



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 6, 2026

CBCA 8952-FEMA

In the Matter of LOS ANGELES COUNTY, CALIFORNIA

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Christiana Cooley, 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 **LESTER**, **VERGILIO**, and **KULLBERG**.

LESTER, Board Judge, writing for the Panel.

Applicant, Los Angeles County, California (Los Angeles County or the County), seeks arbitration under the Stafford Act, 42 U.S.C. § 5189a (2024), of two sets of costs. The first set of costs that the County seeks here was the subject of a first-level appeal decision that the Federal Emergency Management Agency (FEMA) issued in response to the County's request for public assistance (PA) funding for emergency work to install and monitor a sewer bypass necessitated by a slope failure in a residential area, which FEMA denied for lack of evidence of the County's legal responsibility for the work. The second set of costs relates to a second

sewer bypass for which the County paid but that the County intentionally excluded from its first-level appeal.

Based upon evidence and information that the County has presented in this arbitration, FEMA now agrees that the County has established its legal responsibility for the first sewer bypass work, resolving any dispute about work eligibility, and it asks that we return this matter to FEMA for a cost eligibility analysis. As for the second sewer bypass costs, FEMA objects to the panel's consideration of them because they were not a part of the first-level appeal. The County believes that the panel can consider and resolve its entitlement to funding for both the first and second sewer bypass projects, and it objects to the return of this matter to FEMA. It wants the panel to decide cost eligibility in full for both projects, even though FEMA has not previously considered cost eligibility in any depth for the first project or at all for the second project.

In light of FEMA's new analysis, the County has established that the first sewer bypass work is eligible for PA funding. FEMA must now conduct an additional review to resolve remaining PA funding eligibility issues. Specifically, FEMA has not yet conducted a thorough cost eligibility analysis, and the County has identified no basis upon which the panel could legitimately and effectively conduct such an analysis in the first instance. Now that this arbitration is resolved, FEMA should undertake that effort. With regard to the County's request that we resolve PA funding issues involving the second sewer bypass, which were not a part of the first-level appeal giving rise to this arbitration, we lack authority to consider that funding request.

Background

I. The County's Response to the Disaster

From February 21 through July 10, 2023, severe winter storms, straight-line winds, flooding, landslides, and mudslides caused extensive damage in California. On April 3, 2023, the President declared a major disaster (DR-4699-CA) authorizing public assistance (PA) funding. *See* <https://www.fema.gov/disaster/4699> (last visited Oct. 6, 2026).

Peartree Lane is a private road inside a gated community within the City of Rolling Hills Estates in Los Angeles County, California. On July 8, 2023, significant land movement caused slope failure on Peartree Lane, leading to the evacuation of twelve homes. FEMA Exhibit 2 at 3. Over the course of the next several days, continuing slope failure caused additional damage to the sewer main at Peartree Lane, ultimately affecting more than 200 homes. *See id.*

Beginning July 12, 2023, Los Angeles County performed emergency protective measures to protect sewer infrastructure and to prevent sewage spills, including the installation and monitoring by Los Angeles County crews of an initial sewer bypass system between manholes to divert sewage flows and to prevent spills while slope stabilization was assessed. FEMA Exhibit 2 at 1-2. The County used its own crews to monitor this first sewer bypass from July 12, 2023, through early August 2023, until a private geotechnical company hired by the homeowners' association (HOA) of the gated community took over the monitoring and maintenance responsibilities. *Id.* at 2-3. On August 8, 2023, the HOA's private geotechnical company punctured the sewer main at another location, cutting off sewer access for other homes. *Id.* at 2. On August 9, 2023, a different third-party contractor, through a contract with Los Angeles County, installed a second sewer bypass to manage the damage resulting from the puncture and allow residents continued sewer access. Request for Arbitration (RFA) Exhibits 3 at 3, 11 at 1. The two sewer bypasses continued in operation until the sewer damage caused by the private geotechnical company was repaired in November 2023, after which the second sewer bypass was released. RFA Exhibits 3 at 3, 11 at 99-107. The first sewer bypass continued in use through February 2024, at which point it was released. RFA Exhibit 3 at 3.

Los Angeles County used its own force account labor (FAL) and force account equipment (FAE) to set up the first sewer bypass system, and it used its own FAL to provide monitoring support until early August 2023, after which the HOA's private geotechnical contractor temporarily took over monitoring duties. *Id.* The County paid a different contractor to install and monitor the second sewer bypass. *Id.*

II. The County's Initial Request for PA Funding

In December 2023, Los Angeles County submitted a Streamlined Project Application (Grants Manager Project (GMP) 740819) for FAL, FAE, and contract costs used to set up the bypass system and to perform twenty-four-hour-a-day monitoring, but it did not specify at that time what its costs were or make clear whether the application covered both the first and the second sewer bypass or, instead, related only to the first bypass. On May 8, 2024, FEMA sent an official communication to the recipient, the California Governor's Office of Emergency Services (Cal OES), regarding the importance and urgency of the County's submission of documentation and information necessary to substantiate the eligibility of the project and asking for assistance in obtaining complete supporting documentation. *See* FEMA Exhibit 1 at 1. Because the County had still not submitted the documentation several months later, FEMA contacted Los Angeles County directly on August 13, 2024, to ask for information to validate GMP 740819, including documentation on work completion, project costs, insurance, and other required information. On December 30, 2024, FEMA again asked Cal OES for assistance in obtaining that documentation from the County. *See id.* at 1-2.

FEMA reports that no such documentation was provided, and, on July 17, 2025, FEMA issued a determination memorandum (DM) denying PA funding because of a lack of documentation. *Id.* at 3.

III. The County's First-Level Appeal

On September 15, 2025, Los Angeles County submitted a first-level appeal to Cal OES, identifying a total project cost of \$710,494.88 (inclusive of \$52,486.56 in FAL costs, \$5751.82 in FAE costs, and \$652,256.50 in contract costs) for which it wanted PA funding. RFA Exhibit 1. The requested costs covered work associated only with the first sewer bypass. The County did *not* include in its first-level appeal an additional \$226,867.77 in costs incurred in connection with the *second* bypass, which was necessitated by the private geotechnical company's puncture of the sewer. RFA at 23; RFA Exhibit 3 at 5; FEMA Exhibit 2 at 2. With the appeal, the County provided photographs, videos, work reports, staff slips, FAL timesheets and wage statements, legal responsibility documents, and contract and procurement documents. RFA Exhibit 1 at 1-2; *see* RFA Exhibit 3 at 4 (discussing the applicant's submission). Cal OES forwarded the appeal to FEMA, with a supporting letter, on November 4, 2025. RFA Exhibit 2.

In its first-level appeal decision, issued April 24, 2026, FEMA indicated that, "[t]o be eligible [for PA funding], work must be the legal responsibility of the applicant requesting assistance." RFA Exhibit 3 at 4. It stated that, "[t]o determine legal responsibility for emergency work, FEMA evaluates whether the applicant requesting the assistance either had jurisdiction over the area or the legal authority to conduct the work related to the request at the time of the incident." *Id.* FEMA represented that the submitted paperwork did not make clear whether the County was responsible for the sewer at Peartree Lane or whether, instead, the HOA for the private gated community was the responsible entity. *See id.* at 4-5. FEMA determined that, "[f]rom the documentation provided with this appeal, the Applicant has not demonstrated it has legal responsibility for the claimed work." *Id.* at 5. It then found that, "[e]ven if the Applicant had established legal responsibility for the work, FEMA is unable to determine from the Applicant's supporting documentation the costs that tie directly to any potentially eligible emergency work, separate from permanent or ineligible work." *Id.* FEMA acknowledged that the County had removed "costs associated with the third-party act"—that is, costs associated with the second sewer bypass necessitated by the HOA contractor's puncture of the sewer—from its PA funding request but that FEMA was unable to tie costs that were being claimed for the first sewer bypass to eligible work or understand how the County segregated costs associated with the second bypass from the costs being sought for the first bypass. *Id.* at 5-6. Based upon that rationale, FEMA denied the County's first-level appeal. *Id.* at 6.

IV. Proceedings Before the Board

The County filed its RFA with the Board on June 26, 2026, seeking PA funding of \$937,362.65, *see* RFA at 4, an amount higher than what it sought in the first-level appeal. It asserted in its RFA that it should be granted PA funding not only for the first sewer bypass costs that it sought in the first-level appeal, the amount of which it revised slightly downward from the original amount sought to \$707,951.57, but *also* an additional amount of \$229,411.08 for its second sewer bypass costs, which it had intentionally excluded from its first-level appeal. *Id.* at 3-4, 22-23; *see* RFA Exhibit 10 at 3-4, 6. To establish its legal responsibility for the sewer system in question, the County provided with its RFA a declaration from the Deputy County Counsel for Los Angeles County in which he discussed in detail state law requirements imposed on the County and legal actions taken by the County in the past that, prior to the incident in question, placed legal responsibility for the sewer system in dispute on the County. RFA Exhibit 7 ¶¶ 6-15; *see* RFA at 11-13. Later in its RFA, the County argued that FEMA had denied its first-level appeal in part because of an inappropriate belief that the County is barred from receiving PA funding “simply because it received or had access to external funding sources,” RFA at 14, although we do not see that issue clearly demarcated in the first appeal decision. It asserted that the fact that the County might, at some point in the future, be able to recover some of its sewer costs from the private geotechnical contractor that punctured the sewer at a nearby location, which caused some of the claimed costs, is no bar to its eligibility for PA funding. It acknowledged that it would not be able to retain FEMA monies for costs that it was able to recover elsewhere, understanding that it cannot obtain duplicate benefits, but it argued that FEMA was wrong to bar *all* PA funding simply because it might, at some later date, obtain some recoveries. *Id.* at 14-23.

After reviewing the RFA and the evidence that the County provided with it, FEMA responded on August 14, 2026, segregating the County’s request into two categories but using slightly different dollar figures than what the County had identified in the RFA: (1) \$710,494.88 for the first sewer bypass costs that were the subject of the first-appeal decision; and (2) the additional request for \$226,867.77 for the second sewer bypass. Because, in the remaining briefing in this matter, the County, like FEMA, referenced and relied on the \$710,494.88 and \$226,867.77 figures that FEMA cites rather than the \$707,951.57 and \$229,411.08 figures identified in the RFA, we will, in the remainder of this decision, reference \$710,494.88 and \$226,867.77 as the County’s requested funding amounts, even though they do not match the dollar amounts identified in the RFA.

With regard to the County’s request for \$710,494.88 for the first sewer bypass, FEMA informed the panel in its response brief that the “new documentation” that accompanied the RFA “resolves the legal responsibility dispute” that formed the basis of its first-appeal

decision. FEMA Response Brief at 1. It “asks the Panel to return GMP 740819 to FEMA for project formulation and further cost eligibility and compliance review.” *Id.* at 1-2. With regard to the request for an additional \$226,867.77, FEMA represented that those costs “are not properly before the Board because FEMA has not yet issued an eligibility determination” for them. *Id.* at 2. It asked us to decline to review those costs. *Id.*

In its reply brief, filed August 31, 2026, the County told us that it does not want us to return this matter to FEMA for a cost-eligibility review. To the contrary, it asserts that, because FEMA now does not contest its eligibility for \$710,494.88 of costs for the first sewer bypass (a figure reflecting the amount that the County sought during the first-level appeal but not incorporating the reduction to that amount in its RFA), we can and should award the County that amount *plus* the additional \$226,867.77 that it now seeks for the second sewer bypass. *See* Applicant’s Reply Brief at 8 (“FEMA has now agreed to \$710,494.88 of the total emergency work costs, leaving \$226,867.77 remaining in dispute.”).

FEMA submitted a brief surreply on September 14, 2026, reiterating its request to return the County’s original \$710,494.88 PA funding request to FEMA for a cost eligibility review and its position that, with regard to the additional \$226,867.77 being sought, we cannot review those costs because they were not a part of the first-level appeal that preceded the arbitration.

On September 24, 2026, after both the County and FEMA had informed us that they wanted a decision on the written record, without a hearing, we closed the record in this matter.

Discussion

I. The County’s \$710,494.88 Funding Request for the First Bypass Costs

In its first-level appeal decision, FEMA identified two reasons for denying the County’s request for \$710,494.88 in PA funding for costs associated with the installation and monitoring of the first bypass: (1) that the County had not established that it, rather than the HOA, was legally responsible for maintaining the sewer at Peartree Lane; and (2) that, “[e]ven if [it] had established legal responsibility for the work, FEMA is unable to determine from the Applicant’s supporting documentation the costs that tie directly to any potentially eligible emergency work, separate from permanent or ineligible work.” RFA Exhibit 3 at 5.

FEMA tells us that the documentation provided with the RFA adequately establishes the County’s legal authority and responsibility for the sewer bypass work, showing that the sewers were annexed into Los Angeles County’s Consolidated Sewer Maintenance District

in 1977. FEMA's Response Brief at 6-7. It asks that, with that issue resolved, we return this matter to FEMA "to formulate the project and perform the additional required cost eligibility and compliance reviews." *Id.* at 7. The County objects. It thinks that the panel should either (1) determine that FEMA, by acknowledging that the County has legal responsibility for the work, has admitted the County's entitlement to the full \$710,494.88 for the first sewer bypass costs that it is seeking; or (2) make its own determination of the dollar amount that the County should receive for the first sewer bypass. *See Applicant's Reply Brief* at 6-10.

The County propounds a position based upon a fundamental misunderstanding of the process through which PA funding is typically authorized. Before an applicant can obtain PA, FEMA must find that four eligibility requirements are satisfied: (1) applicant eligibility; (2) facility eligibility; (3) work eligibility; and (4) cost eligibility. Public Assistance Program and Policy Guide (PAPPG) at 38 (June 2020). "FEMA refers to these components as the building blocks of an eligibility pyramid." *Id.* "FEMA evaluates each building block to determine eligibility, starting at the foundation (Applicant)," then moving to facility eligibility, followed by work eligibility, "and working up to cost at the top of the pyramid." *Id.* When funding is sought for emergency work, as here, another element—a determination of whether there was an "immediate threat" necessitating emergency measures—is added to the middle of the pyramid (after facility eligibility but before work eligibility). *Id.* at 97. Here, applicant eligibility, facility eligibility, and the existence of an immediate threat are not in dispute. Further, FEMA now agrees that the County has legal responsibility for the first bypass sewer work, which was necessitated by the disaster, meaning that the work eligibility requirement for this project is satisfied. *See id.* at 51-54. At this point, the only eligibility requirement that remains is the one at the top of the pyramid: cost eligibility, the "final component evaluated for eligibility." *Id.* at 65.

In its reply brief, the County asserts that FEMA has acknowledged in its response brief that the County is entitled to full PA funding in the amount of \$710,494.88, eliminating any need to return this matter to FEMA for any further review, and that we should direct FEMA to provide that funding. *See Applicant's Reply Brief* at 8 ("FEMA has now agreed to \$710,494.88 of the total emergency work costs."). The County overstates FEMA's concession. Because FEMA has not yet conducted a complete cost eligibility analysis, there is no "agreement" by FEMA that the County will receive funding for all dollars claimed. In conducting a cost eligibility analysis, FEMA will have to determine whether, among other things, the costs claimed are directly tied to the performance of eligible work, are adequately documented, are reduced by any applicable credits (such as insurance proceeds or salvage value), and were reasonable and necessary to the performance of the eligible work. PAPPG at 65. The County cannot circumvent that necessary step in the eligibility determination process by asking the panel essentially to enter judgment on all claimed costs in its favor.

Further, it is not the Board's place to conduct a cost eligibility review in the first instance. Although the County argues that, in its first-level appeal decision, FEMA actually decided (and denied) cost eligibility, making it appropriate for review here, *see* Applicant's Reply Brief at 6-8, there is no record before the panel that would allow us to conduct the kind of detailed cost eligibility analysis that FEMA would undertake through its normal administrative review process. The County specifically asks us to make findings about the extent to which FEMA could reduce PA funding by recoveries that the County might receive from the third-party HOA contractor, against which the County has already filed a claim, for damage to the sewer that the contractor caused. *Id.* at 9-10. It tells us, though, that, at the present time, it has yet to recover any damages from the contractor. *Id.* at 9. In addition to the fact that the County's interpretation of the first-appeal decision—as being based on a duplication of benefits issue—appears to be a stretch from what was actually decided, we have no basis for making advisory rulings on issues that may, or may not, become relevant when FEMA conducts its cost eligibility analysis. *See School Board of Bay County, Florida*, CBCA 8432-FEMA, 25-1 BCA ¶ 38,903, at 189,377 (“The ripeness doctrine prevents tribunals from ‘entangling themselves in abstract disagreements’ before ‘an administrative decision has been formalized and its effects felt in a concrete way.’” (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148 (1967), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977))). We trust that, as FEMA continues its analysis of the County's funding request, it will undertake an appropriate cost eligibility analysis, the results of which the County can challenge, if it is not satisfied with the result, through the processes allowed by the Stafford Act and under 44 CFR 206.206 (2024).

Thus, with the work eligibility issue resolved, FEMA must now conduct further analysis to resolve remaining issues relating to the County's request for funding associated with the first sewer bypass, including a cost eligibility analysis. *See City & County of San Francisco, California*, CBCA 8853-FEMA, 26-1 BCA ¶ 39,125, at 190,682-84 (returning matters to FEMA for further development and analysis); *Sevier County, Tennessee*, CBCA 8292-FEMA, 25-1 BCA ¶ 38,877, at 189,227 (same); *Pedernales Electric Cooperative, Inc.*, CBCA 8383-FEMA, 25-1 BCA ¶ 38,867, at 189,154, 189,158 (same); *Charlotte County, Florida*, CBCA 8405-FEMA, 25-1 BCA ¶ 38,840, at 189,009 (same).

II. The County's \$226,867.77 Funding Request for the Second Bypass Costs

In its RFA, the County requested \$226,867.77 in funding for costs associated with the second sewer bypass, which were made necessary on an emergency basis to address damage caused by the HOA's contractor. The County acknowledged, though, that it did not ask for those costs in the first-level appeal and only sought PA funding for its first sewer bypass costs. RFA at 23. FEMA argues that these costs are not properly a part of this arbitration.

“Pursuant to statute, the panel serves as a second appeal authority to resolve disputes between applicants and FEMA on requests for PA.” *Housing Authority of the City of Fort Myers, Florida*, CBCA 8138-FEMA, 25-1 BCA ¶ 38,749, at 188,378 (citing 42 U.S.C. § 5189a). “A dispute requires FEMA to have decided an issue and applicant to have appealed that determination.” *Blackhawk Geologic Hazard Abatement District*, CBCA 8688-FEMA, 26-1 BCA ¶ 38,995, at 189,852. The first-level appeal giving rise to this arbitration was limited to a request for funding the first sewer bypass. As a result, FEMA did not review the second sewer bypass costs for either work eligibility or cost eligibility. The County’s assertion that FEMA must have done so in the first appeal because the types of costs for both the first and the second bypasses are of the same nature, *see* Applicant’s Reply Brief at 11, is unfounded. Further, its assertion that the panel can conduct its own work eligibility and cost eligibility analyses for the second sewer bypass in the first instance, without any prior review by FEMA, because the County provided relevant support for the second bypass costs with its RFA, *see id.* at 13, ignores the nature and purpose of FEMA arbitrations. Until all procedural steps necessary to bring a matter to the Board in an arbitration are met, there is no “procedural eligibility” for arbitration of that matter. *Board of Trustees of Bay Medical Center*, CBCA 7826-FEMA, 24-1 BCA ¶ 38,492, at 187,096. Because FEMA has not made an eligibility determination followed by a first-level appeal regarding the County’s entitlement to the second sewer bypass costs, “there is no dispute [about that issue] for the panel to resolve.” *Arizona Department of Emergency & Military Affairs*, CBCA 8784-FEMA, slip op. at 12 (Sept. 29, 2026) (quoting *Housing Authority of the City of Fort Myers*, 25-1 BCA at 188,378).

Decision

For the foregoing reasons, the applicant is legally responsible for the first sewer bypass work and has satisfied the work eligibility prong of the eligibility pyramid. That determination resolves this arbitration. FEMA must now continue its review of the County’s request for \$710,494.88 in funding for its first sewer bypass costs and determine what, if any, of the costs sought are eligible. Because the County’s request for \$226,867.77 in funding for its second sewer bypass costs is not properly a part of this arbitration, we decline to review that request.

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.

Board Judge

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge