




Homeland  
Security

July 3, 2006

MEMORANDUM FOR. Karen E. Armes  
Acting Regional Director  
FEMA Region IX

FROM:   
Robert J. Lastrico  
Director, Grant Program Management Audit Division

SUBJECT: Audit of Los Angeles County Department of Public Works  
Alhambra, California  
Public Assistance Identification Number 037-91012  
FEMA Disaster Number 1008-DR-CA  
Audit Report Number DS-05-06

The Office of Inspector General (OIG) audited public assistance funds awarded to the Los Angeles County Department of Public Works, Alhambra, California (Department). The objective of the audit was to determine whether the Department expended and accounted for Federal Emergency Management Agency (FEMA) funds according to federal regulations and FEMA guidelines.

The Department received an award of \$29.1 million from California Office of Emergency Services (OES), a FEMA grantee, for debris removal and emergency protective measures; and repairs to road and utility systems, water control facilities, and buildings and equipment damaged by the Northridge Earthquake on January 17, 1994. The award provided 100 percent federal funding for emergency work until January 25, 1994, and 90 percent federal funding thereafter for 33 large and 162 small projects.<sup>1</sup> The audit covered the period January 17, 1994, to May 21, 2004, and included a review of 33 large projects and 5 small projects with a total award of \$19.8 million (See Exhibit A).

We performed the audit under the authority of the Inspector General Act of 1978, as amended and according to *Government Auditing Standards* issued by the Comptroller General of the United States. The audit included a review of FEMA, OES, and Department records, a judgmental sample of project expenditures, and other auditing procedures considered necessary under the circumstances.

## RESULTS OF AUDIT

The Department's claim included questionable costs of \$1,813,454 (FEMA's share - \$1,632,109). Further, the Department earned \$32,509 in interest on federal funds that had not been remitted to

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<sup>1</sup> Federal regulations in effect at time of the disaster set the large project threshold at \$42,400.

FEMA as required by federal regulations. Table 1 lists the audit findings discussed in greater detail below.

**Table 1**

<b>Finding Title</b>	<b>Costs Questioned</b>
Finding A – Ineligible Project Costs	\$ 898,872
Finding B – Overstated Damage Estimate	377,508
Finding C – Excess Cost Reimbursements	170,905
Finding D – Unsupported Fringe Benefits Costs for Force Account Labor	307,889
Finding E – Unsupported Legal Costs	58,280
Total	<u>\$1,813,454</u>
	<b>Interest Earned</b>
Finding F – Interest Earned on Federal Advances	<u>\$32,509</u>

**Finding A – Ineligible Project Costs**

The Department's claim for 9 projects included \$898,872 in ineligible project charges attributable to: (1) operating costs within the Department's financial capability, (2) work not related to the disaster, (3) disaster-related work not the responsibility of the Department, and (4) an ineligible project improvement.

**Operating Costs Within the Department's Financial Capability**

The Department claimed \$373,300 for the disposal of household hazardous waste and products that we determined were normal operating costs and within the Department's financial capability to pay. FEMA funded three emergency protective measure (Category B) projects to cover the anticipated costs of collecting and disposing of household hazardous materials that the Department believed could have been created as a result of the disaster. The projects, collection dates, and the amounts we questioned are shown below in Table 2.

**Table 2**

<b>Project Number</b>	<b>Collection Date</b>	<b>Questioned Amount</b>
14348	February 12, 1994	\$167,336
14349	March 19, 1994	110,016
14350	March 5, 1994	95,948
Total		<u>\$373,300</u>

The Department initiated the "Countywide Household Hazardous Waste Management Program" (program) in 1988, and has consistently budgeted for, funded, and staffed it since the program's inception. We analyzed the Department's historical records and determined that the expenditures claimed for Northridge Earthquake damages related to normal program operating activities and were typical of costs incurred for the Department's ongoing events. Exhibit B shows program activity for fiscal years ending June 1994, 1995, and 1996 and indicates that annually, the program averaged about \$3.4 million in costs and 30 hazardous collection events.

The Department claimed \$373,300 for 3 of 28 program events that took place in fiscal year 1994, the year of the disaster. Department records supporting these events identified the number of participants<sup>2</sup> and volume of waste collected; additionally, the records showed that the cost and number of participants were consistent with the other 25 events conducted during the fiscal year. Furthermore, the Department conducted 14 events before and after the disaster with no indication that the frequency of program events or the quantity of household hazardous waste increased due to the disaster. In fact, an event scheduled 6 days after the disaster had the third lowest number of participants and the sixth lowest quantity of hazardous waste collected during the fiscal year.

Sections 401 and 403 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) and 44 CFR § 206.225(a)(3) allow federal assistance to cover damage costs resulting from major disasters that are beyond the capabilities of affected governments, including funding for efforts to meet immediate threats to life, property, and public health and safety. We questioned the \$373,300 claimed because the collections were a normal operational activity funded by the Department and because Department records did not demonstrate that the amounts and types of waste collected were disaster-related or that the collections eliminated or lessened an immediate threat to life, public health, and safety.

The Department understood the basis for this audit finding but disagreed with our conclusion that the grants funds should be deobligated. Department officials deferred further comment until after issuance of this report.

### **Work Not Related to the Disaster**

The Department claimed \$291,207 against project 73457 for the cost of permanent upgrades to a private road not damaged by the disaster. According to 44 CFR § 206.223(a), to be eligible for financial assistance, an item of work must be required as the result of the major disaster event, and be the legal responsibility of an eligible applicant. FEMA's governing code also establishes specific guidelines for performing temporary repairs to private roads. According to 44 CFR § 206.225(b), federal funding for repairs or replacement of emergency access routes to non-publicly owned facilities is allowed provided that the funding (1) eliminates the need for temporary housing; and (2) is limited to that necessary for the access to remain passable through events which can be considered an immediate threat.

The Northridge Earthquake interrupted access between the Valencia Industrial Center (VIC), a privately owned business complex,<sup>3</sup> and Highway I-5. The most direct public access road to the VIC was temporarily closed due to disaster damage but two undamaged roads, one public and one private, provided viable alternative access. FEMA funded the costs to upgrade the private road even though the work did not meet eligibility requirements for public assistance funding, and the owner of the property initiated and completed the work without first obtaining FEMA approval.

Department records showed that the project included widening the undamaged private road from a 25-foot 2-lane road to a 48-foot four-lane road; and providing improvements consisting of a bike path, grading, pavement, striping, and guardrails. Further, according to Department records, the

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<sup>2</sup> Citizens delivering waste to Program locations.

<sup>3</sup> VIC is the third largest industrial center in Los Angeles County with 500 companies as tenants. A California limited partnership owned the VIC and the private road. A subsidiary of the limited partnership performed the road improvements.

work was completed on February 14, 1994 -- 3 days prior to completion of FEMA-funded repairs to a damaged public road that provided primary access to Highway I-5 (Project 02257 for \$72,948). The Department requested federal funding for the improvements to the private road in March 1994 well after the work had been completed.

We also noted that FEMA initially disallowed the Department's request for federal funds to cover project costs based on the premise that the improvements to the private road did not meet eligibility requirements for disaster work. Following an OES appeal of FEMA's funding determination, FEMA reversed its decision and approved funding for the project. In addition, records showed that the property owner represented to the Department that it had started widening the private road 8 days after the earthquake in response to requests from governmental agencies and private organizations.<sup>4</sup>

Department officials disagreed with our determination that the permanent upgrades to the private road were ineligible for FEMA grant funding. Those officials believe that the permanent project met the funding requirements of 44 CFR § 206.225(a) that allows federal reimbursement for emergency protective measures that eliminate or lessen immediate threats to lives, public health, or safety.<sup>5</sup> In addition, the Department cited a July 29, 1994 letter from the City of Santa Clarita (City) that explained that among VIC's 500 tenants were the City's Field Services Center, a utility regional maintenance center, a hospital supply warehouse, and an ambulance service. This letter also noted that the road improvements possibly expedited the response times for law enforcement officials and fire fighting.

Despite the Department's comments, we still assert that permanent upgrades to the undamaged private road did not eliminate or lessen any immediate threats to lives, public health, or safety inasmuch as the 2-lane road as well as a separate undamaged public road remained available and in use by VIC's tenants. Since the Department records did not include evidence that improvements to the undamaged private road were eligible for FEMA funding, we continue to question the \$291,207.

### **Disaster-Related Work not the Responsibility of the Department**

FEMA approved and the Department claimed costs for disaster-related work that was not the responsibility of the Department to accomplish. For projects 84629, 41720, and 01138, the Department inappropriately claimed \$121,982 in costs for disaster-related work performed on private property. In addition, for project 04561, the Department claimed \$108,183 in costs that were the legal responsibility of an oil corporation. According to 44 CFR § 206.223(a)(3), to be eligible for financial assistance, an item of work must be the legal responsibility of an eligible applicant.

Work performed on private property. The following paragraphs discuss the costs claimed for work performed on private property.

FEMA provided \$121,982 to repair two private drains as follows.

1. For drain number 1984, the Department received \$93,442 in funding; \$13,408 for inspection costs under small project 84629 and \$80,034 for permanent repairs under large project 98175

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<sup>4</sup> Corporation's letter dated March 30, 1994 to the Los Angeles County Programs Development office.

<sup>5</sup> 44 CFR § 206.225 finds its basis in section 403 of the Stafford Act where funding of emergency construction measures is limited to those which are temporary in nature (e.g., temporary bridges, temporary facilities); 44 CFR § 206.225(b) specifically addresses federal funding for repair or replacement of a private road needed for emergency access.

(supplemental project 41720). We obtained records showing that the County Board of Supervisors accepted transfer of the drain from private ownership on April 25, 1995, about 15 months after the date of the disaster. Thus, the Department did not have the legal responsibility to perform the initial inspection and repairs.

2. For drain number 2075 (including basin), the Department received \$28,540 under small project 01138 for repairs. However, the Department's records did not include evidence that the drain and basin were the legal responsibility of the Department, and we could not find any documents showing the date of transfer as we did for drain number 1984.

The Department disagreed with our conclusions regarding the eligibility of these projects but acknowledged that private drain number 1984 was not transferred to the Los Angeles County Flood Control District until April 25, 1995. The Department provided us a May 24, 1994, letter from the Department's legal counsel that, in part, stated, "...all those identified facilities that were constructed, inspected, and found to be built substantially in accordance with the applicable plans and specifications prior to January 17, 1994 had been purchased by Community Facilities District No. 3 (CFD No. 3) of the County of Los Angeles, a governmental entity, prior to January 17, 1994." Los Angeles County Counsel stated that the County, through the Department, was responsible for the operation and maintenance of improvements once they were transferred to CFD No. 3. Based on our review of the Funding and Acquisition Agreement for CFD No. 3, transfer of improvements constructed by the developer on its own property are to be evidenced by recordation of acceptance by the Board of Supervisors or other receiving agency. Although we requested such documentation several times, the Department did not provide it.

Because the Department could not document that the private drains were conveyed to the County Board of Supervisors before the January 17, 1994 earthquake, the Department could not support that it was legally responsible for the repairs. Therefore, we questioned \$121,982(\$93,442 + \$28,540).

Work that was the responsibility of an oil company. For project 04561, the Department claimed \$108,183 in costs resulting from an oil fire that damaged the Department's storm drain system. The Northridge Earthquake caused an oil company's pipeline to rupture and release oil into the Department's storm drain system. The oil eventually ignited and burned the storm drain's channel walls. FEMA and the Department agreed that the Department was not responsible for repairs. However, the corporation only assumed the costs of removing the oil from the Department's storm drains and did not address the damage to the walls. While FEMA initially disallowed funding for the cleaning of the walls, it later reversed its position and agreed to cover the costs on the condition that the Department pursued recovery from the oil company. In addition to specifying the project scope of work,' documents supporting FEMA's project approval stated, "...subgrantee shall actively pursue the recovery of funds from the owners of the escaped petroleum as per 44 CFR § 206.15 and § 206.223(a)(3) and as per PL 93.228, Sec. 312(c). Failure to do so could result in the loss of funds approved herein." FEMA also informed the Department that funds collected from the oil corporation had to be returned to FEMA.

The Department records for this project did not include documented evidence showing the Department had fully complied with the conditions of the funding agreement. Specifically, the

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<sup>6</sup> Project scope included (a) inspect the removal of oil from its drainage system; (b) assess the damages caused by the oil igniting and burning in the system; and (c) contract costs to hydroblast the channel walls to repair the soot damage that resulted from the fire.

Department was unable to locate any documentation showing efforts to recover the repair costs funded by FEMA.

Department officials agreed with us that the damage to the walls was not the Department's responsibility. They also indicated that the Department did not pursue collection of the \$108,183 from the oil company as required by project documentation.

**Ineligible Project Improvement**

For project 04580, the Department claimed \$4,200 in costs relating to an ineligible project improvement. According to 44 CFR § 206.226, "Work to restore eligible facilities on the basis of the design of such facilities as they existed immediately prior to the disaster ... is eligible..." for FEMA reimbursement. The scope of project 04580 included the replacement of a 60,000 gallons water tank that was damaged as a result of the disaster. However, the replacement tank had a 65,000 gallons capacity. The Department's records did not include justification for the higher capacity tank nor were Department officials able to provide such information. The Department concurred with the facts that we cited and the subsequent questioning of the \$4,200 in incremental costs incurred for the larger tank.

**Summary.** The nine projects discussed in the finding had ineligible costs totaling \$898,872. Table 3 below shows the individual projects and the amounts we questioned.

**Table 3**

<b>Project Number</b>	<b>Questioned Amount</b>
14348	\$167,336
14349	110,016
14350	95,948
73457	291,207
84629	13,408
98175	80,034
01138	28,540
04561	108,183
04580	<u>4,200</u>
<b>Total</b>	<b><u>\$898,872</u></b>

**Finding B – d Damage E t**

The Department received \$730,935 under improved project 85602 to replace a pre-disaster fixed rail tram system with an aerial tram system. FEMA funded the project based on a cost estimate provided by the Department to repair the damaged fixed rail system to its pre-disaster design. In reviewing the cost estimate, we identified \$377,508 in duplicate pricing of damaged components,<sup>7</sup> costs not related to disaster damage, and excessive construction engineering cost. Further, while the Department estimated that replacing the damaged fixed rail tram with an aerial system would cost about \$2 million, it obtained agreement from a contractor to complete the work (including equipment) for \$710,250. At face value, it appeared that the funded project costs exceeded federal

<sup>7</sup> A disaster repair project completed in 1977 at a cost of \$170,681 identified the five major system components of the fixed rail tram system as: (1) a double rail encapsulated wheel tram cab, (2) double rails, (3) utility lines, (4) a tram landing dock at each end of the track, and (5) the associated construction work.

funding limitations for improved projects.<sup>8</sup> However, due to insufficient historical cost data relative to previous disaster repairs, we did not take issue with the Department apparently exceeding this funding limit. Nonetheless, as discussed below, we did take exception to the ineligible cost components the Department included in the project estimate submitted to FEMA.

### **Duplicative Costs**

The Department's estimate of damage repair costs included \$306,140 in duplicative costs as follows.

- As described below, we questioned \$249,222 in indexed costs because the Department's damage repair estimate to FEMA already included separate line items for construction and material at current cost. In addition, while the Department included the double rail encapsulated wheel tram cab in the index computation, project records did not contain proof that this component was damaged during the disaster.

The Department applied the Engineering News–Record (ENR) index to the costs of replacing the fixed rail system destroyed in the 1971 Sylmar Earthquake to obtain the 1996 value of such things as construction labor costs, structural and fabricated steel, cement, and lumber for repairs to tram system components. The Department's determination of the base costs applicable to the ENR index was not consistent with the 1971–1977 replacement cost of the system (\$170,681) and included a system component that was not damaged during the disaster. In determining the applicable base costs, the Department allocated 99.2 percent (\$169,400) of the \$170,681 replacement cost to only two of the five system components (double rail encapsulated wheel tram cab and double rails). While the double rail encapsulated wheel tram cab was undamaged, the Department applied the ENR index to both components resulting in estimated 1996 repair costs that increased \$249,222 from the 1977 costs.

Notwithstanding the inclusion of the questionable "indexed" costs into its project estimate, the Department also included separate line items for construction and material costs in its repair estimate to FEMA at 1996 cost. Specifically, the double rails rested on the trestle support structure and the utility lines were integrated into the trestle structure. The Department's estimate provided separate line items of \$120,000 for the trestle structure (girders, bents, post, diaphragms, etc.) and \$40,000 for the foundation (concrete piles, drilling, etc.).

Department officials disagreed with our conclusion and argued that the \$169,400 represented the 1977 costs that were justifiably "indexed" to 1996 dollars. These officials explained that while the tram cab was not damaged during the disaster, the component should be included in its project estimate because the total fixed rail system was discarded. Despite the Department's comments, we contend that since its estimate already included individual line items for construction and material costs, the additional cost determined using the ENR index was duplicative and therefore, not eligible for federal funding.

- The Department's repair estimate included \$56,918 for utility lines costs that, as indicated above, were integrated as a separate line item into the trestle structure cost estimate (\$120,000). The

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<sup>8</sup> According to 44 CFR § 206.203(d)(1), if a subgrantee desires to make improvements but still restore the pre-disaster function of a damaged facility, the Grantee's approval must be obtained. Federal funding for such improved projects shall be limited to the federal share of the approved estimate of eligible costs.

Department concurred that a separate line item for utility lines was not warranted since the related costs were already included in the estimate for the trestle structure.

### **Costs not Related to Disaster Damage**

The Department's damage estimate, used by FEMA when it approved the improved project, included \$50,000 for the replacement of two ground-level passenger-loading platforms not damaged by the disaster. The platforms became obsolete when the Department requested and received FEMA approval to construct an aerial tram system instead of repairing the fixed rail system. FEMA's improved project guidelines and regulations set the funding cap at the repair estimate for components and facilities damaged by the disaster. Department officials argued that although the platforms were not damaged, the costs should be eligible for reimbursement since the total fixed rail system was discarded.

### **Excessive Construction Engineering Costs**

In its approved \$730,935 estimate of eligible repair costs, FEMA allowed the Department to include a 6 percent fee charged by a contractor for construction engineering costs. Because we questioned \$356,140 in duplicative and non-disaster related costs included in the approved estimate, we also question the \$21,368 construction engineering fee applicable to this amount.<sup>9</sup> The Department agreed with our calculation of excessive engineering costs for the duplicative estimate for utility line work (\$56,918); but did not agree that the fee estimate should be reduced for the other costs we questioned in this finding.

**Applicable Criteria and Conclusion.** According to 44 CFR § 206.203, federal funding for improved projects is limited to the federal share of the approved estimate of eligible costs associated with repairing the damaged facility components (eligible costs) to its pre-disaster design. In addition, 44 CFR § 206.223 provides that an item of work must be required as a result of a major disaster to be eligible for financial assistance. Further, 44 CFR § 13.20 (b)(6) requires the Department to maintain accounting records that identify how federal funds are used. Since the Department's cost estimate for the improved project included duplicative cost items, cost not related to disaster damage, and excessive construction engineering charges; we questioned \$377,508 (\$306,140 + \$50,000 + \$21,368).

### **Finding C – Excess Cost Reimbursements**

The Department received \$170,905 in excess reimbursements for project 85602 when FEMA provided additional funding to the project in 1999. FEMA initially classified and obligated the funding of the repair work as an improved project. FEMA estimated the pre-disaster eligible repair commitment cost at \$730,935; and obligated \$661,496 representing FEMA's cost share plus the associated administrative allowance on August 1, 1996. According to 44 CFR § 206.203(d)(1), federal funding for an improved project is limited to the federal share of the approved estimate of eligible costs.

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<sup>9</sup> \$356,140 times 6%.



In July 1999, FEMA made, and the Department accepted, a "bundled" Grant Acceleration Program (GAP) award offer that included project 85602.<sup>10</sup> FEMA Region IX officials explained that the FEMA Director, in a letter dated June 16, 1999, authorized the creation of "GAP site projects" for Los Angeles County and approved the bundling of projects when they (i) shared the same Public Assistant Identification Numbers, (ii) were in the immediate vicinity, (iii) served the same function or supporting function, and (iv) represented permanent work. We do not question FEMA's procedures for bundling projects but do question the additional funding provided in July 1999 because of the regulatory funding limitation imposed on an improved project.

FEMA bundled projects meeting the criteria specified above and used GAP cost estimating procedures to determine the July 1999 GAP offer amount. The additional funding for project 85602 resulted from FEMA applying cost estimating procedures that allow for the inclusion of "soft costs" in the offer. These soft costs related to inflation, owner's reserve for changes (typically made during design and construction), architectural and engineering design costs, and project management fees for the design and construction phase. Notwithstanding that the soft costs would have been included in the initial grant award in 1996, the regulations in effect at the time of the disaster established the maximum funding limit for improved projects as the federal share of eligible disaster repair costs, or \$661,496. As of October 1, 2005, 44 CFR §206.203(d)(1) still contained the same language specifying the funding limitations on improved projects.

FEMA Region IX officials agreed that project 85602 was initially classified and funded as an improved project and that the project was substantially complete when the additional funding for soft costs was determined. These officials explained however, that the project was included in the GAP award to the Department and that GAP guidelines may be interpreted to allow for increased funding. However, because federal regulations established the maximum funding allowed for improved projects, the additional \$170,905 in soft cost funding included in the GAP award for this project, resulted in excess reimbursements to the Department because the funds provided by FEMA exceeded the regulatory funding limit for an improved project.

#### **Fi D – Unsupported Fringe Benefits Costs for Force & t k**

The Department claimed \$197,347 in excessive fringe benefits costs for straight time labor and \$110,542 in excessive fringe benefits costs for overtime labor because its fringe benefits rates were inconsistent with FEMA criteria for determining the appropriate disaster eligible costs. Exhibit D provides details regarding the amounts we questioned for the 42 projects and project supplements reviewed.

To determine the actual straight time and overtime benefit rates the Department should have applied for claiming disaster costs, we evaluated the Department's methodology for calculating the rates over a 6-year period (1994 through 1999). Also for the same time period, we computed the fringe rates using FEMA's criteria.

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<sup>10</sup> FEMA developed the Public Assistance GAP to establish a final financial offer with the grantee/subgrantee for eligible work. The GAP provided a fixed level of maximum funding to cover the total cost of eligible scope of repair to damaged facilities.

## **Straight Time Fringe Benefit Rate**

Our review showed that over the 6-year period, the Department's average straight time fringe benefits rate was 44.85 percent in contrast to an average FEMA rate of 36.75 percent. For 1994, the Department calculated a fringe benefits rate of 52.98 percent (paid 33.92 percent and unpaid 19.06 percent). However, using FEMA criteria,<sup>11</sup> we determined the rate allowable for disaster reimbursement was 39.30 percent (paid 24.98 percent and unpaid of 14.32 percent). As discussed below, we determined that the Department's rate included ineligible cost components and its calculation of the nonproductive leave benefit rate was not consistent with FEMA's guidelines for determining this rate.

- The Department's rate included two cost components that were not paid or accrued fringe benefits for the Department's permanently employed personnel performing eligible disaster work.<sup>12</sup> Instead, these two cost components represented overhead costs funded on a pay as you go basis:
  1. Retiree Health Insurance - represents benefits paid to nearly 33,000 retirees and their dependents enrolled in the program's medical plans and over 32,000 retirees and dependents enrolled in the program's dental/vision plans. The entry on the County's general ledger represents the County's portion of the premiums paid in conjunction with enrolled retirees.
  2. Retirement Certificates of Participation – Los Angeles County issued bonds or certificates to fund its unfunded actuarial accrued liability for the retirement benefits of its employees. The issuance of such bonds represents a reclassification of a previously existing obligation.
- The Department's methodology for calculating the nonproductive leave benefits rate (vacations, holidays, jury duty, sick leave, etc.) did not comply with FEMA's guidelines.<sup>13</sup> Further, this methodology was inconsistent with guidelines provided by the State to assist FEMA grant applicants in identifying eligible FEMA reimbursable force account labor costs.<sup>14</sup>

## **Overtime Fringe Benefits Rate**

Our review showed that over a 6-year period (1994 through 1999), the Department claimed an overtime fringe benefits rate of 18.81 percent. OIG and Department officials agreed the more appropriate average rate should have been approximately 3.15 percent.

**Applicable Criteria and Conclusion.** According to 44 CFR § 206.228(a)(4), federal funding is allowed for eligible straight time salaries and benefits of an applicant's permanently employed personnel performing eligible permanent restoration; and indirect costs are funded under the subgrantee's statutory administrative allowance. In addition, 44 CFR § 13.20(b) requires the Department to maintain accounting records that identify how FEMA funds are used and to follow

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<sup>11</sup> FEMA Form 90-128 calculates the straight time fringe benefit rate by dividing annual nonproductive hours (numerator) by the total normal work hours for the year - excluding weekends (denominator).

<sup>12</sup> Excerpt from the Department's personnel records show that these cost components were unrelated to the Department's permanently employed personnel. See Exhibit C for more information.

<sup>13</sup> The Department followed FEMA guidelines except that it reduced the denominator by the total non-productive hours resulting in a higher leave rate.

<sup>14</sup> See Exhibit C for details regarding State guidelines.

Office of Management and Budget (OMB) cost principles, agency program regulations, and the terms of grant and subgrant agreements in determining reasonable costs, allowability, and allocability of costs. OMB Circular A-87, Attachment A, Section C, provides that for a cost to be allowed, it must conform to any limitations or exclusions set forth in federal law and grant requirements.

The Department disagreed with our conclusion that it was required to follow FEMA criteria for determining fringe benefits and calculating the nonproductive leave benefits rate. The Department asserted that OMB Circular A-87 (Revised 5/4/95, as further amended 8/29/97) Attachment B, Section 11(f) allowed the inclusion of post-retirement health benefits in calculating fringe benefits and that FEMA is required to comply with the Circular. The Department also noted that other federal agencies have accepted the Department's treatment of fringe benefit costs for their reimbursement programs. In regard to the calculation of the nonproductive rate, the Department explained that it used a formula provided by the State of California for documenting disaster costs and that the formula was accepted by other federal programs.

Despite the Department's explanations, we still believe the Department was required to follow FEMA criteria for determining fringe benefit costs. As noted previously, 44 CFR and OMB Circular A-87 require grantees and subgrantees to abide by grant agreement conditions to ensure federal reimbursement for eligible costs. Further, the State of California's guidelines referenced by the Department specifically informed the applicant that formulas based on indirect costs were not appropriate for calculating FEMA fringe benefits reimbursement. As such, we continue to question \$307,889 as excessive fringe benefits cost (\$197,347 plus \$110,542).

#### **Finding E – Unsupported Legal Costs**

The Department claimed \$58,280 in unsupported legal expenses for project 82103. The Department's accounting records identified the cost as expenses incurred to resolve issues with a contractor but did not include detailed information explaining the nature and eligibility of the expenses. According to 44 CFR 13.20(b), the Department is required to maintain accounting records that identify how FEMA funds are used.

The Department reserved comment on this finding pending further research to determine the purpose of the legal expenses. However, since accounting records reviewed did not support the eligibility of amounts claimed, we question \$58,280 of the Department's claim.

#### **Finding F – Interest Earned on Federal Advances**

The Department failed to remit to FEMA \$32,509 of interest earned as required by federal regulations on a \$1.5 million FEMA advance. According to 44 CFR § 13.21(i), grantees and subgrantees are required to remit to FEMA the interest earned on advances at least quarterly.

In response to a request from the Department and OES, FEMA advanced the Department \$1.5 million to replace three water storage tanks. The advances were provided in two payments, \$611,730 in March 1994 (project 82103) and \$896,023 in May 1994 (project 82100). Accounting records documented that the Department remitted to FEMA \$3,847 for interest earned on the advances. However, using the Department's records that documented expenditures for the three

water storage tanks and documents that identified investment interest rates,<sup>16</sup> we determined that the Department should have remitted to FEMA \$36,356. Thus, the Department failed to remit \$32,509 (\$36,356-\$3,847). The Department agreed that it did not remit all of the interest earned on federal advances.

The Comptroller General of the United States has consistently held that, except as otherwise provided by law, interest earned by a grantee on funds advanced by the United States under an assistance agreement pending their application to grant purposes belongs to the United States and that all such interest is required to be accounted for as funds of the United States." As such, FEMA Region IX should take immediate action to recover the \$32,509 in interest earned on public assistance funds advanced to the Department.

## **RECOMMENDATIONS**

We recommend that the Acting Regional Director, FEMA Region IX, in coordination with OES,

1. Disallow \$1,334,660 of ineligible, duplicative, and unsupported costs claimed by the Department (Findings A, B, & E).<sup>18</sup>
2. Disallow \$170,905 of excess reimbursements claimed by the Department costs in excess of the regulatory funding limit for improved projects (Finding C).
3. Disallow \$307,889 of the Department's claim for force account labor fringe benefit costs that were ineligible (Finding D).
4. Recover \$32,509 of interest earned on federal funds but not remitted by the Department to FEMA (Finding F).

## **DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP**

We discussed the results of this audit with Department and FEMA Region IX officials on June 8, 2005. The Department's comments provided after the formal exit conference are included with the respective findings. We also notified OES officials of the audit results on June 21, 2005. Since our exit conferences, we have worked intermittently with the Department and FEMA officials to obtain and review additional information and to answers questions or provide working paper support for our audit conclusions.

Please advise this office by September 1, 2006, of the actions taken to implement the recommendation in this report. Should you have any questions concerning this report, please contact me at (510) 637-4311. Key contributors to this assignment were Humberto Melara and Curtis Johnson.

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<sup>16</sup> The Los Angeles County Pooled Surplus Investment Fund Interest Rates for the period from July 1993 to June 1996.

<sup>17</sup> GAO Principles of Federal Appropriations Law, Vol. II, Chapter 10, Section E3., Interest on Grant Advances (1992).

<sup>18</sup> Project 41720 appears in Finding A and Finding D. If the Finding A total is disallowed as recommended, the recommended deobligation of \$2,650 in Finding D for this project should be disregarded.

Schedule of Audited Projects  
Los Angeles County Department of Public Works, Alhambra, California  
Public Assistance Identification Number 037-91012  
FEMA Disaster Number 1008-DR-CA

<b>Project #</b>	<b>Amount Awarded</b>	<b>Questioned Costs</b>	<b>Finding Reference</b>
02257	\$ 72,948	\$ 1,070	D
04499	96,281	6,271	D
04508	103,018	5,890	D
04510	408,933	1,593	D
04518	78,582	0	A
04533	766,219	6,610	D
04556	482,620	8,436	D
04560	10,805	640	D
04561	108,183	108,183	A
04566	301,449	20,999	D
06317	34,247	3,757	D
06319	55,155	1,158	D
06341	53,336	4,414	D
06354	126,057	9,779	D
06368	55,710	194	D
06387	64,049	778	D
06388	130,220	1,609	D
14348	167,336	167,336	A
14349	110,016	110,016	A
14350	95,948	95,948	A
14943	53,353	7,640	D
46765	47,519	1,795	D
47598	219,931	3,022	D
73457	291,207	291,207	A
73541	1,326,504	2,368	D
73546	247,250	197	D
73584	127,249	883	D
73596	15,748	172	D
82100	1,543,086	9,016	D
82103	1,559,744	64,739	D, E
87626	481,444	11,457	D
<b>Totals Page 1 of 2</b>	<b>\$9,234,147</b>	<b>\$947,177</b>	

Schedule of Audited Projects  
Los Angeles County Department of Public Works, Alhambra, California  
Public Assistance Identification Number 037-91012  
FEMA Disaster Number 1008-DR-CA

Project # and Primary Supplement		Amount Awarded	Questioned Costs	Finding Reference
98175	02800	63,343	7,196	D
98175	03258	69,852	4,776	D
98175	06998	1,058,309	21,775	D
98175	41720	80,034	82,475	A, D *
98175	48301	58,348	3,703	D
98175	78490	60,815	1,021	D
98378	04577	69,210	1,525	D
98378	04580	126,589	15,777	A, D
98378	04581	61,628	309	D
98378	41725	436,200	10,478	D
98378	41779	351,700	7,814	D
98378	41780	643,800	21,826	D
98378	46163	988,987	88,314	D
98378	48743	44,050	2,641	D
98378	48761	46,136	1,416	D
98378	67248	5,586,905	1,605	D
98378	85602	730,935	551,678	B, C, D
Small Projects		<u>102,887</u>	<u>41,948</u>	A
Totals Page 2 of 2		10,579,728 .	\$866,277	
Totals Page 1 of 2		<u>9,234,147</u>	<u>947,177</u>	
Grand Totals		<u>\$19,813,875</u>	<u>\$1,813,454</u>	

\* The questioned cost exceeds the award amount because it includes reportable conditions identified in Findings A (\$80,034) and D (\$2,441). Should FEMA accept the OIG's recommendation for Finding A, FEMA should not pursue corrective action for Finding D.

Schedule of Audited Projects  
Interest Under-Remitted Detailed as **Finding F**

Project #	Funds		Summary of Interest:	
	Advanced	Earned	Remitted	Under-Remitted
82100	\$ 896,023	\$ 18,270	\$ 2,180	\$ 16,090
82103	611,730	18,086	1,667	16,419
Totals	<u>\$1,507,753</u>	<u>\$ 36,356</u>	<u>\$ 3,847</u>	<u>\$ 32,509</u>

Los Angeles County Department of Public Works, Alhambra, California  
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Legend:

- # - Number of program events conducted during year.
- Ave \$ per program – Average cost or expenditure for a program event.
- Participants Car Total – Number of cars delivering waste material to the program.
- Locations in ***BOLD & ITALICS*** were FEMA reimbursed.

**28 Program Events Conducted During Fiscal Year July 1,1993 thru June 30,1994**

Program Site	Cost	Date	Participants Cars Totals	Hauler Cost per Car	Hazardous Waste in Gallons	Hauler Cost per Gallon
Monrovia	\$108,955	7/17/93	1,500	\$ 73	11,000	\$ 9.82
Monterey Park	134,357	7/24/93	1,250	107	14,600	9.20
Norwalk	159,533	8/07/93	2,040	78	16,000	9.97
Whittier	154,742	8/14/93	1,400	111	11,000	14.07
Torrance	154,309	8/28/93	3,015	51	19,700	7.83
Azusa	123,457	9/11/93	1,125	110	17,000	7.26
Athens	54,432	9/18/93	375	145	3,600	15.12
Huntington Park	53,121	9/25/93	275	193	3,600	14.76
Agoura	93,659	10/17/93	1,080	87	14,500	6.46
La Verne	88,061	10/23/93	1,300	68	10,100	8.72
Montebello	110,628	10/30/93	1,075	103	9,300	11.90
Glendale	143,451	11/13/93	950	151	14,800	9.69
Commerce	51,454	11/20/93	400	129	4,400	11.69
Malibu	48,706	12/04/93	400	122	3,000	16.24
South Gate	45,669	1/23/94	350	130	5,500	8.30
<b><i>Santa Clarita *</i></b>	166,270	2/12/94	1,950	85	24,800	6.70
La Mirada	109,222	2/26/94	1,350	81	13,000	8.40
<b><i>Calabasas *</i></b>	93,876	3/05/94	1,060	89	7,900	11.88
Lancaster	30,791	3/12/94	1,400	22	14,000	2.20
<b><i>Burbank *</i></b>	108,563	3/19/94	900	121	10,500	10.34
Diamond Bar	88,190	3/26/94	1,200	73	10,500	8.40
Avalon	14,849	4/09/94	70	212	800	18.56
Claremont	102,600	4/30/94	1,200	86	10,300	9.96
El Segundo	138,605	5/07/94	1,550	89	14,600	9.49
Alhambra	186,721	5/21/94	2,250	83	29,500	6.33
Long Beach	221,681	6/04/94	3,275	68	28,100	7.89
Glendale	91,688	6/11/94	1,060	87	11,300	8.11
Monterey Park	84,879	6/25/95	950	90	11,700	7.25
Averages	\$105,802		1,241	\$101	12,325	\$9.88

\* The Department's activity schedule for these three events totaled \$368,709 while the claimed amount totals \$373,300.

**Analysis of Program Events Conducted by Fiscal Years from 1994 thru 1996**

Fiscal Years	Number of Program Events per Month in Each Fiscal Period												
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
7/1/93-6/25/94	2	3	3	3	2	1	1	2	4	2	2	3	28
7/1/94-6/24/95	3	3	2	2	2	1	1	2	2	3	2	4	27
7/1/95-6/28/96	3	3	3	3	2	2	1	3	4	3	4	5	36
Averages	2.7	3.0	2.7	2.7	2.0	1.3	1.0	2.3	3.3	2.7	2.7	4.0	30.3

**Analysis of Annual Fiscal Year Costs and Number of Program Events**

Fiscal Yr	Total Cost	#	Program Ave \$ per	Participants Car Total		Hazardous Waste	
				In Program	Per Program	Total Gal	Average
7/93 - 6/94	\$3,467,902	28	\$123,854	34,750	1,241	345,200	12,329
7/94 - 6/95	\$3,117,939	27	\$115,479	36,310	1,345	331,482	12,277
7/95 - 6/96	\$3,648,624	36	\$101,351	44,330	1,231	344,599	9,572
Averages	\$3,411,488	30	\$113,561	38,463	1,272	340,427	11,392



Los Angeles County Department of Public Works, Alhambra, California  
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**Comparison of Non-Productive Rate Calculation**

<b>FEMA's Method</b>	<b>Department's Method</b>										
The normal year consists of 2080 hours (52 weeks x 5 workdays/week x 8 hours/day). This does not include holidays and vacations.  Note: For comparison purposes, we used 2,088 hours as Straight Annual Hours with no material difference in the rate calculated.	<table style="width: 100%; border-collapse: collapse;"> <tr> <td>Annual hrs (365 days * 8 hr/days)</td> <td style="text-align: right;">2,920</td> </tr> <tr> <td>Sat. &amp; Sun. (52 wks * 2 days * 8 hr/day)</td> <td style="text-align: right;"><u>832</u></td> </tr> <tr> <td>Straight Annual Hours</td> <td style="text-align: right;">2,088</td> </tr> <tr> <td>Less: Paid absence, vacation, holiday, jury duty</td> <td style="text-align: right;"><u>- 299</u></td> </tr> <tr> <td>Productive work hours for FY</td> <td style="text-align: right;">1,789</td> </tr> </table>	Annual hrs (365 days * 8 hr/days)	2,920	Sat. & Sun. (52 wks * 2 days * 8 hr/day)	<u>832</u>	Straight Annual Hours	2,088	Less: Paid absence, vacation, holiday, jury duty	<u>- 299</u>	Productive work hours for FY	1,789
Annual hrs (365 days * 8 hr/days)	2,920										
Sat. & Sun. (52 wks * 2 days * 8 hr/day)	<u>832</u>										
Straight Annual Hours	2,088										
Less: Paid absence, vacation, holiday, jury duty	<u>- 299</u>										
Productive work hours for FY	1,789										
Fringe benefit percentage for leave time: Divide the number of hours of annual leave time provided to the employee by 2080 <b>Key: the normal hour year in the denominator or base</b> (29912088 = 14.3%)	Non-productive percentage for absences: Divide the number of hours of leave time provided to the employee by 1,789 <b>Key: the productive hour year in the denominator or base</b> (29911,789 = 16.713%)										

**Footnote #12 examples of costs unrelated to permanently employed personnel:** "Retiree Health Insurance" represented benefits paid to over 32,000 retirees and their dependents enrolled in the program's medical plans and dental/vision plans. From 1994 through 1999, the Department's portion for Retiree Health Insurance benefits averaged \$3.7 million. Also, "Long Term Disability" represented actual payments made by the Department to employees that had been out of work due to illness or sickness for 6 months or more. From 1994 through 1999, the Department paid an average of \$671,000 for this cost category.

**Footnote #14 - Details on fringe benefits computations and indirect costs:** The California State Controller's Office Division of Audits issued in January 1995 Guidelines for Documenting Disaster-Related Response and Recovery Costs for Federal (FEMA) and State (NDAA) Public Assistance Programs. Page 13 of the manual reflects the Nonproductive Leave Time calculation consistent with the County's methodology. Page 14 then contains a discussion and calculation of Fringe Benefits. Thereafter the following appears - CAUTION: Do not combine fringe benefit rates with indirect cost rates or productive hourly rates. FEMA will not accept indirect or overhead costs. Page 16 notes that Indirect Costs are an additional eligible labor cost under the state's disaster program, NDAA. Page 18 notes - FEMA does not allow indirect cost rates under its program; however, you should include the indirect costs as part of your site or DSR costs. FEMA will exclude the costs from its DSR, but OES will use the rate and costs in its DSR.

Los Angeles County Department of Public Works, Alhambra, California  
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**Unsupported Fringe Benefits Costs for Force Account Labor**

Project Number	Fringe Claimed by Department		Fringe Per FEMA Guidelines		Questioned Fringe Costs	
	Straight Time	Overtime	Straight Time	Overtime	Straight Time	Overtime
02257	\$7,694.82	\$ 138.98	6,742.43	\$ 21.32	\$ 952.39	\$ 117.66
02800	8,361.60	5,694.16	6,092.61	767.33	2,268.98	4,926.83
03258	23,678.37	38.87	18,935.41	6.11	4,742.96	32.76
04499	0	7,407.36	0	1,136.35	0	6,271.02
04508	0	6,957.03	0	1,067.26	0	5,889.77
04510	8,824.27	591.50	7,732.09	90.74	1,092.18	500.76
04533	0	7,807.48	0	1,197.73	0	6,609.75
04556	32,342.40	481.85	24,379.08	9.60	7,963.33	472.25
04560	2,357.77	0	1,717.97	0	639.80	0
04566	78,857.96	7,019.33	63,860.38	1,017.91	14,997.58	6,001.42
04577	5,528.02	29.07	4,027.95	3.92	1,500.07	25.15
04580	41,572.43	1,858.15	31,593.11	260.01	9,979.33	1,598.14
04581	2,494.28	0	2,185.57	0	308.72	0
06317	0	4,438.01	0	680.83	0	3,757.19
06319	6,190.61	462.92	5,424.40	71.02	766.21	391.91
06341	0	5,213.36	0	799.77	0	4,413.59
06354	0	11,550.47	0	1,771.93	0	9,778.54
06368	1,530.79	4.86	1,341.33	.75	189.47	4.12
06387	838.47	796.57	734.69	122.20	103.78	674.37
06388	3,214.97	1,430.78	2,817.05	219.49	397.92	1,211.29
06998	82,152.34	1,605.35	61,764.28	218.31	20,388.06	1,387.04
14943	0	8,831.19	0	1,190.07	0	7,641.11
41720	19,722.79	0	17,281.69	0	2,441.10	0
41725	30,053.54	2,684.30	21,898.27	361.73	8,155.26	2,322.57
41779	28,303.14	154.98	20,622.86	20.89	7,680.28	134.10
41780	73,743.96	2,097.51	53,732.96	282.66	20,011.00	1,814.85
46163	203,436.31	38,267.12	148,232.27	5,156.80	55,204.04	33,110.31
46765	8,223.29	174.88	6,576.10	27.50	1,647.19	147.38
47598	3,898.20	2,659.17	3,117.36	418.12	780.84	2,241.06
48301	12,848.66	487.84	9,387.76	71.63	3,286.91	416.20
48743	0	3,119.44	0	478.55	0	2,640.89
48761	5,219.06	0	3,802.83	0	1,416.23	0
67248	6,985.45	244.28	5,586.21	38.41	1,399.24	205.87
73541	8,106.66	194.11	5,906.85	26.16	2,199.81	167.96
73546	0	233.01	0	35.75	0	197.27
73584	3,172.64	25.49	2,311.72	3.44	860.92	22.06
73596	924.95	68.19	810.47	10.46	114.48	57.73
78490	5,098.79	0	4,077.47	0	1,021.33	0
82100	48,179.26	3,605.72	42,216.10	553.15	5,963.16	3,052.57
82103	34,786.71	2,544.22	30,481.15	390.30	4,305.56	2,153.92
85602	25,893.14	70.54	22,688.34	10.82	3,204.80	59.72
87626	41,877.64	107.62	30,513.81	14.50	11,363.83	93.12
Totals	\$866,113.29	\$129,095.71	\$668,592.57	\$18,553.52	\$197,346.76	\$110,542.25