved. The approval of PW 2 Version 1 on 8/30/2019 finalized the total final cost for all small projects for El Dorado County DR-4308, and subsequently, per direction from CalOES, established the start of the 60-day clock to submit an NSPO appeal.

- **Sub recipient or recipient lacks authority to interpret or redefine FEMA regulations or re-define when project completion occurs**

Title 2 Part 200 of the CFR gives the Federal awarding agency or pass-through entity the ability to determine when to close out projects pending their determination “... that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity (2 CFR §200.343 Closeout).

The County has been actively engaged with CalOES on submitting the necessary documents throughout the closeout of large and small projects in order to ensure that timelines were met, and the necessary information was submitted during project closeout. The County did not seek to interpret or redefine FEMA regulations. The direction to delay submitting the NSPO until the Notice of Obligation was given by the recipient (or “pass through entity”), CalOES, to the sub-recipient, El Dorado County. As stated earlier, FEMA has ruled previously that an applicant should not be penalized for a delay by OES⁸.

(2) Eligibility of claimed overruns for PW 430, PW 653, and PW 1307

- **PW 430 (Evelyn) – Sub recipient doesn’t explain why request to change in scope wasn’t submitted**

⁸ FEMA, Second Appeal Analysis, City of Big Bear Lake, FEMA-1577-DR, PA 071-06434-00 (09/23/2008)

The Damage, Descriptions, and Dimensions (DDD) form and the sub grant application (Form 90-91) for the Evelyn site identifies damage to the inlet riser and culvert crossing under Evelyn Way. The damage length of the existing 42" corrugated metal pipe (CMP) was missing from the form, likely as an "error or omission" (note that the overall length of 42" diameter CMP and 42" riser is identified). As stated in the DDD and Form 90-91, "... high flows inundated the inlet, resulting in erosion and failure of the roadside embankment." and "... due to high flows and erosion around the riser, uplift at the base of the riser occurred and caused the culvert to break". The extent of the damage from the uplift of the riser, break in the existing culvert, and affect to the existing culvert bedding was unknown at the time due to material failure of the slope, concrete curb, and roadway section.

The County completed an alternative analysis report to repair the site which included hydrologic/hydraulic analysis⁹. The alternatives included repairs to bring the site up to current County codes and standards as identified in the County Drainage Manual (Board adopted March 14, 1995). The existing system was designed to allow for low flows to pond as a form of water quality treatment that is utilized in the Lake Tahoe Basin, and for higher flows to enter the inlet riser. To mitigate any future potential inlet issues related to a buoyant riser at this site, the County replaced the inlet riser with a concrete weir and concrete headwall. A headwall is an appropriate inlet protection per County codes and standards¹⁰.

With the break in the existing culvert occurring under the roadway, the bedding surrounding the joint was identified as a potential zone of weakness with possible damage to the culvert bedding. In consideration of this and with the road closed due to the damage repair, the County determined that replacement of the entire length of culvert would ensure long term sustainability of the repair. The County submitted preliminary engineering drawings and cost estimates to FEMA to reflect this design approach¹¹.

A portion of the cost overrun was incurred due to engineering, consulting, or construction engineering costs for PW 430. "Engineering and design services and construction inspection are eligible provided the services are necessary to complete eligible work." (PAPPG April 2017, Page 37) The cost estimation underestimated the eligible engineering costs. Additionally, cost overruns were incurred from differences in actual awarded contract bid items versus estimated item costs identified in the scope of work.

⁹ El Dorado County, Evelyn Road Storm Damage Repair Drainage Design Memo, 2017 (PDF included with Closeout Documents)

¹⁰ El Dorado County Drainage Manual (1995), pg 1-12.

¹¹ County to FEMA email dated 08/07/2017

FEMA has determined that costs related to conforming to these codes and standards are generally eligible. These codes and standards must apply to the type of restoration required (e.g., repair or construction), be appropriate to the pre-disaster use of the facility, and be reasonable. (PAPG, January 2016, Page 87). The pre-disaster system consisted of a CMP riser with a 42" CMP, while the post-disaster system consisted of a concrete headwall and concrete weir with a 42" HDPE culvert.

- **PW 653 (Fallen Leaf) – Cost overrun are attributable to mitigation measures without requesting scope change from FEMA**

For reasons unknown to the County, the Fallen Leaf Road Repair Project had been split into two separate PWs: PW 480 (Fallen Leaf Roadway Repairs) and PW 653 (Fallen Leaf Culvert Repairs). The County, through CalOES, submitted a request to FEMA to combine the two projects into a single PW as the individual PWs had overlapping damage sites. FEMA reviewed the request and responded on 7/15/2019 that in order to avoid funding delays for both projects that *"... all appropriate funding adjustments will be made during the closeout process."*¹² Per FEMA's direction in the response letter and per Title 44 Section 200, the County requested the additional funding through the NSPO process for storm event 4308.

As identified in the approved scope, the County completed a hydrology and hydraulics study for the damaged culvert sites¹³. The study was submitted to FEMA in October 2017 with the results indicating the need for 1) upsizing of the culverts and 2) additional culverts for specific sites in order to meet County codes and standards¹⁴. The FEMA Form 90-91 for this project identifies that that County will bring the culvert crossings to current codes and standards identified in the Board adopted County Drainage Manual. The "hazard mitigation proposal" on the FEMA form 90-91 was marked to address the cost increases associated with culvert upsizing and/or need for additional culverts based on the results of the hydrology and hydraulics study. The increased size and number of culverts were proposed, in direct consultation with FEMA, and should be considered eligible as part of the identified scope of work.

A portion of the cost overrun was incurred due to engineering, consulting, or construction engineering costs for PW 653. "Engineering and design services and construction inspection are eligible provided the services are necessary to complete eligible work." (PAPPG April 2017, Page 37) The cost estimation underestimated the eligible engineering costs. Additionally, cost overruns were incurred from differences in actual awarded contract bid items versus estimated item costs identified in the scope of work. As an example the scope of work estimated costs to replace an 18"

¹² FEMA Letter to County, regarding PW 480 & 653, dated 7/5/2019

¹³ El Dorado County, Fallen Leaf / Tahoe Mountain Road Storm Damage Repair – Drainage Design Memo, 2017 (PDF included with Closeout Documents)

¹⁴ County to FEMA email dated 10/18/2017

culvert at \$37.55 per linear foot, while the awarded contract bid item unit cost was \$210 per linear foot (bid prices for this item ranged from \$210 to \$475 per linear foot)¹⁵.

For the construction contract bid items, the "inadvertent errors" only accounted for "below 10% of the awarded base bid" for PW 653 per the Subrecipient's cost summary documentation, and was to meet the required codes and standards per California Department of Transportation Bid Item list standard. As stated previously for PW 430, this is in agreement with Title 44 Section 206 regarding the ability to meet Standards.

- **PW 1307 (Tahoe Mountain) – Includes replacement of culvert with rock protection inlet/outlets not reviewed and approved by FEMA**

The County updated CalOES and FEMA on the requested changes to the scope of work in December 2017¹⁶. The County signed and submitted an updated form 90-91 to FEMA on December 11, 2017¹⁷. The submitted form identifies the replacement of the existing 24" CMPs with 24" HDPE pipes, the need for rock at the inlet and outlet per County codes and standards, and the replacement length at 30 linear feet for each pipe. These costs are associated with the approved scope of work so should therefore be considered eligible. Please note:

- The determination letter stated that the County replaced "... 24" CMP culverts with 30" HDPE culverts". This is incorrect. The County replaced the 24" CMPs with 24" HDPE pipe and noted the replacement length was 30 feet as opposed to 26 feet, an additional 4 linear feet per culvert.
- Rock placed at an inlet/outlet of a culvert is identified as "rock slope protection" on the bid item list / plan sheets per California Department of Transportation Bid Item list standard. Rock inlet protection is a County standard protection against erosion at the inlet or outlet of a culvert¹⁸.

A portion of the cost overrun was incurred due to engineering, consulting, or construction engineering costs for PW 1307. "Engineering and design services and construction inspection are eligible provided the services are necessary to complete eligible work." (PAPPG April 2017, Page 37) The cost estimation underestimated the eligible engineering costs. Additionally, cost overruns were incurred from differences in actual awarded contract bid items versus estimated item costs identified in the scope of work. As an example the scope of work estimated costs to install a 24" culvert

¹⁵ 2017 Bid Summary for PW 653, PDF included with Closeout Documents

¹⁶ County to FEMA email dated 12/11/2017

¹⁷ FEMA Form 90-91: PA-09-CA-4308-PW-01307, signed 12/11/17

¹⁸ EDC Drainage Manual (1995), pg 7-13

end section at \$447.55 per each, while the awarded contract bid item unit cost was \$2,750 per each (bid prices for this item ranged from \$650 to \$3,600 per each)¹⁹.

For the construction contract bid items, the "inadvertent errors" only accounted for "below 10% of the awarded base bid" for PW 1307 per the Subrecipient's cost summary documentation, and was to meet the required codes and standards per California Department of Transportation Bid Item list standard. As stated previously for PW 430, this is in agreement with Title 44 Section 206 regarding the ability to meet Standards.

In closing, El Dorado County does not agree with FEMA's original determination of the 1st appeal NSPO for FEMA-4308-DR-CA. This 2nd appeal to the NSPO appeal was structured to provide additional supporting documentation for each argument provided in FEMA's previous determination. It is important to note that the County was directed by CalOES to delay the final NSPO submittal until receiving approval of a versioning request which would have converted a "small" project to a "large" project, in so removing that project from the 1st NSPO appeal submittal. The implemented work was largely identified in the preliminary scope of work for each PW. Based on County completed hydrologic / hydraulic analysis for each site, cost effective mitigation measures were implemented at each site so as to meet minimum County codes and standards. As requested in the determination letter, the County has shown 1) documented justification supporting the County position, 2) specified the monetary figure in dispute, and 3) cited provisions in federal law, regulation, or policy with which the County believes the initial action was inconsistent. It is our hope that upon reevaluation, FEMA will be in support of fully funding the NSPO amount of \$686,650.41 for FEMA-4308-DR-CA.

If you have any questions or need further information, please contact Chief Fiscal Officer Jon DeVille at (530)621-5691.

Sincerely,



Jon De Ville
Chief Fiscal Officer
El Dorado County Sheriff's Office

¹⁹ 2017 Bid Summary for PW 1307, PDF included with Closeout Documents

From: [Jon DeVille](#)
To: [Gillings, David@CalOES](#)
Cc: [Massello, Ryan@CalOES](#); [Kamalu, Osita@CalOES](#); [Casillas, Raymond@CalOES](#); [Jon Balzer](#); [Brandi Reid](#); [Monica Ferguson](#); [Dan Kikkert](#)
Subject: El Dorado County Appeal, Net Small Project Overrun FEMA 4308
Date: Thursday, December 3, 2020 3:21:34 PM
Attachments: [Small Project Closeout 4308 2nd Appeal.pdf](#)

Dear Mr. Gillings-

Attached is our second appeal in response to FEMA's determination dated October 9, 2020 regarding our first appeal related to El Dorado County's NSPO for FEMA-4308-DR-CA. Below is a link to the ftp site where our back up documents are located that support our second appeal.

<https://sftp2.edc.gov.us/public/folder/fXMj7A9qzUeC2cvdrR32gg/4308%20NSPO%202nd%20Appeal>

Thank you for your consideration.

Jon

Jon DeVille
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