

DEPARTMENT OF WATER RESOURCES

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March 21, 2016

Federal Emergency Management Agency
Regulatory Affairs Division
Office of Chief Counsel, 8NE
500 C Street SW.
Washington, DC 20472-3100

RE: Docket ID FEMA-2016-0003

The California Department of Water Resources (DWR) appreciates the opportunity to comment on the Federal Emergency Management Agency's (FEMA) advance notice of proposed rulemaking that would establish a deductible for FEMA's Public Assistance Program, as published in the Federal Register on January 20, 2016.

The proposal raises significant concerns for DWR. This letter outlines eight comments related to these concerns. As the outreach process continues, DWR requests further consultation and engagement to develop a policy that will achieve the objectives of both FEMA and the State of California.

Together with the California Governor's Office of Emergency Services (CalOES), DWR responds to disasters associated with drought, storm high-water, tsunamis, and river flooding. In addition, DWR allocates a significant amount of state funds towards planning and implementing a wide range of structural and nonstructural hazard mitigation strategies and projects in partnership with state, federal, and local agencies. These projects include the State Plan of Flood Control which consists of over 1,600 miles of flood protection levees, weirs, bypasses, and pumping plants. The State also owns, operates, and maintains the State Water Project, a system of canals and pumping plants that provides water to over 23 million people and ensures drought resiliency for California's water supply.

DWR offers the following comments and requests FEMA to consider these comments during further development of a revised program:

1. Extend the comment period and convene regional discussions with state and local partners, including state emergency management agencies. The proposal for assessing a deductible and establishing credit to offset the deductible is a significant departure from the existing Public Assistance Program. We support FEMA's goal of encouraging improved disaster planning and mitigation among states.

State, tribal, and local governments are partners with the federal government in preparing for and responding to disasters and should be actively engaged with FEMA in addressing all aspects of this proposal. We request FEMA to engage in dialogue and regional discussions that will allow state emergency management and flood management professionals to provide input and recommendations on the proposal to make it more acceptable and implementable without sacrificing post-disaster recovery and mitigation.

2. Allow each state, tribe, and territory to submit an assessment to FEMA of its capacity and capability to respond to disasters and to perform post-disaster recovery and mitigation. Because the Public Assistance Program is intended to supplement the capacity of a state government to respond and recover from a disaster, FEMA should allow each recipient to provide an assessment of its capacity for response and recovery. This assessment should include an inventory of risk reduction and climate change planning programs, an inventory of risk mitigation projects, expenditures of capital outlay to build and improve new or existing risk reduction infrastructure, and programs to improve regional and community resilience. The eventual rule should include objective and quantifiable elements for measuring that capacity. These elements could then serve as a foundation for the deductible established in consultation with each state and not penalize states that have invested funds and implemented state laws and local regulations to reduce risk.
3. The relationship between the disaster cost criteria and the proposed deductible needs to be clarified to avoid potential conflict with the cost-sharing requirements of the Stafford Act. The Stafford Act mandates a minimum cost sharing formula for public assistance. The concept of establishing a deductible may conflict with the mandate that federal assistance not be less than 75 percent.
4. The deductible and credit model is one concept worth exploring but there are potentially others worth exploring. These include changes in the public assistance cost share formula without creating a deductible, development of tiered cost-sharing based on the severity and frequency of the disaster, and establishment of cases where no disaster assistance would be provided if development in identified high risk areas continues.
5. The calculation methodology for the deductible is not specific. The proposed rule states that "FEMA would intend for the calculation of the deductible level for each recipient to be published periodically and to be representative of recipient capability."

There are many different factors that potentially could indicate the state's capabilities and each would result in very different outcomes. We request the opportunity to assist in the development of this methodology to calculate a deductible.

6. The calculation methodology for credit is undetermined. The proposed rule states "FEMA might provide a credit toward the deductible, for example, for Recipient's prior adoption of building code that reduce risk; for adoption of proactive fiscal planning such as establishing a disaster relief fund or self-insurance fund; or investment in programs of assistance available when there is no federal declaration."

California has made substantial investments in disaster planning and statewide flood and water supply infrastructure; however, based on the information in the proposed rule, we are unable to estimate the amount of credit that would subsequently be applied to the deductible. The proposed rule does not adequately address how credit will be calculated and accounted for at the recipient and sub-recipient levels. State and local governments perform different yet complementary, functions in preparing for and mitigating the risk of potential disasters. The proposed rule should recognize all those functions when providing credit toward the deductible and not penalize states that proactively reduce risks through a full suite of structural and non-structural mitigation measures.

7. The process for applying the deductible may ban public assistance after a declared major disaster. The proposed rule states: "To ensure a Recipient's participation in recovery from disaster losses, following receipt of a major disaster declaration authorizing the Public Assistance Program, the Recipient(s) would be required to demonstrate it has satisfied a predetermined deductible amount before FEMA would provide assistance through a Project Worksheet for eligible Public Assistance work." Currently, following the declaration of major emergencies, participation in the Public Assistance Program was guaranteed. With the establishment of a deductible concept, following the declaration of major disasters, another new layer of screening will take place in order to satisfy FEMA of the deductible amount.

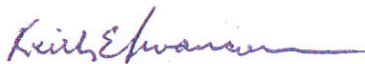
8. The requirements or process for satisfying deductible requirements is undetermined.
The proposed rule states "To ensure a Recipient's participation in recovery from disaster losses, following receipt of a major disaster declaration authorizing the Public Assistance Program, the Recipient(s) would be required to demonstrate it has satisfied a predetermined deductible amount before FEMA would provide assistance through a Project Worksheet for eligible Public Assistance work." FEMA's requirement to demonstrate that the State satisfy the deductible amount has not been described in the proposed rule. We request the opportunity to assist in determining what criteria FEMA would find acceptable for demonstrating compliance.

In summary, the proposed rule introduces a new concept that is likely to affect the extent and frequency of federal public assistance under the Stafford Act. Reduction of federal public assistance is of great concern to DWR and the State. We respectfully request that FEMA convene workshops with potential recipients and sub-recipients to further discuss and develop this concept and its alternatives.

As a public assistance recipient, we do not endorse or encourage the establishment of the disaster deductible as *proposed*, but we request and welcome the opportunity to work with FEMA and to provide technical assistance to develop a proposal that will make the best use of public funds to plan for, respond to, and recover from disasters.

Thank you for the opportunity to comment. DWR stands ready to confer with FEMA to ensure that the objectives of the Stafford Act are met to improve public safety and respond to natural disasters. If you have any questions regarding this matter, please contact Ricardo Pineda at (916) 574-0632, or at Ricardo.Pineda@water.ca.gov.

Sincerely,


Keith E. Swanson, Chief
Division of Flood Management
Department of Water Resources

cc: (See attached list.)

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