



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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June 15, 2022

CBCA 7288-FEMA, 7289-FEMA, 7304-FEMA

In the Matter of MONROE COUNTY ENGINEER

James L. Peters, Monroe County Prosecutor's Office, Woodsfield, OH, counsel for Applicant.

Anne Vitale, Ohio Emergency Management Agency, Ohio Department of Public Safety, Columbus, OH, counsel for Grantee.

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Before the Arbitration Panel consisting of Board Judges **LESTER**, **RUSSELL**, and **VERGILIO**.

This decision addresses three separate requests for arbitration from the Office of the Monroe County Engineer (Engineer, Monroe County, or Monroe County Engineer) seeking public assistance (PA) funding under section 423 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. § 5189a (2018).<sup>1</sup> In its requests, Monroe County challenges denials by the Federal Emergency Management Agency (FEMA)

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<sup>1</sup> Although the Board has not formally consolidated these three arbitration matters, the parties are the same in all three, and the cases share common factual issues and legal arguments. Because of their similarities, and because they are all ready for disposition, we have elected to resolve them together in a single decision. *See, e.g., US Sprint Communications Co.*, GSBICA 11490-P, et al., 92-1 BCA ¶ 24,622 (1991) (resolving two separate, non-consolidated cases in a single decision because of the similarity of issues presented); *Sungwoo E&C Co.*, ASBCA 61144, et al., 19-1 BCA ¶ 37,449 (same).

of PA funding for the repair of damage to roadways and/or surrounding embankments in Monroe County, Ohio, allegedly caused by severe storms that struck the area between February 5 and 13, 2019.

The first arbitration matter at issue here, CBCA 7288-FEMA, involves alleged instability of the embankment supporting the roadway at mile 4.20 of Beautiful Ridge Road (County Road (CR) 26) and was submitted for decision on the written record with a paper hearing. In the second matter, CBCA 7289-FEMA, in which the Engineer seeks PA funding to repair the road and embankment (including a seventy-eight-foot pipe piling retaining wall) at mile 1.38 of Bares Run Road (CR 22), the parties presented live testimony at an arbitration hearing to address the cause of the alleged damage. The third matter, CBCA 7304-FEMA, involves a claim of embankment instability and erosion adjacent to the roadway at mile 1.90 of Mellott Ridge Road (CR 31) and was submitted for decision on the written record with a paper hearing. FEMA does not contest that Monroe County meets the definition of a “rural area” under 42 U.S.C. § 5189a or that the amounts sought in each of these matters exceed the threshold for rural area arbitration eligibility.

After evaluating the evidence presented in each case, we find that the Monroe County Engineer has not proven that the February 2019 storms caused road damage, soil instability, or embankment and/or retaining wall damage at the roadway sections at issue in these matters and that the damage more likely than not pre-dated the February 2019 storms. Accordingly, we deny the requests for funding.

### Background

From February 5 to 13, 2019, Monroe County and nineteen other counties in Ohio were subjected to flooding and landslides as a result of severe storms. On April 8, 2019, the President declared the February 2019 incident a major disaster, DR-4424-OH, *see* 84 Fed. Reg. 19,793 (May 6, 2019), rendering PA funding available to, among others, eligible local government entities like Monroe County.

Damage at Mile 4.20 of CR 26/Beautiful Ridge Road (CBCA 7288-FEMA). The Monroe County Engineer alleges that, at mile 4.20 of CR 26 (CR 26–4.20), soil saturation from the February 2019 storms caused a slope failure impacting the integral ground beneath and adjacent to the road surface at that location. The cited section of CR 26 is a twenty-foot-wide, two-lane asphalt road with an upslope on one side and a downslope on the other. The width of the unpaved embankment on the downslope at that part of the road is narrower than at other nearby parts of the roadway, suggesting that slope “creep” or erosion occurred at some point in time. Asserting that the soil erosion was caused by the February 2019 rainfall, the Engineer requested PA funding to stabilize the sloped embankment.

FEMA created project 100230 to capture the claimed damages and the Engineer's requested repair work. After conducting a site inspection and obtaining documentation from the Engineer, FEMA issued an "Eligibility Determination Memorandum" (DM) on October 11, 2020, in which it indicated that the FEMA site inspector was unable to verify the Engineer's claim of disaster-related instability to the sloped embankment at CF 26-4.20. It specified that the Engineer had failed to provide evidence "demonstrating the sloped embankment was stable prior to the event, became unstable [as] a direct result of the disaster, and the claimed damage area is compromising the stability of the [roadway]." FEMA Exhibit 3 at 72. Based upon those findings, FEMA determined that slope stabilization was not eligible for PA funding.

On December 7, 2020, the Engineer submitted its first appeal for project 100230 to the grantee/recipient, the Ohio Emergency Management Agency (Ohio EMA). In its submission, the Engineer provided pre-incident aerial imagery and documentation that, according to the Engineer, showed that, before February 2019, "the condition of the site was stable, maintained and without damage . . . [which] demonstrat[es] that damage was caused by the event, and was not pre-existing." FEMA Exhibit 3 at 80. The grantee/recipient forwarded that appeal to FEMA on January 27, 2021, along with its recommendation that FEMA approve \$363,530 for site stability work. The grantee/recipient indicated that photos of the area, which it stated showed a drop in the shoulder at the area of slope instability, provided visual evidence of a landslide having occurred adjacent to the roadway.

By decision dated September 29, 2021, FEMA's Region V Acting Regional Administrator denied the first appeal, finding that "the Applicant has not provided sufficient documentation or evidence demonstrating that the Facility has been damaged or made unstable by a landslide or slope failure triggered by the declared disaster, or that the claimed embankment damages were a direct result of the declared disaster in accordance with 44 C.F.R. § 206.223(a)(1)." FEMA Exhibit 1 at 1. FEMA relied in part on an expert analysis prepared at FEMA's request by Dr. Timothy Stark, who visited the site and found no evidence of a landslide, although he saw some slope erosion and movement. He reviewed infrared aerial images taken in 2014 and light detection and ranging (LiDAR) aerial images taken in March 2018 before opining that well before the February 2019 rainfall, significant slope erosion and movement had already occurred at CR 26-4.20. Dr. Stark also opined that the manner in which trees beneath the embankment were shaped evidenced slope creep and erosion over a long period of time pre-dating February 2019. FEMA concluded that "the documentation in the administrative record shows that the claimed damages and instability are not attributable to the declared disaster, but rather are the result of prior slope movement and pre-existing conditions at the damage site." *Id.* at 6.

The Monroe County Engineer received the first appeal decision by certified mail on November 2, 2021, and timely submitted an application for arbitration to the Board on

December 29, 2021. The Board docketed that application as CBCA 7288-FEMA. The parties have submitted that matter for decision on the written record pursuant to Board Rule 611 (48 CFR 6106.611 (2020)).

Damage at Mile 1.38 of CR 22/Bares Run Road (CBCA 7289-FEMA). The roadway at mile 1.38 of CR 22 (CR 22–1.38) is a two-lane asphalt road on a natural slope that is supported on the downslope by an adjacent pipe piling retaining wall. The Monroe County Engineer requested PA funding for repairs to the road surface and retaining wall at that location and stabilization of the sloped embankment adjacent to the roadway, asserting that the February 2019 rainfall caused that damage.

FEMA created project 108347 to capture the claimed damages and the Engineer's requested repair work. After conducting two site inspections and obtaining documentation from the Engineer, FEMA issued a DM on October 23, 2020, in which it recognized that an incident like the February 2019 rainfall "may cause minor damage to roads that result in damage similar to that which may [already have] occur[red] over time from other causes" and that "[d]istinguishing between pre-existing damage and damage caused by the incident is often difficult." Applicant Exhibit 1 at 3. In evaluating Monroe County's claim of damage to the road itself, FEMA recognized that, "[f]or the repair of this type of damage to be eligible, the Applicant must demonstrate that the damage was directly caused by the incident" in question, rather than from the cumulative effect of prior events, and that Monroe County had not made that demonstration. *Id.* FEMA reported that "[s]ite inspectors observed fatigue cracking, tension crack, surface washout and previous surface patching" on the road, all of which are similar to damages that result from "deferred maintenance, the age of the road, traffic flow, and/or frequent rain." *Id.* As for Monroe County's request for funding to stabilize the embankment adjacent to the road, FEMA could not find evidence that the February 2019 rainfall triggered either a landslide or slope instability. Accordingly, FEMA determined that "the work to repair the [road] and stabilize the sloped embankment is ineligible" for PA funding. *Id.*

On December 9, 2020, the Engineer submitted its first appeal for project 108347 to the grant recipient, the Ohio EMA. In its appeal submission, the Engineer provided pre-incident aerial imagery and documentation that it believed showed the site to be stable and well-maintained prior to the February 2019 incident. The recipient forwarded that appeal to FEMA on February 8, 2021, while complaining that FEMA was applying an impossible standard of proof by requiring more than the types of maintenance records, purchase invoices, and activity logs that a local government might reasonably maintain as proof of causation. The recipient recommended that FEMA approve \$191,089 in PA funding for the road, retaining wall, and site stability work based upon the evidence that the Engineer had been able to provide.

By decision dated November 8, 2021, FEMA's Region V Acting Regional Administrator denied the first appeal, finding the Engineer's evidence insufficient to establish that the February 2019 rainfall caused the damage at the site and that the damage did not pre-exist the rainfall. The Engineer received the first appeal decision by certified mail on November 16, 2021, and timely submitted an application for arbitration to the Board on December 29, 2021.

The Board docketed that application as CBCA 7289-FEMA. The Board subsequently conducted an arbitration hearing in CBCA 7289-FEMA on April 19, 2022, at which the parties presented three witnesses: (1) FEMA presented the testimony of its expert, Dr. Stark; (2) Monroe County presented the testimony of its primary engineer, Amy Zwick; and (3) the grant recipient presented the testimony of Laura Adcock, Disaster Recovery Branch Chief, Ohio Department of Public Safety. Photographic evidence presented at the hearing plainly shows some movement in the vertical pipes supporting the pipe piling retaining wall, soil pushing against the metal barriers in the retaining wall in a manner that has caused the metal pieces slightly to separate from one another, slight separation of guardrails that were once connected together with now-missing bolts, and erosion above and around the far end of the wall. The testimony at the hearing focused mainly on whether damage to the pipe piling retaining wall and guardrail at the site, rather than the roadway itself, pre-dated the February 2019 disaster, although some testimony addressed cracking in the roadway.

Damage at Mile 1.90 of CR 31/Mellott Ridge Road (CBCA 7304-FEMA). The two-lane asphalt roadway at mile 1.90 of CR 31 (CR 31-1.90) is approximately twenty-five-foot wide with an upslope on one side and a twenty-degree downslope on the other. At some point between October 2014 and October 2015, gravel was poured in a large area on the downward slope immediately adjacent to the roadway for reasons that are unexplained in the record. In addition, at some point prior to February 2019, three vertical utility-gas-line-marking poles were placed on the downward slope a few feet from the roadway.

After the February 2019 rainfall, the Engineer requested PA funding of \$609,000 for work to repair and stabilize the embankment at this location. To establish movement and erosion of the embankment, the Engineer provided photographs showing that the three gas-line markers have noticeably shifted so that at least two of them are no longer vertical but are tilted, one of them significantly. The Engineer also cited to a significant dip or leveling in the roadway as evidence of a landslide. Because of the amount of erosion, the Engineer asserted that it could not return the embankment to its pre-disaster condition but instead would stabilize the embankment by installing drilled shaft H-piling with concrete lagging. It is unclear whether the Engineer's request included funding to repair alleged damage to the roadway itself or was limited only to the embankment.

FEMA created project 100368 to capture the claimed damage. It conducted site inspections at this section of roadway in August and October 2019. At that time, the FEMA inspector reported that he saw no damage to the roadway itself, which Monroe County had (since the February 2019 event) already repaved, and that the roadway was fully open to traffic. The inspector identified erosion along 225 linear feet of the adjacent embankment, although with no indications of instability within the vicinity of the roadway. FEMA issued a DM on September 28, 2020, denying the Engineer's request for PA funding for project 100368. It determined that, although there was evidence of erosion and slippage at the embankment (inclusive of the leaning gas line markers), photographs of the roadway area from 2017 – two years before the February 2019 rainfall – showed that the gas-line markers were already tilted, the dip or settlement of the roadway to which the Engineer referred had already happened, and that there were already significant erosion issues by that point in time.

The Engineer submitted a first appeal to the Ohio EMA on November 5, 2020, which forwarded the appeal to FEMA on December 23, 2020. In response, FEMA requested copies of any geotechnical studies, slope stability analyses, or subsurface explorations of this embankment and was informed that Monroe County lacked the resources for such studies. By decision dated November 29, 2021, FEMA's Region V Deputy Regional Administrator denied the first appeal, finding insufficient evidence to demonstrate that the facility was damaged or made unstable by a landslide or slope failure triggered by the declared disaster. The Engineer received the first appeal decision by email on November 29, 2021, and timely submitted an application for arbitration to the Board on January 22, 2022. The Board docketed that application as CBCA 7304-FEMA. The parties have submitted that matter for decision on the written record pursuant to Board Rule 611.

## Discussion

### Standard of Review

In a recent decision resolving two earlier arbitration requests from the Engineer, we described the standard for evaluating whether a particular roadway project is eligible for PA funding as a result of damage caused by a presidentially-declared disaster:

Section 406 of the Stafford Act authorizes FEMA to provide assistance for “the repair, restoration, reconstruction, or replacement of a public facility damaged or destroyed by a major disaster.” 42 U.S.C. § 5172(a)(1)(A). Public facilities eligible for assistance can include local public roads and highways, *id.* § 5122(10)(B); 44 CFR 206.221(h) (2019), and include the roadways' surfaces, bases, shoulders, and drainage structures (including culverts). *See* Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018) at 115. Nevertheless, PA funding is available only if the damage to the

roads was the result of a declared disaster. 42 U.S.C. § 5172(a)(1); *see* 44 CFR 206.223(a)(1) (“To be eligible for financial assistance, an item of work must . . . [b]e required as the result of the emergency or major disaster event.”). “Prior arbitration panels of the Board have construed this requirement to mean that ‘cause and effect [for any damage claimed] must be established.’” *City of New Orleans*, CBCA 5684-FEMA, 18-1 BCA ¶ 37,005 (quoting *City of Kenner*, CBCA 4086-FEMA, 15-1 BCA ¶ 35,875). It is the applicant’s burden to establish that the declared disaster caused the claimed damage to the public facility. *City of Kenner*; PAPPG at 9, 19; *see* PAPPG at 133 (“[I]t is the Applicant’s responsibility to substantiate its claim as eligible.”).

*Monroe County Engineer*, CBCA 7251-FEMA, et al., 22-1 BCA ¶ 38,061, at 184,798-99.

Determining causation for the damage at the roadway sites at issue can, in many ways, be more difficult than for damage resulting from many other types of disasters. If a tornado strikes and demolishes a building, there is little doubt that the tornado caused the building’s destruction. The type of erosion and slope instability at issue here, though, does not necessarily happen all at once as the result of a single event. It can, but it might also develop over time through the cumulative effect of numerous heavy storm events that progressively cause seepage, soil instability, and growing erosion.

As we recognized in our prior *Monroe County Engineer* decision, although the February 2019 rainfall that forms the basis of the disaster declaration at issue here was higher than normal for Monroe County, the County received higher-than-normal rainfalls in *numerous* months in 2018, 2019, and 2020, some with even *greater* rainfall amounts than in February 2019. *Monroe County Engineer*, 22-1 BCA at 184,799. Was it the February 2019 rainfall event that caused damage to the roadways at issue in these arbitration matters? Or was the damage caused by the cumulative effect over time of numerous storms and road usage that pre-date the February 2019 damage? It is the applicant’s burden to show that it was the declared disaster, rather than the cumulative effect of earlier events, that caused the damage. *St. Augustine High School, Inc.*, CBCA 6530-FEMA, 20-1 BCA ¶ 37,501, at 182,181.

#### Mile 4.20 of CR 26 (Beautiful Ridge Road)

The parties do not dispute that the soil embankment adjacent to CR 26–4.20 shows signs of erosion. The only dispute here is whether that erosion was caused by the February 2019 rainfall. Photographic evidence in the record shows that significant erosion had already occurred before the February 2019 disaster. Because the declared disaster did not cause the claimed damage, the embankment restoration project that the Engineer proposes is, pursuant

to 42 U.S.C. § 5172(a)(1), ineligible for PA funding. Even if it were probable that the February 2019 rainfall somehow added to the pre-existing embankment erosion and instability, PA funding would not be available in light of Monroe County's failure to take earlier corrective action to address the pre-disaster erosion. PAPPG at 19; *see City of Liverpool*, CBCA 6593-FEMA, 20-1 BCA ¶ 37,497, at 182,169 ("FEMA does not provide PA funding for repair of damage caused by deterioration, deferred maintenance, failure to protect the facility from further damage, or negligence.").<sup>2</sup> To the extent that the Engineer is claiming that cracking in the roadway was caused by the February 2019 rains, we deny PA funding for those repairs for the same reasons that we explained in our prior decision in *Monroe County Engineer*, 22-1 BCA at 184,799.

#### Mile 1.38 of CR 22 (Bares Run Road)

The evidence in the record makes clear that the pipe piling wall at this location has shifted to a certain degree and that there has been erosion around the edge of the wall. In support of its position that it was the February 2019 rainfall that caused that damage, as well as other roadway damage at CR 22–1.38, the applicant elicited testimony that, prior to February 2019, the Engineer's staff did not notice cracking in the roadway, erosion, loss of materials, or guardrail separation. It was only while checking the roadways following the February 2019 rains, the Engineer asserts, that such issues were discovered. Yet, the Engineer acknowledges that it had performed maintenance, including asphalt patching and chip sealing, on the roadway at CF 22–1.38 on several occasions in the years preceding the February 2019 rainfall.

Reviewing the evidence of record, we cannot find that the roadway and embankment issues here, including shifts in the pipe piling wall, suddenly occurred in February 2019. Photographs of the wall and the roadway, including pre-disaster photographs that FEMA introduced from sources like Google Earth, make clear that the issues with the wall had to have been the cumulative effect of many years of periodic heavy storms and roadway use or, perhaps, just normal settling given the construction. Although the Engineer's staff may not have noticed problems with the wall prior to February 2019, given the vegetation growing up against the retaining wall that would hide its issues and the lack of easy visibility of the wall from the roadway, the photographs do not indicate that the wall suddenly and dramatically shifted specifically in or immediately after February 2019. Because these issues

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<sup>2</sup> Given the Engineer has not established that slope erosion was caused by the February 2019 disaster, we need not consider FEMA's alternative argument that only the roadway itself, and not the adjacent embankment, is a facility that could be eligible for PA funding.



pre-dated the February 2019 rainfall, we cannot find entitlement to PA funding for the damage at CR 22–1.38.

The grant recipient points to records showing that, overall, the damage caused by the February 2019 rainfall was originally estimated at over \$40 million, an estimate which indicates the severity of the storms that hit Monroe County at that time, and that the damage from those storms was sufficient for the President to declare the event a disaster. The mere fact that a disaster hit Monroe County does not mean, however, that this *particular* stretch of roadway and this *particular* retaining wall were damaged as a result of this *particular* event. It is the applicant's burden to tie the damage to the specific disaster, and we cannot find that nexus in the record here.

The grant recipient also complains that FEMA's demands for specific proof of the pre-disaster condition of the incident site go too far and are impossible for a small locality with a small budget to meet. Because of the nature and volume of roadways in Monroe County, the recipient argues, there is no way for the locality to maintain up-to-date records and photographs of the condition of every mile of every roadway at all times or to support claims of embankment instability with geotechnical studies and subsurface explorations. Such a requirement, it asserts, conflicts with the following PAPPG provision:

When evaluating eligibility of reported road damage, in addition to evaluating how the incident caused the damage, FEMA reviews maintenance records or documentation establishing that the Applicant has a routine maintenance program. In the absence of maintenance records, FEMA reviews material purchase invoices and activity logs and inspects other sections of the Applicant's road system to confirm the performance of normal maintenance activities.

PAPPG at 116. FEMA is acting consistently with this provision. Although it requested any geotechnical studies that the Engineer might have, it did not make such studies a condition of PA funding approval. In the end, it is the applicant's burden to present evidence to "distinguish between the pre-disaster conditions of the roads and the condition of the roads following the disaster" to show that the damage being claimed did not pre-exist the declared disaster. *City of Lakeport, California*, CBCA 6728, 20-1 BCA ¶ 37,671, at 182,885-86. The PAPPG provision that the recipient references provides for various types of documentation that can be produced as proof of a routine maintenance program. The production of detailed maintenance records is by no means the exclusive way of showing the existence of such a program. Invoices for roadway repair work and/or activity logs showing repair work might also be sufficient proof. These are the types of documents that even a small local public roads department relying on local government funding should be able to produce. The cited PAPPG provision does not purport to limit FEMA's ability to look to evidence beyond the

applicant's maintenance records or to evaluate and make inferences relating to other evidence that FEMA obtains from whatever source.

At the hearing, FEMA's expert introduced photos of this particular stretch of roadway that he had collected from Internet sources, which showed that shifts in the wall had already occurred prior to February 2019. We see nothing in the PAPPG that would preclude FEMA from searching for and relying upon whatever evidence can help in evaluating a PA funding request.

Both the Engineer and the grant recipient complain that, in our prior *Monroe County Engineer* decision, we placed too much weight on the fact that the amount of rain that fell in Monroe County in February 2019 was not so unusual as to raise saturation levels in the area to something uncommonly high. They argue that there is no minimum or maximum amount of rainfall necessary to cause slope instability and that the rainfall amount should not be the sole factor for determining whether a site was damaged by a declared disaster. We do not disagree with the Engineer on those points. That the rainfall amounts in Monroe County in February 2019 were not atypical does not preclude a finding of causation, but it is a *factor* that can be considered in determining whether the February 2019 event, rather than an earlier event or a series of earlier events, actually caused the damage. Greater amounts of rain fell in Monroe County in February 2018 (7.72 inches), April 2018 (7.2 inches), June 2018 (9.45 inches), and September 2018 (10.77 inches) than the 6.49 inches that fell in February 2019. The Engineer was unable to identify anything about the February 2019 event, as it related to this particular site, that would have caused damage when earlier rainfalls did not, and it did not establish that it was the February 2019 event that actually caused the damage.

#### Mile 1.90 of CR 31 (Mellott Ridge Road)

FEMA does not dispute that there has been erosion at this location. Nevertheless, the evidence that FEMA's expert, Dr. Stark, included as part of his expert report credibly establishes that the erosion pre-dated the February 2019 rainfall event. A photograph from 2017 clearly shows that the gas-line markers that were originally vertical were already tilted by that point and that a dip or settlement in the roadway that the Engineer indicated suggested a landslide was already there, indicating that the erosion and any slope instability about which the Engineer is complaining had already begun by then. Further, comparing Google Earth photographs taken in October 2013 and October 2015, it is clear that a large erosion gully at the embankment that did not exist in October 2013 had developed by October 2015 and that Monroe County poured a large amount of gravel fill onto the embankment adjacent to the roadway sometime during that two-year period. Monroe County has not suggested a basis for this extra gravel, but it is clear that erosion issues were already occurring at this time. Monroe County cannot use the February 2019 rainfall to seek monies

to remedy long-term erosion issues that already existed at the time of the February 2019 rain event but that Monroe County had failed adequately to address.

To the extent that the Engineer is claiming that the February 2019 event damaged the roadway itself by causing tension cracking, the record supports Dr. Stark's conclusion that any cracking on the roadway involved fatigue cracking caused by heavy traffic rather than storm-related damage. That conclusion is further supported by the absence of any roadway failure after CR 31-1.90 was repaved following the February 2019 rainfall.

### Decision

For the foregoing reasons, we deny the Monroe County Engineer's requests for PA funding in these three arbitration matters.

*Harold D. Lester, Jr.*

HAROLD D. LESTER, JR.  
Board Judge

*Beverly M. Russell*

BEVERLY M. RUSSELL  
Board Judge

**VERGILIO**, Board Judge, writing separately.

Although arbitration is permitted by statute, not every denial of a request for public assistance merits invoking the process. After a thorough review, I agree with the panel but would deny the applications much more summarily than do the other panel members. The record developed here simply does not compel the conclusion that the documented damage resulted from the declared disaster so as to qualify for public assistance.

FEMA gets to set and apply standards for eligibility. Those used by FEMA here are reasonable, rational, and not arbitrary; the agency's analysis is supported factually and legally. It is immaterial that the applicant and grantee would prefer a more lenient test, which could render eligible any damage that may be evident after a disaster. My sense is that the applicant's extended pursuit of recovery reflects a waste of resources (time and money) of all involved.

*Joseph A. Vergilio*  
JOSEPH A. VERGILIO  
Board Judge