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April 29, 2010

Honorable James L. Oberstar  
Chairman  
House Committee on Transportation and Infrastructure  
2165 Rayburn House Office Building  
Washington D.C. 20515

Honorable Eddie Bernice Johnson  
Chairman  
Subcommittee on Water Resources  
House Committee on Transportation and Infrastructure  
B-376 Rayburn House Office Building  
Washington D.C. 20515

Dear Mr. Chairman and Madam Chairman,

The Association of State Floodplain Managers is pleased to have the opportunity to provide written testimony associated with the hearing held on April 15, 2010 titled "Proposals for a Water Resources Development Act of 2010, Part II".

We would very much appreciate your including our testimony in the written hearing record.

Sincerely,

Larry A. Larson  
Executive Director  
Association of State Floodplain Managers

***Dedicated to reducing flood losses in the nation.***

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## **Testimony for the Record**

### **April 15, 2010 Hearing on Proposals for a Water Resources Development Act of 2010, Part II**

House Committee on Transportation and Infrastructure  
Subcommittee on Water Resources and Environment

Submitted by  
Larry Larson, Executive Director  
**Association of State Floodplain Managers**  
April 29, 2010

The Association of State Floodplain Managers is pleased to submit our thoughts on elements of a Water Resources Development Act of 2010. This testimony will focus on

- 1) inclusion of a Title on a National Flood Risk Management program which would include a component on levee safety,**
- 2) clarification that the National Levee Inventory should include federal, non-federal and private levees and that timely completion of the inventory is important and**
- 3) expansion of Army Corps of Engineers programs to facilitate technical assistance to communities in developing and implementing flood risk management options.**

#### **1) Inclusion of Title on National Flood Risk Management**

A new national flood risk management policy is needed to establish a fresh, more effective approach to addressing risks associated with existing levees, while also evaluating emerging flood risk to developed areas.. Flood risk needs to be investigated and addressed on a watershed or basinwide level with the participation of all potentially affected property owners and jurisdictions up and down-stream. Protection of existing investment at risk requires consideration of the full range of possible solutions including structural measures such as levee system improvement or reconfiguration, and nonstructural measures such as strategic relocation from areas at risk.

As the public grows to recognize the risks associated with levees, communities are working to evaluate the various actions they can take in response to those risks: levees can be repaired and improved or set back from the river to relieve pressure and erosion on the levee; homes, businesses, and infrastructure at risk can be relocated to reduce risk and restore floodplain function; waters can be detained upstream; and measures can be combined to achieve the most effective results with scarce public dollars.

#### Incentivizing State & Local Practices

To assure the success of a national flood risk management initiative, the federal government will need the participation and commitment of states, local governments, and the private sector. Communities and states will need to commit to robust and inclusive planning processes, reaching beyond their jurisdictional boundaries and traditional

partners, many for the first time. They will also need to review and integrate existing plans for land use, hazard mitigation, infrastructure, and other responsibilities. Finally, important data will need to be acquired or generated, maintained, and used to populate the National Levee Database, including levee location, level of protection, general information on the condition of the levee, and the number of structures in residual risk areas for all levees regardless of provenance, ownership, and responsibility for operations and maintenance.

Inclusion of a diverse menu of incentives can help motivate state and local governments in their efforts to plan and manage flood risk associated with levees. Incentives can cost the federal taxpayers less than continuing to pay disaster relief for flood damages if the incentives encourage states and locals to manage development wisely to avoid creating tomorrow's disaster. Additionally, technical assistance programs such as the U.S. Army Corps of Engineers (USACE) programs for Planning Assistance to States (PL 93-251) and Floodplain Management Services (PL 86-645) support innovative management of flood risk along with other water resources challenges. Existing federal law in environmental and other policy areas provide useful examples of incentives beyond simple monetary inducements to reward states for robust programs. In addition to the data and planning contributions outlined above, incentives should be designed to encourage and reward States that meet and exceed minimum standards on a sliding scale; the more rigorous or innovative the program, the greater the rewards.

#### Levee Safety Component

The National Committee on Levee Safety (NCLS), established by the Water Resources Development Act of 2007, developed a legislative proposal based on its report and recommendations to Congress in January 2009. ASFPM participated on the NCLS in the development of the legislative proposal and recommends inclusion of the ideas contained in the NCLS proposal as an important component of a Flood Risk Management program for the nation. ASFPM views the following recommendations as particularly critical to reducing the loss of life and property in future levee failures:

- Expansion and completion of the National Levee Inventory to include all levees across the nation;
- National mapping and mandatory flood insurance in residual risk areas associated with levees;
- Development of national levee safety standards and a levee hazard classification system;
- Inclusion of structures along canals and other structures such as highway and railway embankments that are relied upon as levees in the definition of what is a levee;\* and
- Public engagement regarding residual risk areas associated with levees.

\*ASFPM recommends that any national levee program address levees and embankments in the floodplain that modify flooding, and include them in the oversight and regulation applicable to the traditional definition of what is a levee.

A more complete list of ASFPM's suggestions for a Flood Risk Management Program is included at the end of this testimony.

## **2) Clarification that the National Levee Inventory should include federal, non-federal and private levees and that timely completion of the inventory is important**

A complete inventory of all of the nation's levees – federal, nonfederal, and private – is the first step to conduct the levee triage that will be necessary so that everyone, including Congress, understands the scope of the crisis we face. A national levee inventory was provided for in the Water Resources Development Act of 2007 (WRDA '07) and the inventory of federally built, owned and maintained levees is nearing completion. In order to evaluate and address the size and scope of the nation's levee issues, it is essential that the inventory include federally built but locally owned and maintained levees as well as agricultural and private levees. Full engineering evaluation of levee condition is not necessary for this purpose. A general, preliminary assessment of condition is sufficient for this purpose.

It is critical that this information be compiled as expeditiously as possible to facilitate plans and initiatives to address the needs. Public safety is at stake.

ASFPM recommends that a WRDA 2010 (or its accompanying report language) clearly express the expectation that the National Levee Inventory should include not only federal levees, but non-federal, agricultural (to the extent possible) and private (to the extent possible) levees. Additionally, we recommend that the Congress state clearly the importance of all deliberate speed in completion of the inventory.

## **3) Expansion of Army Corps of Engineers Programs to Facilitate Technical Assistance to Communities in Developing and Implementing Flood Risk Management Options**

Technical assistance programs such as the U.S. Army Corps of Engineers (USACE) programs for Planning Assistance to States (PL 93-251) and Floodplain Management Services (PL 86-645) support innovative management of flood risk

ASFPM strongly believes that the USACE can contribute significantly to better informed flood hazard reduction decisions in our nation's communities through providing technical advice and assistance. As the Corps moves toward helping states and local governments with a comprehensive approach to flood risk management the Flood Plain Management Services (FPMS) and Planning Assistance to States (PAS) programs are essential. These are small Corps programs, yet their impact can make a significant contribution to development of solutions to flood risk problems which fit well with a community's priorities and preferences.

Many towns and communities in our nation do not have either the staff capacity or the financial capacity to secure professional consultation to identify and analyze options for reducing their flood risk. The choice could be a structural project (levee), a non-structural project (diversion of water up-stream to a retention pond, property elevation or buy-out as examples), or a combination of the two. FPMS, in particular, can be used to support a community assistance initiative at the Corps called “Silver Jackets”. The initiative has already been quite successful in several locations and is being expanded. The expertise of the Corps of Engineers in assisting state and local officials and their citizens would provide technical guidance to many areas where such assistance is very much needed. Significant expansion of the authorities for PAS and FPMS would certainly contribute to reduction of losses as well as to reduction of costs to the nation’s taxpayers in the form of disaster relief.

### **More Detailed Recommendations for a Flood Risk Management Program**

Following are the more detailed recommendations for a Flood Risk Management Program referenced earlier in this testimony:

#### **ASFPM Recommendations**

Although ASFPM supports much of the NCLS proposal, we identified important gaps that will need to be addressed for a levee program to be sustainable and effective. Since NCLS has completed its report and recommendations to Congress, NCLS could be tasked with further exploration of the following issues.

- 1. Development of a National Flood Risk Management Program, to address levee safety among the broader range of risk management challenges and opportunities.** We cannot address levees as an entity onto themselves without consideration of land use decisions and the full range of flood risk management tools. Additionally, effective state and local programs need to operate within a unified National Flood Risk Management Program that guides decision-making at all levels. If a program only addresses the levee structure and not the responsibility of local communities to control and guide the development behind the levee, the ability to reduce the risk is lost. Finally, a National Flood Risk Management Program should identify the federal interest in preventing and reducing catastrophic flood losses considering the full range of risk management options – not just levees:
  - a. A national policy should be adopted to prevent federal participation in the construction of new levees except to protect existing development where a full range of options, including all nonstructural options have been considered and included in a multifaceted approach. This new national policy should be embodied in future Water Resources Development Acts, Principles & Standards, and other statements of broad national policy,

- b. A complete inventory of all of the nation’s levees – federal, nonfederal, and private – is the first step to conduct the levee triage that will be necessary to understand the scope of the nation’s exposure, and to ensure that public dollars are spent wisely.
- c. A National Levee Hazard Classification System should be adopted that serves as the basis for risk identification, prioritization, management, and other requirements for eligibility for federal funds. Since levees can fail with catastrophic consequences, even if for only a few people, ASFPM recommends the following system:

HIGH Potential for any loss of life  
 SIGNFICANT Potential for damage to property  
 LOW No potential for loss of life or damage to property

- d. Federal funds to support construction of new levees in urbanized areas must provide protection for no less than the 0.2%-chance flood.
- e. Eligibility for funds for levee work on pre-existing structures, including under the Flood Control and Coastal Emergency Act (P.L. 84-99, 33 U.S.C. 701n), must include requirement that levee structure provide no less than 100-year level of protection.
- f. Within 5 years of enactment, federal funds for new housing, transportation, and infrastructure in non-urbanized residual risk areas associated with levees is available only in areas with at least 1%-chance protection; urbanized areas and critical facilities will require at least 0.2%-chance protection to be eligible for Federal funds in such residual risk areas.
- g. All new levees, be setback from the waterway to allow natural systems to provide natural flood reduction benefits, relieve the erosion and hydraulic pressure on the levee, and allow the waterway’s natural ecosystem and resources to function. This should be considered when evaluating options for repair of existing levees as well.

**2. Residual risk areas behind levees must be mapped and all properties therein insured for flood at full risk premiums.** Property owners in residual risk areas must be required to obtain risk-based flood insurance coverage to help manage economic loss of what for many of them is their only capital asset, assure equitable distribution of responsibility, incentivize levee maintenance & risk mitigation, and to help manage potential legal liabilities associated with levees for levee owners, program managers, and providers of engineering services.

- a. Affordability of flood insurance must not be an impediment for those who need coverage but cannot afford it. Property owners at risk who cannot afford insurance are those who most need it, as well as knowledge of their risk and support to help them undertake mitigation of their structure. Family safety should

not be a luxury available only to those who can afford it. Congress should investigate development of a means-based voucher, premium rebate, or similar system to provide interim relief for those who cannot afford to pay flood insurance premiums.

- b. A new federal program to address flood insurance affordability should be managed through an agency that deals with income supplemental programs, such as the Department of Housing and Urban Development. The National Flood Insurance Program is not an appropriate vehicle for means-based programs. Moreover, measures such as premium subsidies, delaying insurance requirements, and other measures intended to reduce financial burdens serve only to distort risk perception and undermine the fiscal soundness and other aspects of the flood insurance program that promote individual responsibility.
- c. In addition to measures to address affordability, the following innovations in insurance warrant exploration as stand-alone approaches and in combination, such as long-term group insurance behind levees that is attached to the property:
  - 1) Group flood insurance obtained by the levee district provided to property owners throughout the residual risk area through premiums combined with existing district fees. This measure is attracting attention as a benefit for everyone involved, since levee owners' liability is reduced, property owners' financial risk is managed, and everyone shares a common stake in the ongoing maintenance of that levee and other risk reduction measures that keep premiums down.
  - 2) Group flood insurance obtained by the community provided to property owners throughout the residual risk area through premiums which can provide coverage for all properties, not just those with federally backed mortgages, thus the community can recover when the levee is overtopped or fails. The community is also the entity that has control over future development and redevelopment, and can use its development plan and mitigation plan to reduce flood insurance premiums.
  - 3) Long-term flood insurance based on the length of any federally-backed loan, to reduce the rate of policy nonrenewal and provide continued financial security to citizens.
  - 4) Flood insurance attached to the property rather than to the insured, to ensure continuity of coverage even if property is transferred;
  - 5) Legislation requiring that all property insurance policies in the nation cover all natural hazards; and
  - 6) Privatization of flood insurance.

**3. Minimum performance standards for communities to qualify for federal funding to construct new levees, rehabilitate or repair existing levees, and develop infrastructure in residual risk areas.** Although land use planning is a local and state function, the federal government plays an important role in helping communities guide development through conditions on the availability of federal dollars and through policy

and regulatory guidance. In addition to minimum standards proposed by the NCLS, to qualify for federal funding to construct new levees, rehabilitate, or repair existing levees, and develop infrastructure in residual risk areas, communities must be required to:

- a. Participate in the National Flood Insurance Program;
- b. Adopt a FEMA approved Hazard Mitigation Action Plan that includes emergency action planning (EAP) for residual risk areas associated with all levees and residual risk areas in their jurisdiction;
- c. Prevent the construction of critical facilities (CFs) in areas subject to inundation in the 0.2%-chance floodplain, and that requires that all CFs be protected, accessible, and operable in the 0.2%-chance flood;
- d. Evaluate the full array of nonstructural measures to reduce risk, implement effective nonstructural measures in combination with any structural measures that are selected, and adopt standards to prevent any post-project increase of risk, prior to any commitment of public funds toward levee work;
- e. Demonstrate binding and guaranteed financial capacity and commitment to long-term operations and maintenance, rehabilitation, and management of all levee structures and system components in the community's jurisdiction;
- f. Adopt short- and long-range flood risk reduction planning as part of the community's mitigation, development and land use planning, including comprehensive planning and zoning that:
  - 1) Reflects and addresses flood hazards, levees, and other relevant flood damage reduction structures, and articulates the community's objectives in managing flood risk;
  - 2) Incorporates and references data, including maps, that shows current conditions, trends, and likely future conditions, and addresses each hazard that may confront or impact the community in any material way;
  - 3) Identifies areas of highest risk of flooding in which new development and redevelopment are not permitted due and which, if damaged in a future flood, are appropriate for buyout of properties and floodplain restoration;
  - 4) Identifies existing properties that pre-date current zoning regulations or development codes, and that are appropriate for buyout when the property is next available for transfer;
  - 5) Identifies vulnerable structures, lifelines (such as water, sewer, power, critical roadways), and critical facilities (such as emergency operations centers, fire stations, hospitals, evacuation centers, and hazardous materials storage areas); and
  - 6) Articulates property owner rights and responsibilities in flood risk and residual risk areas.
- g. Participate in regional/watershed planning to identify and manage risk that crosses jurisdictional boundaries;



- h. Notify levee owners and provide opportunity to comment on all proposed development in that owner's residual risk area; and
- i. Communicate annually with property owners in residual risk areas to notify them of their risk, update them on emergency action plans, report on levee operations and maintenance over the past year, and for other public notification and engagement activities.

ASFPM and its 29 Chapters represent over 14,000 state and local officials and other professionals who are engaged in all aspects of managing and mitigating flood risk to address the loss of life and property from natural hazards. These aspects include land management, hazard mitigation, mapping, engineering, planning, building codes and permits, community development, hydrology, forecasting, emergency response, water resources and insurance. Most of our members work with the Nation's 21,000 flood prone communities to reduce losses from all flood related hazards. The ASFPM website is: [www.floods.org](http://www.floods.org).

Thank you for this opportunity to share our recommendations with you as you develop WRDA 2010. If there are questions or interest in further discussion of these thoughts, please contact Larry Larson at (608) 274-0123 or [larry@floods.org](mailto:larry@floods.org).