

Debris appeal goes to Washington

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By Alice Dowty |

LIVINGSTON - Parish government is entitled to an additional \$16.6 million for removal of Hurricane Gustav roadside debris, according to a second attempt by attorney Shelby Easterly to reverse a federal denial.

Easterly told the Parish Council Monday that the second roadside debris appeal has been sent to the Federal Emergency Management Agency's Washington, D.C. office.

The first roadside debris appeal was rejected at FEMA's regional office in Denton, Texas in September.

FEMA approved about \$4.7 million for removal of hazardous roadside trees ("leaners") and limbs ("hangers"). That amount covers about 16 percent of the claimed hanging limbs and 34 percent of the claimed leaning trees.

"Livingston Parish had to remove nearly 89,000 hangers and over 1,300 leaners," according to Easterly's Washington appeal. "Livingston's monitors personally observed the work and provided contemporaneous documentation for all the eligibility requirements on a limb by limb and tree by tree basis."

A separate appeal to Denton addresses FEMA's rejection of bills submitted by Professional Engineering Consultants Corp. (PEC) for monitoring services. FEMA's regional office has not yet responded to Easterly's PEC appeal, which asks that a debt of \$350,801 be erased, and replaced with a \$594,374 payment.

Easterly told councilmen Monday that he has received indications that the PEC appeal will be successful at the regional level.

A third appeal, by far the largest, addresses FEMA's denial of about \$46 million for removal of Hurricane Gustav debris from canals and ditches.

Easterly was hired nearly a year ago and has been paid \$181,119 for his appeal work so far, according to the parish Finance Office.

In his roadside debris appeals, Easterly claims that FEMA applied stricter standards to Livingston Parish than to other parishes.

Livingston Parish did not go through the standard process by which most parishes received federal funds to pay hurricane recovery bills.

Usually, the federal government pays out money for contractors before auditing the documentation. Years later, after a complete audit, FEMA can demand that local governments repay some of the money, if proper documentation is lacking.

In May 2009, Parish President Mike Grimmer received an estimate that total hurricane recovery costs could reach \$90 million. The roadside work was finished, and Grimmer halted the debris removal work in canals. FEMA was asked to do its audit before releasing any further payments.

Grimmer has said he was concerned about the possibility that FEMA would find the billing excessive and demand a huge refund.

Easterly's appeal claims that FEMA's standards for documentation of Livingston Parish debris eligibility were unattainable.

"Livingston's monitors also took, and Livingston provided to FEMA, over 120,000 photographs. However, no applicant on a job this size could possibly document through photographs every aspect of FEMA eligibility for every one of 89,000 tree limbs.

"As a practical matter, no applicant can do that, no applicant does do that, and FEMA does not require that-except here," according to the Washington appeal.

If FEMA had "applied the same documentation standards to East Baton Rouge that it did to Livingston," Easterly writes, "hardly a single hanger would have justified reimbursement."

The appeal to Washington also recalls a claim Easterly made in February, that FEMA erred by not including parish representatives when making its eligibility decisions.

Policy requires FEMA to include the parish in the "validation process," according to the appeal.

The validation process "should be considered a coordinated and collective effort between FEMA, the State, and the applicant," according to Easterly's Washington appeal.

Easterly refers to FEMA's Disaster Assistance Fact Sheet 9580.204, "Documenting and Validating Hazardous Trees, Limbs, and Stumps," which was issued in August 2009.

In a February 26 letter to the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP), included in the Denton appeal, Easterly maintains that the fact sheet on validation "is not prospective from its date. It is clearly a general statement of policy not restricted as to time of application."

Fact Sheet 9580.204 was in effect during FEMA's validation process for roadside debris eligibility (PW 54v1), according to the Washington appeal.

"Livingston Parish's monitors offered to assist FEMA on its site inspections as required by Fact Sheet 9580.204. FEMA declined to take the Parish's representatives with it," according to the Washington appeal.

"Had FEMA allowed Livingston Parish to participate, the Parish could have helped FEMA avoid the many errors that it committed and perhaps obviated the need for this appeal," Easterly wrote.

"FEMA had reached the conclusions contained in PW 54v1 with virtually no input from the Parish's professional representatives. Contrary to the dictates of Disaster Recovery Fact Sheet 9580.204, FEMA had not included in the validation process 'representatives from...the applicant who are familiar with debris removal operations, FEMA policy and debris removal eligibility, and debris monitoring documentation practices.' The process had not been a 'coordinated and collective effort' as 9580.204 requires."

Livingston Parish hired International Equipment Distributors, Inc. (IED) to perform debris removal after Hurricane Gustav hit on Sept. 1, 2008.

PEC was hired to monitor the roadside debris removal. PEC, in turn, subcontracted with Barowka and Bonura Engineers and Consultants LLC (BBEC) to perform a substantial portion of the work, according to the appeal.

The roadside work was completed in December 2008.

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