Fields of Opportunities

STATE OF IOWA

TERRY E. BRANSTAD
GOVERNOR

KIM REYNOLDS
LT. GOVERNOR

DEPARTMENT OF PUBLIC DEFENSE
IOWA HOMELAND SECURITY AND
EMERGENCY MANAGEMENT DIVISION
MARK SCHOUTEN, HOMELAND SECURITY ADVISOR
AND EMERGENCY MANAGEMENT ADMINISTRATOR

July 3, 2012

Ms. Maggie Burger
Combined Lake Delhi Recreational Facility & Water Control District
PO Box 67
Delhi, IA 52223

Disaster #: 1930
PA ID #: 055-UNOCB-00
Request for Public Assistance
Appeal Response

Dear Ms. Burger:

After review of project documentation, Deborah Ingram, FEMA Assistant Administrator, determined that the District provided sufficient documentation to demonstrate it is an eligible applicant and has legal responsibility to perform the work in question. Based on this determination your appeal has been granted.

In accordance with 44 CFR §206.206, this determination represents the final decision on this matter. Please contact Dan Egnor, Deputy State Public Assistance Officer, with any additional questions regarding this matter at (515) 979-3734, dan.egnor@iowa.gov.

Sincerely,

Patrick J. Hall
Alternate Governor's Authorized Representative

PJH/kae

Enclosure

7105 NW 70th AVENUE / CAMP DODGE / BLDG. W-4 / JOHNSTON, IOWA 50131-1824 / 515-725-3231
WWW.IOWAHOMELANDSECURITY.ORG

U.S. Department of Homeland Security
500 C Street, SW
Washington, DC 20472

FEMA

JUL 0 2 2012

Mark Schouten
Administrator
Iowa Homeland Security and Emergency Management Division
7105 NW 70th Avenue
Camp Dodge, Bldg W-4
Johnston, Iowa 50131-1824

Re: Second Appeal-Combined Lake Delhi Recreational Facility and Water Quality District, PA ID 055-UNOCB-00, Request for Public Assistance (RPA), FEMA-1930-DR-IA

Dear Mr. Schouten:

This letter is in response to a letter from your office dated July 5, 2011, which transmitted the referenced second appeal on behalf of the Combined Lake Delhi Recreational Facility and Water District (District). The District is appealing the U.S. Department of Homeland Security's Federal Emergency Management Agency's (FEMA) denial of its Request for Public Assistance (RPA).

Background

The District is a benefited lake district established under Iowa Code. The District was established in 1989 in order to operate and maintain a recreational lake for the benefit of the residents of Lake Delhi area, and to collect tax revenues in support of that function. In addition to the District's tax revenues one-time homeowners' association fees are paid to the Lake Delhi Recreation Association, Inc. (Association). The Association is a private nonprofit organization that owns the Lake Delhi dam. Due to heavy rains and flooding, the earthen structure of Lake Delhi dam was breached. Water and sediment washed out of the breached area causing a dramatic decrease in the lake level.

The District submitted an RPA on August 18, 2010, to apply for reimbursement for silt removal costs and repair of the breached dam. On August 23, 2010, after a review of the District's eligibility as an applicant and of its legal responsibility for the work in question, the Director of FEMA's Iowa Recovery Center made the determination that District was not an eligible applicant as it was not formed for a public purpose and did not provide an essential governmental service to the general public. In addition, it was determined that the District did not have legal responsibility for the Lake as required by Title 44 of the Code of Federal Regulations (44 CFR) § 206.223, **General work eligibility**.

First Appeal

On October 11, 2010, the District appealed FEMA's determination. In the appeal letter, the District requested that FEMA reinstate funds for silt removal. The District stated that it is an eligible applicant created under Iowa Code and that it is legally responsible for the facility. On March 10, 2011, the Regional Administrator denied the appeal, stating that, "the District and the Association are both ineligible for Public Assistance" and that "because the District is not an eligible applicant, the matter as to whether the District's facility is eligible is irrelevant."

Second Appeal

The District submitted a second appeal in a letter dated May 6, 2011. The District reiterates the claim from the first appeal that it is a local government entity recognized under both state and federal law and that it is ultimately responsible for completion of the work on the eligible facility. Additionally, the District requested the opportunity to provide an oral presentation to FEMA to discuss the second appeal. On October 27, 2011, the Director of the Public Assistance Division held a conference call with the District and State representatives to discuss the appeal.

Discussion

The Stafford Act defines local government to include, "a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments... regional or interstate government entity, or agency or instrumentality of a local government" (42 U.S.C. § 5122(7), see also 44 CFR § 206.2(a)(16)). FEMA's regulations at 44 CFR § 206.223(a), General work eligibility, General, describe the basic criteria that must be met in order to be eligible for Public Assistance funding, including the requirement that the work in question must be the legal responsibility of an eligible applicant.

Section 357E of Iowa Code allows for the creation of benefited lake districts. That section establishes that the purpose of a benefited recreational lake district is to maintain and operate water quality facilities for the residents of the district that will be conducive to the public health, comfort, convenience, water quality or welfare. Lake districts are controlled by elected officials that have the authority to tax and issue bonds for the purpose of spending money to maintain and repair district property and facilities that include lakes and other recreational facilities. Within the Iowa Code, section 357E is located under Title IX Local Governments and under Subtitle 2 Special Districts.

With the first appeal, the District submitted affidavits from three members its Board of Trustees, including the president. These affidavits state that "many of the records of the District were destroyed in the 2010 flood," and go on to declare that the District has used over $1.8 million in tax revenue on dam maintenance, repair and restoration since 1998. In addition, they state that the "financial responsibility for this [work] falls squarely on the District" and that all such payments must be approved by at least two of the District's three trustees.

In further support of its claim of legal responsibility to perform the work in question, the District submitted an affidavit from the former President of the District ("President") as a supplement to the second appeal. The President was an original member of the Board of Trustees of the District. In the affidavit, the President states that the District was formed under Iowa Statute 357E and is required to perform all the duties of a public entity. The purpose of the formation of the District was to provide for "management, control, maintenance, repair, and operation of the dam and related recreational facilities." The President further states that extremely detailed budgets were kept, to include, "the upkeep of the house where the dam keeper lived, repair of the dam gates… and similar matters." In addition, he noted that the District's control included approving contracts and authorizing expenditures and that any expenditure of funds required District authorization. He also stated that the District's records were destroyed in the 2010 flooding. Finally, the President "unequivocally swear[s] and state[s] that the District managed, controlled, repaired, maintained, and operated the dam and associated lake facilities."

In addition, the District submitted a copy of the budget to support its claim that it is a public entity with the legal responsibility of the lake. Among the trustees' authorities is the authority to repair, maintain, or operate a dam or other facility to create or maintain a recreational lake. Lake Delhi is the only lake within the district, and the dam creating Lake Delhi is the only dam. In addition, the one-time membership fees collected by the association are minimal compared to the annual taxes collected by the District. While documentation associated with maintenance of the dam has been destroyed, these factors show that the District's taxes represent the vast majority of the funds available to maintain the dam and lake. In addition, the District was created to maintain the dam and lake, and those facilities are the only facilities the District has authority to fund. Finally, it is also noted the District is also a public lake with two public boat ramps that allow the public to launch a boat or personal watercraft on the lake. Lake Delhi is a public waterway and the Iowa Department of Natural Resources (DNR) is the governing body over the safety on the Lake.

Upon further review of Iowa Statute 357E and of documentation establishing the District's creation under that provision, FEMA has determined that the District meets the definition of a "local government" under 42 U.S.C. § 5122(7) and 44 CFR § 206.2(a)(16). After review of the additional documentation submitted by the applicant, as discussed above, FEMA has also determined that the District is legally responsible for the work in question.

Conclusion

I have reviewed the information submitted with the appeal and have determined that the District provided sufficient documentation to demonstrate that it is an eligible applicant and has legal responsibility to perform the work in question. Accordingly, I am granting the second appeal. By this letter, I am requesting the Regional Administrator take appropriate actions to implement my decision.

Please inform the District of my decision. This determination is the final decision on this matter pursuant to 44 CFR § 206.206, **Appeals.**

Sincerely,

Deborah Ingram
Assistant Administrator
Recovery Directorate

cc: Beth Freeman
Regional Administrator
FEMA Region VII