NAFSMA Annual Meeting
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Levees and Flood Protection
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Outline

• What to anticipate
• Financing alternatives
• Federal requirements
• How to proceed

Milton Friedman, Author / Economist
Capitalism and Freedom, 1962

ONE OF THE GREAT MISTAKES IS TO JUDGE POLICIES AND PROGRAMS BY THEIR INTENTIONS RATHER THAN THEIR RESULTS.
What Are Some Current and Emerging Challenges for Project Owner / Operators?

- Continued Change
- Increased Responsibility / Accountability
- Decreased Federal $$$
- More Federal requirements
- Federal Interagency Enforcement
- Growing Funding Gap
FINANCING ALTERNATIVES

- (Re-)Assessment of Benefits
- Local Public Financing Options
- State Legislative Options
- Federal Investment
ASSESSMENT OF BENEFITS

Tax vs. Benefit Assessment
Assessing Benefits: Non-Typical, Under-Assessed Owners

Examples:
- Public Property, Charitable Property
- State, County and Local Roads
- Railroads
- Utilities - water, gas, electric, sewer
- Fiber Optic Lines
- Pipeline
- Sewage & Water Treatment Plants
- Airports
Iowa

468.42 – Railroad Property - Collection
The commissioners…shall determine and assess the benefits to the property of any railroad company extending into or through the levee or drainage district.

468.43 – Public Highways and State-Owned Lands
When any public highway or other public land extends into or through a levee or drainage district, the commissioners…shall ascertain and return in their report the amount of benefits…to such highway or other public land.
24-407: The board of directors of every drainage district . . . Shall have the power . . . To levy special assessments against all real property located within the district that may be **benefited** to pay the costs of the construction and maintenance of levees or other works . . . .

24-422: In the levying of special taxes or assessments . . . the right of way and station grounds of any railroad company, within such drainage district, including all the permanent improvements thereon, shall be . . . treated . . . as real estate and . . . shall be required to pay special taxes or assessments levied thereon . . .

24-810: The county board shall determine the entire cost and expense of constructing such levee . . . [and] shall apportion the same to and between the several tracts of lands, **railroads and highways** to be directly **benefited** by such levee . . . .
Missouri

Levee District (245.120, RSMo.): [The commissioners] shall assess the amount of benefits…that will accrue to each governmental lot, including all property owned by the state or other political subdivision, forty-acre tract or other subdivision of land according to ownership, railroad and other rights-of-way, railroad roadways and other property...

Drainage District (242.260, RSMo.): [The Commissioners] shall assess the amount of benefits, and the amount of damages, if any, that will accrue to each governmental lot, forty-acre tract or other subdivision of land according to ownership, public highways, railroad and other rights-of-way, railroad roadways and other property...
Local Public Financing Options

IMPOSE NEW SALES TAX OR SPECIAL ASSESSMENTS

• Sanitary Improvement District (NE)
  • Impose Special Assessment
    • Authorized projects include among others constructing and contracting for the construction of dikes and levees for flood protection for the district.

• Community Improvement District (MO & KS)
  • Imposes 1% sales tax or special assessment
    • Authorized projects include the construction and maintenance of drainage, water and other public infrastructure improvements
• Transportation Development District (MO & KS)
  • Impose 1% sales tax or special assessment
  • Missouri authorized projects include bridges, streets, roads, highways, interchanges, parking lots, hangars, docks, wharfs, lakes or river ports, and related infrastructure (among others)
• Kansas authorized projects include transportation-related projects including, but not limited to, levees, drainage channels, lift stations

• Municipal Improvement District (KS)
• Neighborhood Improvement District (MO)
• AND MANY MORE
TAX INCREMENT FINANCING
(NE; MO; KS; OK; IA; etc.)

• Area must be blighted, conservation area, economic development area or reinvestment area (Flooding = blight)
• TIF captures the increment of ad valorem taxes and a portion of sales and other local taxes generated over the base year
State Legislative Options
How can state legislatures help?

Iowa

Flood Mitigation Program / Growth Reinvestment Initiative

- In response to 2008 flooding, the Iowa legislature created the Iowa Flood Mitigation Board to grant “flood-protection funds” to cities.

- Program is funded by capturing up to 70% of the incremental growth in state sales tax (i.e. “Sales Tax TIF”).

- The City of Cedar Rapids was granted **$264 million over a period of 20 years** to fund improvements to its 7.5-mile Flood Management System.
Metro East Levee System

Southwestern Illinois Flood Prevention District Council

• 5 levee systems
  • Wood River Drainage & Levee District
  • Chain of Rocks Levee (Federal)
  • Metro East Sanitary District
  • Prairie Du Pont Levee
  • Fish Lake Levee
• Collaboration of 3 counties (Madison, St. Clair, Monroe)
• FEMA decision to de-accredit levee system
Metro East Levee System

- Mississippi River (500-yr) and tributaries
- Federal Flood Control Project
- Protects 92,000 acres commercial/residential
  - $10 billion in economic value
- 77 miles earthen levee, closure structures, floodwalls, pump stations
- 156,000+ Residents; 4,000+ Businesses; 51,500+ Jobs
- Project Cost: $350m
How can state legislatures help?

**Illinois**

Illinois Flood Prevention District Act (70 ILCS 750)

- Adopted in response to FEMA’s announcement of its intention to de-accredit a 74-mile levee system protecting the St. Louis Metro East
- Authorizes 3 counties to impose a 0.25% sales tax to fund levee improvements (without voter approval)
- Since the tax was implemented in 2009, approx. $10.5 million has been collected annually
- SWIFPDC issued $94 million in bonds in 2010 and issued an additional $70 million last year
Federal Investment

• Infrastructure Investment
  – President proposed a $200 billion Federal budget for infrastructure to leverage an overall $1 trillion investment
  – Private investors would receive a tax credit in public-private partnerships ("P3") on the equity share of projects

• Some key goals:
  – streamlining permitting process for infrastructure projects
  – shifting responsibility for project implementation to state and local governments
Infrastructure Investment

- Some talk of a WRDA 2018 being a part of an Infrastructure Investment Act
- Possibility also mentioned of including infrastructure investment as part of a bill on federal tax reform
- So far, no legislation announced
FEDERAL REQUIREMENTS

- FFRMS
- FEMA flood maps
- Section 408
Federal Flood Risk Management Standard

**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 “floodplain”? 

**STATUS (current)** —

- Pres. EO on CAP* called into question its ongoing use
  
  * Specified for NEPA August 2016 CEQ Guidance
- June 8, 2017 Congressional letter to the Pres. seeking revocation
FEMA - NFIP Flood Maps

Floodway
- increase regulated area by mapping on landside levee toe
- Limited opportunity to correct on final maps

Levee Certification / Accreditation
- LAMP
- Levee impacted areas – identify and communicate risk
- Risk assessments –
  - Scope, time, cost
  - Federal vs. Local O/O levees
- After 10 years?
Section 408

Authority

- RHA is independent authority, but that is not unlimited
- Flood Control Acts came later and are more specific to flood control and local flood protection
  - Recognize non-Federal rights and interests, but for…
  - Flood Control Regulations 33 CFR 208
- 1954 Legislation
  - Title I River and Harbor Act
  - Title II Flood Control Act
- Federal Regulations for Corps Authority to Issue Permits
  - Real estate instrument for Section 14 RHA (i.e., not a permit)
- Permission or permit?
- More…. 
Does 408 apply?

- Place riprap per O & M manual
- Build a setback levee
- Change a fence post
- Recapitalize a pump station
- Rehab an existing culvert
- PL 84-99 levee rehab (retroactive)
- “Federal Levee”

Improvement, alteration or encroachment to a local flood protection project owned or operated and maintained by a non-Federal interest
Section 408

From Anywhere to No-wheresville

Sec 408 – “not injurious to the public interest” (w/ ESA consultation)

Sec 404 / 10

Sec 214 - Corps decides accountability, O/O pays

Sec 214 - O/O pays

Local O/O plans to improve levee / FC project

3 – 5 years, maybe never
Flood Control Regulations 33 CFR 208

DE 208.10 determination: “not adversely affecting” the project

Sec 404 / 10 NEPA to OHWM

State / local law re: risk transfer, FP mgt.

1 – 2 years
Section 408 v. Flood Control Regulations

- Section 10 Rivers and Harbors Act of 1899 (aka 408)
  - Intended for navigation so as to protect commerce
  - **Permission** for alterations that are *not injurious to the public interest* (now being interpreted as a flood risk management authority w/ no transfer of risk allowed)
  - Inconsistent and retroactive application
  - Long and costly review w/ little to no added value

- 33 CFR 208.10 Flood Control Regulations
  - Allows for improvement or alteration to flood control project
  - DE offers no objection if project is *not adversely affected*
  - O/O makes decision on whether to alter if not any Fed. $, (if so, then may need to pursue as a project modification)
# Flood Agency Threats - What Can Be Done?

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<th>Federal</th>
<th>State / Local</th>
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<td>Assuming / seeking to establish authority as the nation’s flood risk managers</td>
<td>Assert State / Local Gov’t roles, rights and responsibilities</td>
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<td>Less $ for projects, more for regulation</td>
<td>Explore financing alternatives, and perform due diligence early, determine applicability</td>
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<td>FEMA Flood mapping</td>
<td>Review / comment on prelim maps, know and inform rules / requirements</td>
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<td>USACE – Sec. 408 retroactive application of new requirements</td>
<td>Identify and understand implications, strategize then act</td>
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<td>Agencies making policy and plans, but not seeking stakeholder input</td>
<td>Make yourselves heard, demand transparency, engage</td>
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Parting Thoughts

- Managing flood risk is growing increasingly complex
- Federal agencies cannot regulate the nation out of flood risk – state, regional, local efforts are required
- Floods and flood regulation – better to have a plan before than to deal with it during and after it comes
- “Science alone is not the answer, what the world needs now is some practical engineering.” The Essential Engineer, Henry Petroski

Bring it, or keep out of the way!
Thank You