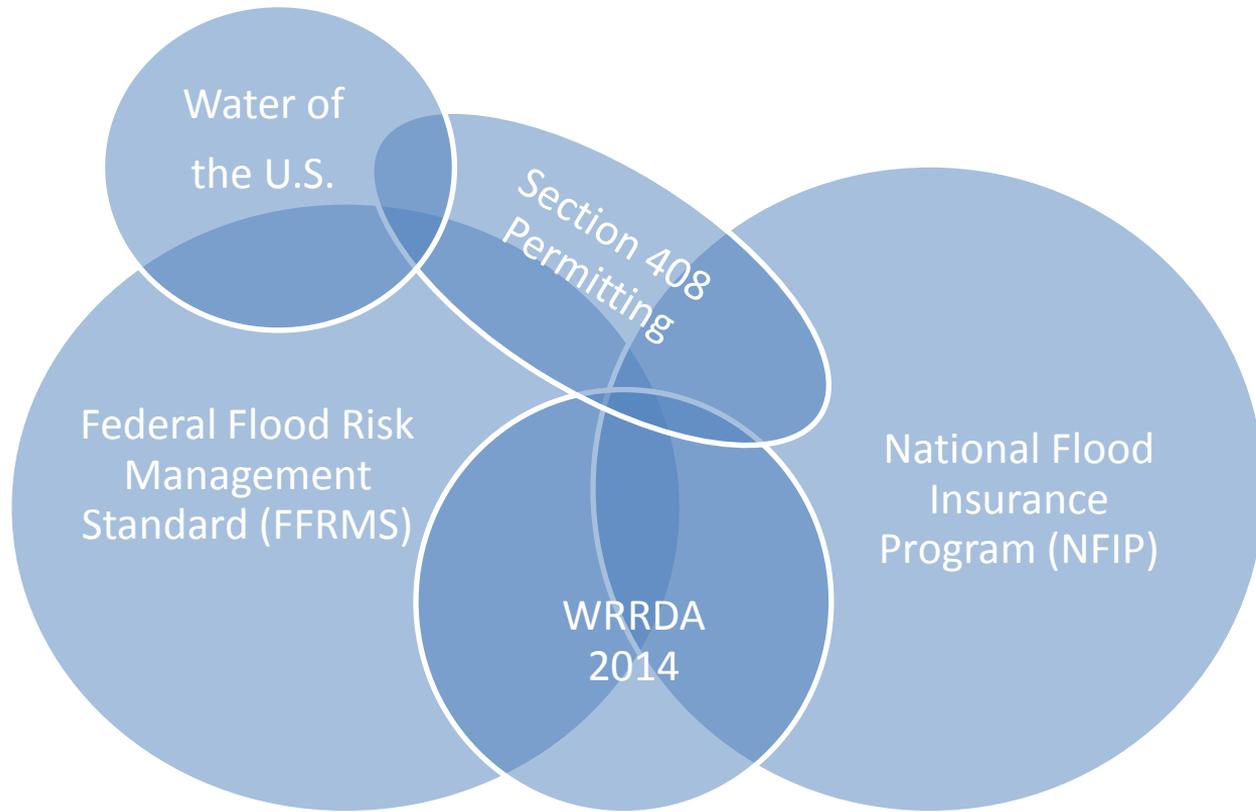




Flood Risk Management: An Evolving Regulatory Framework

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HUSCH BLACKWELL



I. FFRMS

January 30, 2015:

- President Obama issued Executive Order (EO) 13690
 - Revises Executive Order 11988 on floodplain management
 - Establishes a new Federal Flood Risk Management Standard (FFRMS)
 - Applies to ALL federal “actions” in the expanded floodplain

FFRMS – Federal Actions

- **Action:** Any Federal activity including:
 - (1) acquiring, managing, and disposing of Federal lands and facilities;
 - (2) providing Federally undertaken, financed, or assisted construction and improvements; and
 - (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating and licensing activities

FFRMS

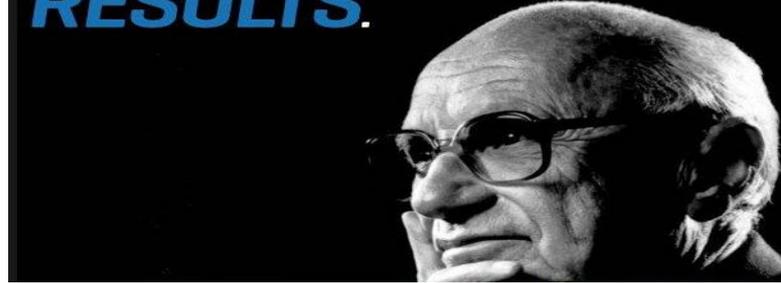
INTENTIONS (stated) -

- ensuring federally funded buildings and infrastructure
- constructed to withstand impacts of flooding
- so to improve community resilience and protect federal investment

RESULTS (expected) –

- Regulatory - 402 NPDES, 404 permits, 408 Corps projects
- ALL Federal actions in the newly expanded “floodplain”
- B/C no grandfathering, flood risk reduction projects already underway

ONE OF THE GREAT MISTAKES IS
TO JUDGE POLICIES AND
PROGRAMS BY THEIR
INTENTIONS
RATHER THAN THEIR
RESULTS.



Milton Friedman, Author / Economist
Capitalism and Freedom, 1962

FFRMS

The FFRMS gives the Federal agencies the option of selecting one of three approaches for establishing the expanded floodplain, and allows for another method to be defined.

1.
 - Use data and methods informed by best-available, actionable climate science. (*Preferred method*)
2.
 - Build 2 ft. above the 100-year (1% annual chance) flood elevation for standard projects. (3 ft. above for **critical actions: Any activity for which even a slight chance of flooding would be too great.**)
3.
 - Build to the 500-year (0.2% annual chance) flood elevation
4.
 - Elevation and flood hazard area that result from using any other method identified in an update to the FFRMS

Proposed 4th method

- **Local, State or Tribal Approach** – *The elevation and flood hazard area resulting from the standard established through adoption by a local, state or tribal government, developed through an open and transparent public process involving communication of current and future flood risk, that is equal to or greater than the area subject to a one percent or greater chance of flooding in any given year.*

PPD8 refreshed and updated FIOPs

- Use of NSC process allowed for interagency committee to develop FFRMS w/o Congress or nonfederal entities
- Mitigation FIOp released 8-3-15, comment period 9-2-15
- MitFLG chooses to consult relevant state/local/tribal
- No process for determining relevance or selecting reps
- Lack of involvement and transparency led to FFRMS
- Congressional oversight, open process, local input sought

NFIP Reauthorization

2012: Biggert-Waters Flood Insurance Reform Act of 2012 (P.L. 112-141), reauthorized the NFIP through September 30, 2017

2014: Homeowner Flood Insurance Affordability Act of 2014 modified certain provisions of Biggert-Waters

2017: ????????



NFIP Reauthorization

Big issues facing the 2017 NFIP Reauthorization:

1.

- Improve accuracy of flood risk assessment and mapping of hurricane and coastal storm hazard areas.

2.

- Strengthen the financial sustainability of the NFIP in light of future extreme weather events.

3.

- Address affordability challenges which are associated with mandatory purchase requirements and actuarial based premium rates.

NFIP Reauthorization

Big issues facing the 2017 NFIP Reauthorization:

4.

- Reduce likelihood of future emergency supplemental spending.

5.

- Explore creation of effective hazard reduction strategies linked to land use planning and construction standards.

6.

- Push behind privatization of aspects of flood insurance.

7.

- Push behind community-based flood insurance.

WRRDA – Levee Safety Initiative

- **2014:** WRRDA includes several program reforms that impact federal water resources projects, and also a Subtitle on Levee Safety.
- **Levee Safety Subtitle:**
Authorizes Secretary, in consultation with the Administrator of FEMA, to carry out a national levee safety initiative, including the establishment of voluntary levee safety guidelines and technical assistance to states to create local levee safety programs.
- **Authorization of federal funds for this initiative:** \$4,000,000 (2015-2019)
- **Three years:** to report recommendations for a National Dam & Levee Safety Program

WRRDA Implementation

- Implementation Guidance for “Reform” and Levee Safety
 - Congress expressed concern Corps may be slow-walking
 - Stakeholders disappointed with limited nonfederal consultation
- National Levee Safety Corps / FEMA Initiative
 - Levee safety guidelines
 - Hazard potential classification
 - Technical assistance for levee safety programs
- *Also:* 408 permits, vegetation management, SWIF, certifications, etc.

FRM – Federal

A top-down approach founded on:

1.

Expanding / enhancing the NFIP mandatory purchase requirement (MPR), while mapping future flood risk using climate change predictions and developing associated risk-based / premiums;

2.

Usurping local land use decision-making through FFRMS regulation, restriction of floodplain activities, and impacts to ongoing projects; and

3.

Concept of shared responsibility confusing Federal understanding of the role local entities have in flood preparedness, risk communication and emergency response;

is not how to build community resilience.

FRM – Local, Regional, Federal

An all levels of government approach that recognizes:

1.

Work ongoing at local / regional levels to address concerns with flooding (both protection of property and the threat to public safety) that is customized to communities, which is better than a one-size fits all approach;

2.

Flooding conditions vary by region and land-use practices differ locally, and so must flood-risk management strategies; and

3.

Innovations at the local/regional level, and supports those tools being developed and deployed, thereby incentivizing their widespread use in reducing flood risk across the nation;

is a path toward preparedness and better outcomes.

Waters of the U.S.

- Rule "does not interfere with or change private property rights, or address land use"
- Less clear in leveed areas than some other locations
- Waters in the floodplain, without regard to presence of a levee, considered jurisdictional to maximum distance of 1,500 feet beyond the ordinary high water mark
- Expected it will be increasingly difficult to use land within that part of the leveed area
- Could be impacts to O&M or development / fill

Stu's Views

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Children,
let's settle this
like adults.





Thank you

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