



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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March 5, 2025

CBCA 8133-FEMA

In the Matter of TRINITY COUNTY, CALIFORNIA

Panos Kokkas, Director, and Andrew Pence, Senior Engineer, Trinity County Department of Transportation, Weaverville, CA, appearing for Applicant.

Michael Romero and Carl DeNigris, Governor's Office of Emergency Services, Mather, CA, counsel for Grantee; and Robert Larsen, Public Assistance Officer, Eli Owen, Assistant Director, Fan Jia, Infrastructure Branch Chief, and Courtney Day, Associate Governmental Program Analyst, Governor's Office of Emergency Services, Mather, CA, appearing for Grantee.

Ramoncito J. deBorja, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **KULLBERG**, **ZISCHKAU**, and **O'ROURKE**.

**O'ROURKE**, Board Judge, writing for the Panel.

The applicant, Trinity County, California (applicant or county) seeks funding for survey and mapping work conducted to establish the public property boundaries along a seventy-mile stretch of rural county roads. The work was necessary to identify trees in the burned area for which the applicant was legally responsible, as well as to facilitate hazardous tree removal operations in the aftermath of a devastating wildfire. Because the panel finds that the survey and mapping work, though required to remove the hazardous trees, constitutes administrative and maintenance work for which the county was responsible, we determine that the survey costs are ineligible for public assistance (PA).

### Background

In 2020, the August Complex Fire (the fire) burned over 1,000,000 acres of land in northwestern California. On August 22, 2020, the President authorized a major disaster declaration that included Trinity County, a rural county with vast areas of heavily forested public and private lands and a population of 16,112. The fire burned down houses, damaged roads, and charred forests.

Approximately 52,000 trees were burned as a result of the incident, which posed a threat to the health and safety of work crews, private property owners, and the public at large. Due to the magnitude of the disaster in proportion to the county's size and resources, the task of hazardous tree removal was not feasible for this small, rural community. The county sought assistance from California's State Disaster Recovery Program and from the Federal Emergency Management Agency (FEMA), with the task of hazardous tree removal along seventy miles of maintained roads in the public right of way (ROW) located within the burn area. Request for Arbitration (RFA) at 2, 9.<sup>1</sup>

#### Cal OES's Approval of the County's Request for Assistance with Hazardous Tree Removal

On May 18, 2021, the Governor's Office of Emergency Service (Cal OES) approved the county's request for hazardous tree removal in the public ROW. In its approval letter, Cal OES referenced FEMA-4558-DR-CA, the official disaster declaration from FEMA which authorized "Public Assistance (categories A through G), Individual Assistance, Hazard Mitigation Statewide," as well as debris removal from private property (PPDR) "to abate immediate threats to public health and safety." RFA at 14. Cal OES further advised:

For any tree that poses a threat to the public ROW, a subject matter expert's (i.e. certified arborist or registered professional forester) opinion is required to substantiate that the tree was in fact an eligible hazardous tree. Trees that do not meet this requirement are not eligible for removal by the state because they do not pose an immediate threat to public health and safety.

*Id.* at 14-15.

Cal OES communicated two additional requirements that had to be satisfied to secure assistance with hazardous tree removal: 1) Trinity County had to identify all trees the county had the legal responsibility to remove by June 15, 2021, and 2) Cal OES's certified arborists

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<sup>1</sup> Citations to the RFA's page numbers refer to the document's .pdf page numbers.

and registered professional foresters had to assess whether a tree identified by the county qualified as an imminent threat. Cal OES emphasized that it would remove a tree only if it met both requirements. RFA at 15.

#### The County's Notice of Work Completed and Its Request to Conduct a Hazardous Tree Assessment

The county notified Cal OES by letter dated June 16, 2021, that, as required, the county “hired surveyors to complete delineation of right of way over approximately 95% of our roads where they cross private property. These marked locations are ready for the State Incident Management Team to begin evaluating which trees qualify for removal.” RFA at 16. The county explained that the remaining five percent of the ROW consisted of three parcels of land for which the county had not yet obtained deeds to confirm responsibility and one small area along a primary road that was not safe to access. Finally, the county stated that it did not mark the limits of county road ROW through lands belonging to the United States Forest Service or to the Humboldt Bay Municipal Water District. *Id.*

#### FEMA's Request for Survey Cost Justification and Determination Memorandum

Approximately six months later, the county sent another letter to Cal EOS regarding FEMA's request that the county justify the costs of surveying the ROW within the August Complex fire area. RFA at 17-19. The county reminded Cal OES that the purpose of the survey was to identify trees that were eligible for removal, consistent with Cal OES's direction in its letter of May 18, 2021. *Id.* at 17. “Most rural counties do not have comprehensive right-of-way maps available for rural roads and in particular rural roads that were created 100+ years ago.” *Id.* Moreover, since the use of a professional land surveyor (PLS) was required by state law, and the county did not have a PLS on staff due to its small size, the county contracted with two firms to complete the survey within the allotted twenty-seven day time frame. *Id.* at 18.

Until the fire, the county never had a need to conduct such a survey, which encountered significant obstacles throughout the process, including burned, missing, or melted monuments, property deeds from the 1800s, and miscalculated ROWs. Specifically, with regard to the monuments, the county reported, “[m]any monuments are very difficult to locate in the field due to age. Some are covered in dirt, some were melted in the fire, and others had been illegally removed by the public over the years.” RFA at 2-3. As a result of these impacts, the county explained that “the surveyors needed to obtain and review copies of all survey maps in the area to help them locate the survey monuments, and thus the ROW.” *Id.* at 3. The request for arbitration went on to provide details about the work that was required to comply with CAL OES's and FEMA's requirements. *Id.* The county offered

all of this information in an effort to justify the need for the survey and, thereby, support its costs. *Id.* at 19.

By letter dated October 28, 2022, the county appealed FEMA’s September 1, 2022, determination memorandum (DM), which found the costs of work related to ROW delineation for hazardous tree removal (project 163967) to be ineligible. RFA at 20. FEMA provided three reasons in support of its determination that the costs were ineligible: 1) that the work (land surveying of ROW in the burn scar and associated costs) was not “directly related to identifying and addressing the immediate threat resulting from the declared disaster”; 2) that “the [a]pplicant [was] responsible for identifying locations of incident-related damage or debris impacts”; and 3) “that [c]osts related to assessing overall impacts of an incident, locating damage or debris impacts, and conducting preliminary damage assessments are not eligible project costs.” *Id.* at 20.

The county characterized FEMA’s reasoning as “incorrect,” since the county had already located the debris in the preliminary damage assessment, and explained that the costs of locating the ROW were expended in order to identify the trees for which it was legally responsible and to prevent duplicating benefits for eligible costs. RFA at 20. The county added, “[w]e wish to stress that, *if not for this incident*, this survey work would never have been required to be completed by the County . . . The only reason this survey was carried out was to comply with the reimbursement and project implementation requirements set forth by FEMA.” *Id.* at 21. The county asked FEMA to rescind the DM and authorize project 163967 as eligible. *Id.* at 23. On behalf of the applicant, Cal OES transmitted the county’s first appeal to FEMA on December 14, 2022, which FEMA denied on April 24, 2024. The county filed its request for arbitration on June 20, 2024.

### Discussion

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§ 5121–5207 (2018), sets forth this panel’s authority to conduct arbitrations. *Id.* § 5189a(d). FEMA is statutorily authorized to provide PA “essential to meeting immediate threats to life and property resulting from a major disaster.” *Id.* § 5170b(a). In arbitration matters, the panel reviews FEMA eligibility determinations de novo. *Monroe County, Florida*, CBCA 6716-FEMA, 20-1 BCA ¶ 37,688, at 182,980.

The issue in this arbitration is whether the survey work that the county conducted to identify the public ROW in the aftermath of the fire was eligible work for the purposes of qualifying for PA funding through FEMA. “To be eligible for financial assistance, an item of work must: 1) [b]e required as the result of the emergency or major disaster event; 2) [b]e located within the designated area of a major disaster or emergency declaration; and 3) [b]e the legal responsibility of an eligible applicant.” 44 CFR 206.223(a) (2024); *see* Public

Assistance Program and Policy Guide (PAPPG) (June 2020) at 51; FEMA's Reply to Applicant's RFA at 4.

The applicant argues that the survey was necessary to satisfy the third requirement of FEMA's eligibility determination which requires that the work be the legal responsibility of the applicant. The applicant contends that without a survey, the county could not have met that requirement because it could not determine whether a particular tree was its legal responsibility. FEMA, on the other hand, contends that this work (compiling and drafting record maps for field calculations, locating survey monuments, and creating file records that delineate road ROWs in order to establish legal responsibility for hazardous trees) is not work that was required to lessen or eliminate an immediate threat or for the performance of eligible debris removal. Rather, the work was a *prerequisite* to securing Cal OES's assistance with removing hazardous trees that threatened the public ROW. FEMA further reasoned that:

[E]ven if the work was effectively required to remove the hazardous trees, administrative costs associated with surveying and mapping road rights-of-way are part of the Applicant's normal pre-disaster operations. Even though the Applicant claims that it never previously had the necessity to delineate the rights of way for the rural County roads under this claim, increased operating costs are only eligible if the costs are directly related to accomplishing specific emergency health and safety tasks as part of emergency protective measures.

RFA at 28-29 (footnote omitted). Here, FEMA determined that the survey and mapping work was only undertaken to establish the county's legal responsibility to participate in a state-wide hazardous tree removal program—not to eliminate or lessen a threat to public health and safety. 44 CFR 206.225(a)(3). As such, FEMA classified the work as an increased operating cost of the disaster and found it ineligible for funding.

It is the applicant's burden to support its application for PA funding. *City of Hattiesburg, Mississippi*, CBCA 7228-FEMA, 22-1 BCA ¶ 38,029, at 184,685. The applicant must show that work was required due to an immediate threat resulting from the declared incident or to address damage caused by the incident. PAPPG at 51-52. FEMA does not provide PA funding for damage caused by deterioration or deferred maintenance. *Id.* at 52; *City of Belle Plaine, Iowa*, CBCA 7652-FEMA, et al., 23-1 BCA ¶ 38,358, at 186,271. Here, the county attributed the challenges of locating monuments that indicate a property boundary to age, theft, obscurity due to dirt and overgrowth, and destruction by the fire. None of these circumstances, with the exception of the last one, were the direct result of the incident. Based on the evidence presented by the county, the panel cannot ascertain the number of monuments, or the percentage of the total number of monuments, that were destroyed or damaged by the fire. Nor is the county seeking costs related to the removal or

restoration of those monuments. Rather, the county seeks the costs related to the survey work conducted prior to Cal OES removing hazardous trees in the public ROW. That is the issue we must decide—whether the survey work is eligible for PA funding.

After reviewing the arbitration record, the panel finds that the costs of surveying and mapping the county's own ROW, while necessary for delineating the county's legal responsibility for hazardous trees in the public ROW, were not costs associated with lessening or eliminating the threat posed by hazardous trees. Nor are we persuaded by the county's rationale that it did not conduct mapping and survey activities in the past because it did not have the resources or on-staff expertise to perform the surveys or because it did not require this information until this incident. These reasons, though logical and economically understandable, do not shift expenses from an administrative category to an emergency category simply because a disaster prompted the county to perform the work. Maintaining these roads, to include surveying, mapping, and restoring monuments that had been damaged or lost over time, was always the responsibility of the county. Marking the property boundaries along a stretch of public roads, though urgently required to identify eligible hazardous trees in the aftermath of the fire, remained a routine maintenance task the county was responsible for performing. As such, the costs of performing that work are ineligible for PA funding.

### Decision

The county's survey costs are ineligible for PA funding.

*Kathleen J. O'Rourke*

KATHLEEN J. O'ROURKE

Board Judge

*H. Chuck Kullberg*

H. CHUCK KULLBERG

Board Judge

*Jonathan D. Zischkau*

JONATHAN D. ZISCHKAU

Board Judge