



National Association of Flood and Stormwater Management Agencies
PO Box 4336, Silver Spring, MD 20914 202-289-8625 | www.nafsma.org

NAFSMA Comments – US Army Corps of Engineers Agency Specific Procedures to implement Principles, Requirements, and Guidelines

SUBJECT: Docket ID – COE-2023-0005

The following comments have been developed by the National Association of Flood and Stormwater Management Agencies (NAFSMA). NAFSMA represents flood control, flood risk and stormwater management agencies throughout the country, many of which are non-Federal partners of the U.S. Army Corps of Engineers (USACE) on flood risk management and ecosystem restoration projects.

NAFSMA is pleased that USACE has proposed its Agency Specific Procedures (ASP) for the Principles, Requirements and Guidelines (PR&G) through a formal rulemaking process. This process allows USACE partners to review and provide input on the proposal. NAFSMA also supports the goals of the ASP rulemaking process, which are to “demonstrate the USACE commitment to the PR&G, ensure robust and meaningful Tribal and public engagement, and to make the implementing procedures durable.”

NAFSMA has been concerned that the current process for determining benefits of USACE-partnered water resources projects, which depends on the traditional National Economic Development (NED) account, falls short of the broader type of benefit review that needs to be part of the process. The NED process, which relies heavily on property values, has led to water resource projects that could provide critical help needed for disadvantaged communities not qualifying for USACE federal funding.

ASP Improvements Over Current Approach

It is encouraging to see that the new ASPs would provide USACE with tools needed to be able to consider projects that provide multi-benefits. Such benefits include but are not limited to flooding, drought, water quality, ecosystem restoration, climate change and competing demands on water resources.

NAFSMA supports the commitment outlined in the new rule for enhanced collaboration with non-Federal interests and affected parties early, and in all stages of the planning process. In the rulemaking, the Army is soliciting recommendations on how best the ASP’s can incorporate and identify the role of the non-Federal interest (sponsor) in the process. NAFSMA would like to see USACE treat the sponsor as a USACE team member and include the sponsor in meetings as soon as the study begins. The sponsor

should be involved in all activities associated with the study to include, but not limited to, identification of the problem statement; scoping of the study; discussions on what data is needed as the sponsor may have existing data to provide; development of the array of alternatives and selection of recommended plan. It would be helpful if the implementing guidance include details on treating the sponsor as a true partner since Districts in USACE coordinate differently.

Implementation Questions

In reviewing the proposed rule, NAFSMA members have raised concerns as to whether implementation is possible under the current 3x3x3 framework, which has guided the feasibility study process since 2012. Under this approach, feasibility reports are to be produced in no more than three years, cost no more than \$3 million, and involve all three levels of USACE (District, Division and Headquarters (HQ)) throughout the study process.

NAFSMA was a champion for USACE's implementation of 3x3x3, especially compared to the previous efforts where 10-year studies were not uncommon. However, the standard timeline for a three-year study reserves a full 18-months for Division, HQ, and ASA review. If USACE is to fully implement the concepts contained in the ASPs, more than 18-months will be required for plan formulation.

NAFSMA believes that the most effective way to ensure that studies continue to be completed in a three-year timeline while also implementing the ASPs would be to implement more vertical integration at the front-end of the study. This vertical integration would have two benefits: first, it could help spread the culture change required by the ASPs more consistently within USACE. Second, it would allow more time to be spent on plan formulation and reduce the amount of time required for review. For example, if review was reduced to an eight to 12-month period, it would allow a longer time for plan formulation during which all benefits could be properly considered, and because there would be increased vertical integration during formulation, less review time would be required.

The analysis that would be needed to review additional benefits and increased community engagement will come at a cost that will challenge this process. Ironically, because the data used to quantify additional benefits are likely to be less mature for disadvantaged communities, the cost and time required to develop this analysis will likely be higher for these same communities. Timing to meet the three-year target will also be an issue since it is already challenging to meet this timetable.

With the comprehensive changes being proposed, training for both the Districts and non-Federal sponsors will be key to successful implementation. NAFSMA would welcome the opportunity to work with USACE on joint training that would include both District staff and non-Federal sponsors, as we have in the past.

Identified Areas for Additional Detail

Although NAFSMA understands and welcomes flexibility to address regional issues, balance is needed in the ASP between too much, and not enough, detail.

As part of our partnership discussions with USACE HQ, NAFSMA understands that USACE economists have been working on a methodology that considers a broader range of benefits for water resource projects. Details on these efforts are not included in the ASPs. As a result, it is unclear how economic benefits calculated in the traditional NED approach will be reformulated to remove the bias toward higher property values which is inherent to the avoidable damages calculation. It is also unclear how the benefits for other categories (environmental and social), some of which will be qualitative, will be considered in the process.

Recommendations on Methodology: Details on the procedural methodology for determining benefits are needed, including the role that the non-Federal sponsor will have in the process. Some of the areas where additional details are needed are provided below.

- The ASP needs to define that the problem that a proposed water resources project will address should be clearly defined and agreed upon by non-Federal sponsors and USACE prior to formulating alternatives. Also, the proposed ASP needs to clearly state that the alternatives need to be scaled to the size of the identified problem.
- Details need to be provided on how benefits that cannot be monetized will be evaluated and if/how they would be weighted.
- Benefit quantification should use a without-project baseline that is reflective of real-world operations and conditions, and not those that may be unrealistically codified in policies, statute, legal doctrine, or aspirational planning. As an example, requirements described in an outdated Operations & Maintenance (O&M) Manual that conflict with current environmental laws should not describe a baseline condition; rather, the current and even future limitations on a non-Federal sponsor imposed by enviro-social conditions should be used.
- Benefits should include the consideration of the “natural capital” created by ecosystem services and the utility of functioning regional socio-economic systems undisturbed under conditions of project implementation. Benefits should not be limited to avoided damages but should also give value to capital stock that has largely been ignored: the value intrinsic to functioning ecosystems and working populations.
- More clarity is needed on how trade-off analysis will proceed in the development of alternatives and the analysis of benefits. A method needs to be developed that will avoid bias in the trade-off analysis itself, and the analysis needs to be equally informed by the USACE Project Delivery Team and the non-Federal sponsor.

General Recommendations:

The following recommendations address general concerns in the proposed rule.

- Protection of life and property/public safety needs to be included in the ASP.
- Although the rule excludes some O&M activities, NAFSMA urges that all O&M activities be excluded from the ASP. We also recommend that the ASP's be updated to clearly state that they do not apply to any decisions that would be made by a non-Federal sponsor on its investments outside of their cost share for an authorized project. While we would have assumed this to be the case, reference to the application of the ASPs to operation and maintenance decisions where that operation and maintenance level is not reflected in the Operation and Maintenance Manual created confusion for us on this topic. Specifically, "The original O&M envisioned by the original project authorization would be considered an evaluated under the ASPs in the investment decision making process" and "However, the PR&G would apply when significant changes to O&M plans are proposed or changes to meet new goals are proposed that raise additional considerations for water resources investments." We think it would be valuable to add clarity to make clear that the ASPs only apply to decisions of Federal investments.
 - For example, the ASPs should not apply to how the non-Federal sponsor elects to perform operation and maintenance. Similarly, while the ASPs would apply to USACE's analysis of a proposed plan, any decision by a non-Federal sponsor to advocate for an LPP or to take any other actions or invest in an improvement to the built project that would result in an update to the O&M plan (through a Section 408 permission) should not be affected by the adoption of the ASPs. It should be noted that an O&M plan should cover the built project, not just the original project authorization, but also includes any betterments or improvements performed at the non-Federal sponsor investment either during project construction or through a change based on a 408 permission.
- How can local/regional data on climate change be included in the study if data is more specific than federal guidance, or how can local requirements be included if more stringent than the federal government? There are no specifics provided on how to implement a climate change analysis for inland projects.
- Nature-Based Solutions – Rule needs to clarify that it is not the responsibility of the local sponsor to prove when a nature-based solution is not viable in a feasibility study. This could be a costly and unnecessary step in some regions, such as in the arid west.

NAFSMA appreciates the opportunity to comment on this important rulemaking. We welcome the opportunity for further discussions on the association's comments, or on implementation of the ASP.

Please feel free to contact Executive Director Sunny Simpkins at sunnys@nafsma.org or 503-705-4944 with any questions.