



March 31, 2022

The Honorable Michael L. Connor
Assistant Secretary of the Army (Civil Works)
108 Army Pentagon
Washington, D.C. 20310-0108

RE: Comments on the “Development of the National Levee Safety Program” (Docket No. COE-2021-0007)

Dear Mr. Secretary:

On behalf of the National Waterways Conference (NWC), I am pleased to submit comments on the U.S. Army Corps of Engineers (USACE) and the Federal Emergency Management Agency's (FEMA) (collectively, the Agencies) on the “Development of the National Levee Safety Program,” as published in the Federal Register on December 28, 2021 (Docket No. COE-2021-0007). We thank the Agencies for their outreach and ongoing engagement with non-federal sponsors (NFS) and other stakeholders on Phase 1 of this effort.

NWC was established in 1960 and is dedicated to creating a greater understanding of the widespread public benefits of our Nation's water resources infrastructure. We represent the broad spectrum of water resources stakeholders, including flood control associations, levee boards, waterways shippers and carriers, industry and regional associations, hydropower producers, port authorities, shipyards, dredging contractors, regional water supply districts, farmers, engineering consultants, and state and local governments. Our members are NFS with USACE waterway infrastructure projects and facilities, including ongoing project studies, construction, and operation and maintenance of levee and flood control systems.

Many of our members have participated in Phase 1 of the National Levee Safety Program (NLSP) Stakeholder Feedback process conducted in the Winter 2021-22 and, while we support the concept of a National Levee Safety Program (NLSP), we have some questions and concerns about the scope and intention of the program and offer some recommendations for consideration.

This letter will highlight a number of those questions and concerns as they relate to the NLSP:

Comments of National Waterways Conference

Docket No. COE-2021-0007

March 31, 2022

Page 2

- **There needs to be greater clarity about the intent of the NLSP, how it will be used—both inside and outside of the Agencies—and how to measure success.**
- **The data populating the National Levee Database has varying degrees of accuracy/thoroughness.**
- **A National Levee Database Appeal Process will ensure the database includes updated and accurate data.**
- **FEMA is inappropriately using the USACE Levee Safety Risk Assessments to set rates for individual property owners.**
- **Ensure that USACE Levee Safety Program Risk Assessments are consistent with other USACE documents and programs.**
- **The next iteration of the National Committee on Levee Safety violates FACA.**

There needs to be greater clarity about the intent of the NLSP, how it will be used—both inside and outside of the Agencies—and how to measure success.

The USACE already has a well-established Levee Safety Program for Federal levees and levees that are in the Rehabilitation & Inspection Program under Public Law 84-99 (PL 84-99), Rehabilitation Assistance for Non-Federal Flood Control Projects. Under PL 84-99, public levee sponsors enroll in the program with understanding that levees need to meet and maintain certain eligibility requirements for the USACE to supplement local efforts in the repair of flood control projects (i.e. levees) which are damaged by a flood. However, our members have expressed concerns that the Agencies' NLSP will pull in non-PL 84-99 levees, which is problematic, since these levee systems are primarily governed through other Federal and state agencies. Adding an additional layer of USACE regulations, would be costly, time-consuming, and inappropriate.

The data populating the National Levee Database has varying degrees of accuracy/thoroughness.

We recognize it has been an extremely difficult task in populating the National Levee Database (NLD), but the reality is the current data represents varying levels of detail and accuracy. Some levee systems have been analyzed in great detail while others only have basic data available. We believe that to help ensure that the data is used appropriately, there needs to be way to better identify the source and the quality of the data and its level of detail.

Comments of National Waterways Conference

Docket No. COE-2021-0007

March 31, 2022

Page 3

The NLD should be informed by the local maintaining agencies. As these local agencies conduct improvements to their facilities; these agencies should be able to submit updates to the NLD. This practice would provide for a collaborative and inclusive process and builds confidence in the accuracy of the data.

Development of the NLSP guidelines and the NLD need to include a common approach for definition of non-levee features and how levee systems (reaches) are defined. Non-Levee features (NLFs) such as railroad and roadway embankments are often functional parts of a levee system that do provide some level of flood flow confinement but are not consistently regulated the same by USACE and FEMA. USACE may or may not consider NLFs as part of a levee system, and FEMA may or may not address NLFs in the National Flood Insurance Program (NFIP), accreditation and mitigation applications. Complementary and common approach the NLSP guidelines and NLD data needs to be defined at the Federal program level before data is applied and managed at the State level.

The NLD fact sheet offered as supplemental background information for this notice states that, “[a]lthough we understand more than ever about the location of the Nation’s levees and what is at stake behind them, we do not have a complete enough picture regarding their condition or expected performance during high water events.”

Our general understanding is that while the Corps levee screening data included in the NLD may offer some broad, preliminary value to the Nation for advisory-level risk communication purposes, it is generally not reliable for regulatory purposes or use by FEMA to calculate chargeable premiums under the NFIP. Only a relatively small percentage of the overall national levee portfolio has been analyzed in great detail while the lion’s share of U.S. levees only has basic data available. The same USACE NLD fact sheet referenced above discusses the time consuming and expensive nature of detailed levee risk assessments. We believe that to it is essential for the USACE to take appropriate steps to ensure that NLD data is not used inappropriately.

A National Levee Database Appeal Process will ensure the database includes updated and accurate data.

We would like to see a better-defined process implemented for correcting and incorporating new and updated data in the National Levee Database (NLD). Currently, there is a button to click on in the NLD to request a correction to the data. However, we are not aware of an existing publicly defined USACE

Comments of National Waterways Conference

Docket No. COE-2021-0007

March 31, 2022

Page 4

process to vet the data correction requests, with timelines, for what happens to the request once it is made. Nor is there an opportunity to appeal final data decisions.

Additionally, the process needs to include a timeline for addressing correction requests, what input, signoffs, and approvals of the data from other agencies is sought and/or required, and follow-up discussion with the original submitter on what changes that will be made or what additional data is needed.

Moreover, as entries or changes are made in the NLD, we would suggest checking with the local maintaining agencies to see if they agree with the submitted data. Generally, the local maintaining agencies should be the most trusted source of data for the NLD acting on behalf of the NLSP NLD Guidelines.

Furthermore, there should be a report publicly available indicating how many change requests have been submitted, how many are still pending (with the date they were submitted), and how many have been completed. Reporting on incorporation of new and updated data entered in the NLD should be available at agreed upon timeframes. And it should be noted in the database when the data is revised.

An appeal process is especially important for properties in leveed areas since the new FEMA Risk Rating 2.0 methodology does not have an appeals process for NFIP Risk Rating 2.0 or premium calculation. We are concerned about FEMA's use of the preliminary levee screening data, without such an appeals process. If FEMA is utilizing unreliable or incorrect levee risk rating information, then property owners will not be paying accurate chargeable premiums, nor will they understand the accurate flood risk faced by their individual property. It appears the only way to make an appeal is to make sure the data in the database is accurate in the first place.

FEMA is inappropriately using the USACE Levee Safety Risk Assessments to set rates for individual property owners.

Based upon the available information, FEMA Risk Rating 2.0 appears to be using the Levee Safety Risk Assessments to help set individual property owner rates under the National Flood Insurance Program. However, these Risk Assessments are intended to characterize the risk associated with a levee system as a whole. It is based on a combination of hazards the system may experience, the expected

Comments of National Waterways Conference

Docket No. COE-2021-0007

March 31, 2022

Page 5

performance of the system during a given hazard scenario, and the consequences should flooding occur. The risk assessments were never intended to be used within NFIP rate setting.

However, this methodology which the USACE uses in performing the risk assessments is incongruent with the methodologies that should be used to set individual flood insurance rates. Differing methodologies causes greater confusion in an already complex analysis. Therefore, care needs to be taken to use the appropriate components of a risk assessment and utilize them correctly in developing the individual property owner rates under Risk Rating 2.0.

While these concerns are primarily FEMA and NFIP-related, USACE itself, as the NLD administrator, should also ensure that data disseminated for use by other agencies is of acceptable quality, objectivity, utility, and integrity.

Ensure that USACE Levee Safety Program Risk Assessments are consistent with other USACE documents and programs.

The USACE Levee Safety Risk Assessments are based three areas: hazard, performance, and consequences. However, the way these are completed sometimes can result in findings that may seem, or are, contradictory with other USACE documents and processes, which can cause confusion. Some of NWC's NFS have indicated there have been instances when the characterization of the Levee Safety Risk Assessment is not consistent with a feasibility study the USACE is conducting on the same levee system. This can be problematic for the NFS. There also needs to be an accounting system to identify changes in Levee Safety Risk Assessment findings based on updated routine (generally annual) and periodic levee inspections. There needs to be a more consistent effort across all USACE programs to better quantify assessments and message system performance to avoid misunderstandings and misinformation.

The next iteration of the National Committee on Levee Safety violates FACA.

The charter under which the National Committee on Levee Safety (Committee) was formed under the National Levee Safety Program, paragraph (e) "Duties and Powers" states that the sole purpose of the Committee is to provide an annual report to Congress only. Since the Committee was formed for the sole purpose of advising Congress, it was exempt from the Federal Advisory Committee Act (FACA).

Comments of National Waterways Conference

Docket No. COE-2021-0007

March 31, 2022

Page 6

However, in the January 21, 2022, Federal Register notice “Request for Nominations: Stakeholder Representative Members of the Committee on Levee Safety,” it states that Committee duties will “provide advice to USACE and the FEMA on a broad range of issues, topics, or alternatives...” which means the Committee is changing its scope from advising Congress to advising USACE and FEMA, which means FACA would apply.

Under the U.S. General Services Administration, which oversees FACA compliance, if a committee is used to advise federal agencies and uses outside members, it is required to follow FACA rules for how the committee is set up and operated. Hence the concern that the committee is operating outside of FACA.

We recommend that USACE and FEMA follow FACA rules for the formation and scope of this committee.

National Levee Safety Program Process Moving Forward

We appreciate the Agencies setting up a process to invite opportunities for feedback and participation. We would also encourage the Agencies to ensure that they follow the requirements of the Administrative Procedures Act and the Data Quality Act in the application and utilization of the NLD and the NLSP. Additionally, as part of the rule-making process, the Agencies should address the comments that they receive and how explain how they addressed those comments in any future.

We thank you again for the opportunity to comment on the NLSP. If you have any specific questions on our comments, please feel free to reach out to us. We look forward to working with you further through the remainder of the process.

Sincerely,



President and CEO
National Waterways Conference