



**National Association of Flood & Stormwater Management Agencies**

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Testimony of the National Association of Flood  
And Stormwater Management Agencies

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**Water Resources Development Act of 2012**

U.S. Senate  
Committee on Environment and Public Works  
Sen. Barbara Boxer, Chairwoman

November 15, 2012

The National Association of Flood and Stormwater Management Agencies (NAFSMA) is very pleased to testify on proposals for the Water Resources Development Act of 2012. On behalf of our membership, many of whom are non-federal partners on flood damage reduction and environmental restoration projects with the U.S. Army Corps of Engineers, we thank you for your leadership and efforts to move a Water Resources Development Act forward this year.

NAFSMA appreciates the difficulty of drafting this much-needed bill in light of the serious economic issues facing the nation, at all levels of government, and the constraints of earmark limitations on this national authorization debate. We thank you for taking on this challenge to develop an approach to move critical flood damage reduction and other water resources projects forward and offer to work with you to address these critical issues as you continue your efforts to enact a comprehensive water resources development bill this year.

### **Background on NAFSMA**

NAFSMA is a public agency driven organization based in the nation's capital, with a focus on effective flood and stormwater management in urban areas. Our mission for close to 35 years has been to advocate public policy and encourage technologies in watershed management that focus on flood protection, stormwater and floodplain management. Through this mission, NAFSMA enhances the ability of its member agencies to protect lives, property and economic activity from the adverse impacts of storm and flood waters.

Formed in 1978, NAFSMA works closely with the Corps of Engineers, the Federal Emergency Management Agency and the U.S. Environmental Protection Agency, as well as other federal agencies and national water resource organizations to carry out its mission. NAFSMA members are on the front line protecting their communities and regions from loss of life and property and are responsible for flood mitigation, flood water and emergency management activities as well as the water quality protection.

Therefore, the organization is keenly aware that flood damage reduction activities and projects are a wise and necessary investment required to first reduce loss of life and ensure the safety of our citizens. In addition, our members are charged with reducing damages to peoples' homes and businesses and critical infrastructure, while also protecting the environment and preventing economic disruption. Flood management has proven to be a wise investment that more than pays for itself by preserving life and property, thereby reducing recurring requests for federal disaster assistance.

Especially since WRDA 1986, this protection has been provided through a strong and well-tested federal-nonfederal partnership which NAFSMA values and will continue to work to improve and strengthen as we move forward in such critical flood management discussions as WRDA 2012. As a result, we are dedicated to ensuring that the nation's flood management systems can be operated and maintained properly and any needed inventory, assessments and repairs to flood damage reduction structures can be implemented smoothly.

### **Intergovernmental Flood Risk Management Efforts**

Beginning in August 2005, just prior to Hurricane Katrina's devastating impact on the Gulf Coast, NAFSMA convened a discussion between our members, Corps leadership, FEMA, the Association of State Floodplain Managers, and other levee experts to discuss the need to inventory and assess the nation's levees due to issues that would definitely develop in this area as FEMA's flood map modernization process continued to move forward. This meeting and numerous subsequent joint

interagency discussions has led to a much stronger working relationship in the flood damage reduction arena between the Corps of Engineers and FEMA. These interagency partnerships at the federal, as well as at the state, regional and local levels are critical to reducing the nation's risks from flooding.

NAFSMA very much appreciates the strong initiatives of both agencies and their leaders to speak with one federal voice on these critical issues. Many strides have been made in this effort at the federal level and we hope that this continued commitment will result in better communications and partnerships at the District and regional levels of both agencies.

## **NAFSMA Recommendations for WRDA 2012**

### Enact WRDA 2012

The reauthorization of the Water Resources Development Act is critical. In the wake of the enormous devastation caused by Sandy, moving our nation's flood risk management initiatives forward to protect life, property and the economy from flood and storm disasters is more important than ever. Local, regional and state agencies depend on WRDA's reauthorization.

Crucial flood damage reduction, environmental restoration and watershed planning projects face significant cost increases and missed opportunities for safety, economic, and environmental improvements while waiting for Congressional authorization. During these tough economic times, we must all find ways to reduce costs, expedite studies, and minimize reviews and permitting so we can build projects that reduce the loss of life and property from the flood threat and put people to work.

### Exclude Corps of Engineers Water Resources Projects from the Definition of Earmarks

Federal funds used to reduce the loss of life and property damages from floods are an investment in improving the resiliency of a community and the nation. The Corps of Engineers' process and associated legislative requirements for identifying, vetting, and funding potential projects is an example of a transparent and public process which does not belong in the earmark category. NAFSMA urges Congress to exclude Corps of Engineers water resources projects from the earmark category.

### Allow Increasing Authorized Cost Limit for Flood Risk Management Projects

NAFSMA supports allowing the Secretary to modify the authorized cost of a project subject to certain requirements and conditions (Section 1003). One of the requirements of the Secretary is to certify that "...expenditures above the authorized cost of the project are necessary to protect life and safety, maintain critical navigation routes, or restore ecosystems;"

NAFSMA recommends adding "*provide significant flood risk reduction*" to the list so flood risk management projects would be eligible, as well.

### Enactment of a National Levee Safety Program

Having had the privilege to serve as a member of the National Committee on Levee Safety, which was established by WRDA 2007, I am pleased that the NAFSMA membership approved a resolution

in support of enactment of a National Levee Safety Program in November 2011. A copy of that resolution is provided with this testimony.

In adopting the resolution, NAFSMA noted that the nation lacks of a complete understanding of levee location, ownership and condition throughout the country, and further that federal funding participation is required for the rehabilitation and repair of levees, many of which were constructed in partnership with the U.S. Army Corps of Engineers. NAFSMA's resolution also recognizes that levee owners and operators should implement flood risk management activities such as emergency preparedness and planning, as well as education and outreach components as part of a flood risk management program.

NAFSMA urges Congress to move forward with a voluntary and incentive based National Levee Safety Program that includes qualified states, and local and regional flood control districts. NAFSMA further recommends that a levee rehabilitation and repair fund with incentives for sound flood risk management be established as part of WRDA 2012.

### **Other Critical Levee Safety Recommendations**

#### **Authorize Completion of the National Levee Inventory**

NAFSMA urges Congress to authorize the completion of the National Levee Inventory (also known as the national levee database), including non-federal, as well as federal levees.

#### **Authorize Corps, When Requested, to Carry Out Levee Certifications**

With many flood damage reduction projects built through partnerships with the Corps, the Corps District offices are in many cases uniquely suited to carry out levee certification activities. NAFSMA strongly believes that the original national interest that was determined to exist in order for federally-partnered flood damage reduction projects to move forward, still remains, and in most cases is even stronger. It follows then that there is a shared responsibility for the Corps to participate in FEMA's certification process. If the federal government is asking private engineering firms to take on this responsibility, the federal government's engineering branch should be engaged to also help perform these activities as well.

#### **Establish National Levee Rehabilitation, Improvement, and Flood Mitigation Fund**

In the spirit of shared responsibility, NAFSMA strongly endorses the recommendation of the National Committee on Levee Safety and urges Congress to establish a repair, rehabilitation and flood mitigation program to address critical levee repairs and authorize federal cost-sharing with owners and operators of levee systems.

#### **Include New, and Amendments to, Flood Damage Reduction Projects**

As you move forward with drafting WRDA 2012, it is important to recall that many existing and potential non-federal sponsors and their congressional delegations held critical projects back from consideration in WRDA 2007 at the request of committee leadership and staff in an effort to move that bill forward. These projects now need to be considered as they are necessary to protect lives, public safety and critical infrastructure, and provide new jobs critical to the economy. In addition, some existing project authorizations require amendments to move forward, as well.

### Explore Expanding Credit Incentives for Levee Safety Activities

NAFSMA urges that full credit for work performed by a non-federal sponsor, or cost sharing partner, for identified levee strengthening or retrofit activities not be limited to the nonfederal cost of the project. In instances where major activity is needed to repair federally-partnered flood management projects, the nonfederal sponsor needs the ability to advance these activities with the knowledge that the work will be eligible for appropriate credit. NAFSMA offers to work with the Committee and the Corps to amend these applicable sections.

### Crediting for Ecosystem Restoration Activities Linked with Levee Safety Strengthening and Retrofits

NAFSMA urges that credit or reimbursement be allowable for environmental mitigation or restoration activities that may be needed as the result of work performed to repair or improve existing flood damage reduction systems.

### Develop and Implement Measures to More Closely Harmonize Levee Operation and Maintenance Activities with Environmental Protection Requirements

This National Committee on Levee Safety recommendation is particularly important to NAFSMA members who are currently trying to maintain the integrity and strength of their existing levees so they provide the flood reduction capabilities expected by the public. Currently, there is a lack of consistency by federal regulators and environmental agencies in the permitting and guidance of levee maintenance that is resulting in unpredictable requirements and timelines. Specifically, the management of deep-rooted vegetation on levees has become controversial.

Conflicting regulatory and environmental agencies' views are resulting in long delays or inability to perform needed infrastructure maintenance. NAFSMA concurs with the National Committee on Levee Safety that acceptable operation and maintenance practices need to be developed in conjunction with and coordination with state and federal environmental agencies so lives and property can be protected, and significant environmental and natural resources are not impacted.

NAFSMA urges Congress to clarify routine maintenance of flood damage reduction channels and basins and to improve the regulatory process for obtaining the necessary permits for routine maintenance of the facilities.

## **Recommendations for All Flood Risk Management Projects**

### Water Infrastructure Finance and Innovation Act of 2012

NAFSMA generally supports the establishment of a Water Infrastructure Finance and Innovation initiative for projects that are capable of producing revenue streams as an additional funding tool that would complement existing Corps of Engineers flood damage reduction, environmental restoration cost-shared project funding.

Project selection criteria under this program should consider job creation, and economic, ecological and social benefits. NAFSMA also urges loan repayment options to include local taxes, user fees and private sources, and also secured non-federal loans.

### Make Section 214 of WRDA 2000 Permanent

Section 214 of WRDA 2000 allows the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits. The Section 214 program has

been valuable in allowing local governments to move forward with vital infrastructure projects and maintenance with minimal or no impact to the environment that might have otherwise been held up while waiting for permits to be processed. By funding additional staff to work on permit evaluations, existing Corps staffers are able to process permits more quickly, resulting in a reduction of permit wait times not only for the funding entity, but for any individual or organization that makes an application with that Corps District. The Section 214 program has been reauthorized for limited terms repeatedly and NAFSMA urges Congress to permanently authorize the program.

#### Levee Vegetation Policy

NAFSMA strongly supports language included in the draft bill to direct the Assistant Secretary of the Army (Civil Works) to conduct a comprehensive review of Corps policy guidelines on vegetation on levees. NAFSMA has raised concerns about the one size fits all nature of this policy, which we are concerned is not supported by conclusive research. Many of the flood damage reduction projects now faced with vegetation removal requirements were constructed in partnership with the Corps, with vegetation included in the projects to provide habitat benefits.

#### Provide Incentives for Sound Floodplain Management

NAFSMA supports the current federal cost sharing of 65 percent federal/35 percent local, but would support options to provide for a sliding cost share formula for federally-partnered flood damage reduction projects. We would urge that the 35% local cost share be reduced for non-federal sponsors where the community is carrying out sound floodplain management activities and have or would achieved a strong rating from FEMA as part of the Community Rating System program, or are taking special actions to preserve natural areas and increase community resiliency. Such incentives have been successful at the state level.

#### Address Crediting Issues

NAFSMA supports the Committee's efforts in Section 2010 of the draft bill to address concerns of non-federal partners relating to Section 104 credit eligibility and its availability to sponsors for advance construction of flood protection works. With the current economic strain faced by non-federal sponsors and their federal counterparts alike, the ability to address critical flood damage reduction and public safety needs by promoting earlier construction of these essential projects represents a sound investment of federal and local resources.

#### Increase the Limit for Requiring Independent Peer Review to Larger Projects

NAFSMA recommends raising the floor that triggers External Independent Peer Reviews to \$100 million or more. Setting the level at \$45 million brings in smaller water resource projects. NAFSMA is concerned that the benefits from reviewing projects on this scale have not been proven and are concerned about using limited federal resources to address these reviews. If a project under the \$100 million limit has been deemed controversial by the District Commander, it could be moved into the Independent Peer Review Process.

#### Improve the Corps Planning Process

The Corps in recent months has moved forward on plans to transform the civil works process and to improve the project planning process, which has been a long, complex and costly planning exercise

that does not necessarily yield better flood reduction projects. NAFSMA requests the Committee to support any and all means to expedite the planning process including authorization changes, if needed. NAFSMA supports non-federal sponsors receiving full credit for all legitimate project related expenses, similar to credit received by the Corps of Engineers for project related expenses.

Project Partnership Agreement - NAFSMA urges the Committee to explore non-federal and federal concerns about issues related to federally-partnered projects once they reach or exceed their design life.

NAFSMA supports changes to the Project Partnership Agreement (PPA) that would limit the contractual liability of operation, maintenance, repair, replacement and rehabilitation (OMRR&R) requirements on the local sponsor to the design life of the project. If there is not financial commitment by the federal government to recapitalize and rehabilitate projects then more of the long term service and/or decommissioning decision making should reside with the local sponsors.

### **Closing**

NAFSMA very much appreciates this opportunity to testify and our members look forward to working with the Committee on WRDA 2012. Please feel free to contact me or NAFSMA Executive Director Susan Gilson at 202-289-8625 with questions.



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## **Support For A National Levee Safety Program**

### **Resolution 2011-02**

**Approved by the Membership on November 3, 2011**

WHEREAS many members of the National Association of Flood and Stormwater Management Agencies are owners and operators of flood control structures, including levees, and are charged with responsibility for the protection of lives, property and the environment from flood risk;

WHEREAS, Congress through the authorization of the Water Resources Development Act of 2007 established the National Levee Safety Committee charged with the task of developing recommendations for a National Levee Safety Program;

WHEREAS, the National Committee on Levee Safety delivered a set of draft recommendations to Congress on January 15, 2009;

WHEREAS the nation is currently lacking a complete understanding of the location, ownership and condition of levees throughout the country;

WHEREAS there is clearly a need for federal funding for the rehabilitation and repair of levees throughout the country, many of which were constructed in partnership with the U.S. Army Corps of Engineers;

WHEREAS the responsibility of levee owners and operators, in addition to maintaining flood control structures, includes flood risk management activities such as emergency preparedness and planning, as well as education and outreach components;

NOW THEREFORE BE IT RESOLVED, the National Association of Flood and Stormwater Management Agencies urges Congress to move forward with a National Levee Safety Program that is voluntary and incentive based and includes qualified states, local and regional flood control districts. A levee rehabilitation and repair fund and incentives for sound flood risk management at all levels of government are critical elements of a National Levee Safety Program.

A handwritten signature in black ink that reads "James Fiedler".

James Fiedler, President

November 3, 2011



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## **Regulations and Policies – A Reasonable and Sustainable Approach**

### **Resolution 2011-01**

**Approved by the Membership on November 3, 2011**

WHEREAS many members of the National Association of Flood and Stormwater Management Agencies are charged with responsibility for the protection of lives, property and the environment from flood and stormwater risk;

WHEREAS, many local, regional and state governments are facing significant economic and funding challenges;

WHEREAS, local flood, floodplain and stormwater management agencies are responsible for meeting numerous local, state and federal regulations as part of their responsibilities;

WHEREAS the number and requirements associated with these regulations requires significant funding and staff resources;

WHEREAS the members of the National Association of Flood and Stormwater Management Agencies are committed to carrying out responsible and reasonable flood management, floodplain and stormwater management requirements;

WHEREAS members of the National Association of Flood and Stormwater Management Agencies are charged with providing adequate support for infrastructure at the local and regional levels;

NOW THEREFORE BE IT RESOLVED, that the National Association of Flood and Stormwater Management Agencies urges Congress and the federal agencies to only consider legislation and regulations that respect local authority and regional differences; are reasonable with the current technical and economic environment; protect local and regional flood, floodplain and stormwater management agencies from unfunded mandates; streamline state and federal environmental permitting processes; provide support for sustainable programs at all levels of government and provide for adequate investment of public infrastructure.



James Fiedler, President

November 3, 2011