



NAFSMA Position on Flood Management Issues

(Adopted by Directors on November 14, 2023)

The National Association of Flood and Stormwater Management Agencies (NAFSMA), since its founding in 1978, has represented state and local public agencies nationwide. NAFSMA is an association committed to improving and ensuring the continuation of water resource projects and programs of interest to flood and stormwater management agencies.

NAFSMA's mission is to advocate public policy that facilitates and enhances the capability of its member agencies in achieving their public service functions. NAFSMA is committed to working with federal agencies and other groups to resolve flood risk management issues.

NAFSMA's Flood Management Committee (FMC) focuses on member issues related to planning, funding, constructing, maintaining, permitting, and operating flood risk management projects.

The Flood Management Committee is Actively Working on the Following Priorities:

408 Permissions – The current process for obtaining Section 408 permissions is a significant issue for NAFSMA members. The failure to obtain Section 408 permissions in a timely manner often delays the implementation of critical projects that protect our communities and increases project costs.

Adequate resources have not been provided to USACE Districts to fund the personnel necessary for review and approval of 408 permissions in a timely manner. As a result of funding constraints, Districts have increasingly expected local agencies to contribute to this effort through Section 214 agreements. This hinders the environmental justice priority since underfunded agencies cannot afford to pay for the permissions and creates a pay to play context.

To maximize the limited resources, USACE should review and optimize the process for frequent low-risk activities (e.g., installing fence posts, gates, perch poles, signage, etc.) so that staff can use 408 resources on activities that threaten flood risk reduction systems. Improvements to processing time can be achieved with the development of Regional Categorical Permissions, and USACE partnering with non-federal sponsors and other local flood management agencies. FEMA has been successful in a similar effort with their Cooperating Technical Partners Program (CTP) where states and locals take on some of the responsibility for activities under FEMA's flood mapping program known as Risk MAP. We believe that USACE can develop a similar

program. In addition, we encourage headquarters to create clear expectations and training around low-risk activities and their review to increase the program's efficiency.

PL 84-99 – NAFSMA does not believe that USACE's approach to the update of PL 84-99 is aligned with the program's intended authority. The changes proposed are regulatory in nature. In contrast, the congressional intent of the program is to authorize USACE to repair and rehabilitate flood risk management structures, including levees damaged by floods. In addition, many non-federal sponsors participating in PL 84-99 are experiencing significant delays with inspections of damage and subsequent repairs. In some cases, the full suite of emergency capabilities, as enumerated in EP 500-1-1 and ER 500-1-1, are not sufficiently utilized by Districts implementing PL84-99 repairs. As a result, many flood risk reduction systems are not repaired in a timely manner to best position local flood control agencies for future inclement weather that might cause flooding. Lastly, NAFSMA urges USACE to coordinate with the Federal Emergency Management Agency (FEMA) on recovery efforts to maximize Public Assistance reimbursement while at the same time expediting eligible repairs under the PL84-99 program.

Mitigation – USACE and EPA should work together to reform the process to develop compensatory mitigation programs for impacts to waters of the United States to address disparities more effectively between mitigation needs and resources available in urban areas. The current framework is biased towards compensatory mitigation projects and programs in rural areas. This bias is problematic because most impacts that require compensatory mitigation are in urban communities. Therefore, these mitigation projects are missing opportunities to provide social and environmental benefits to urban areas that are being impacted. The buffers that USACE and EPA are requiring do not reflect the current science for mitigation. Common sense, updated science-based parameters for compensatory mitigation programs should be used to design mitigation actions. NAFSMA encourages USACE and EPA to be more collaborative with non-federal sponsors to determine the mitigation that will achieve the best outcome for the impacted community. NAFSMA encourages flexibility and some deferment to non-federal sponsor preferences regarding on-site versus off-site mitigation to best achieve social equity and affordability.

Homelessness – Flood control and public works agencies have had to direct resources to address impacts of encampments near or within flood risk management systems and floodplains. Such impacts include debris (including hazardous materials) and damage to the flood risk management system and floodplains. The debris from camps are washed into waters of the US, impacting water quality and habitat for migratory fish and wetlands. To expand programs to improve water quality and habitat preservation, NAFSMA proposes that public agencies involved with cleaning up encampments in and adjacent to waters of the US or repairing and rehabilitating riverine systems from encampment-related activity receive mitigation credit for this work that can be applied to other infrastructure projects or impacts from maintenance activities.

OMRRR – Permitting for Operations, Maintenance, Repair, Replacement and Rehabilitation- Non-federal sponsors are often forced to delay critical maintenance activities on flood risk reduction systems because of staffing issues and other regulatory delays. NAFSMA advocates for USACE and the non-federal sponsor to coordinate on O&M maintenance manuals and permitting to ensure that maintenance activities can be completed. Ideally, all non-federal sponsor operation and maintenance activities that are specifically called for and agreed to with an approved Project Operations and Maintenance Manual, should be understood as having categorical permissions for regulatory permits.

Levees – There are many changes to federal programs that impact levee owner/operators. These changes include Engineering Manual 110-2-1913 Levee Design Manual, PL 84-99, National Levee Safety Program and FEMA’s Risk Rating 2.0. NAFSMA encourages federal agencies to actively engage levee stakeholder groups to ensure that their perspectives are considered to ensure successful implementation of changes. In addition, federal agencies need to coordinate their efforts internally on these changes. For example, it is not clear how the National Levee Safety Program will work with PL 84-99. NAFSMA suggests that there should be a federal dashboard that provides updates and an ability to track all the timelines associated with these changes. Non-federal sponsors cannot track and provide input on the changes when they are not done in a coordinated effort.

CWIFP- Corps Water Infrastructure Financing Program will be a great financing tool for non-federal sponsors who seek to improve their levee system. NAFSMA seeks to expand the program to include levees and the ability to use the financing for new projects. In addition, the funding threshold of \$20 million to enter the program is too high for many communities. Finally, 80% fed/20% non-fed cost share is untenable in EJ/Disadvantaged Communities and states that don’t have \$20 million to enter CWIF-P. The thresholds for entry are simply too high for some communities and should be lowered for EJ/Disadvantaged communities.

The FMC Will Continue to Monitor and Explore Opportunities for the Following Priorities:

Federal Authorization and Funding – As flood risk reduction infrastructure continues to age and the impacts from climate change increase, it is imperative that federal authorization and funding bills are enacted on a regular basis.

Planning and Feasibility Studies – Federally-partnered planning and feasibility studies are critical to identify needed flood risk management and ecosystem restoration projects that best meet the non-federal sponsor needs and that qualify for federal funding. It is also critical for planning and feasibility studies to be completed in a timely manner and within the budgets identified at the start of the study process.

Federal Interagency Coordination – Communities often face conflicting requirements from federal agencies. Active engagement of and coordination between the federal agencies involved in flood risk management is critical so that federal policies are developed and implemented in an integrated and consistent manner.

Climate Change – NAFSMA requests that federal agencies support public works agencies by creating tools to incorporate future climate data into capital planning. In addition, federal agencies need to ensure that their programs do not prohibit betterments. The prohibition of betterments disallows improving climate resilience for public works infrastructure.