

**NAFSMA Annual Conference**  
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*Current Legal Issues of National Interest*

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# Topics

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- The Water Resources Development Act as an Indicator of National Issues
- Observations on 408
- Continuing Challenges Posed to Agricultural Areas in California's Central Valley by the NFIP

# The Water Resources Development Act

- WRDA is the main Congressional vehicle for:
  - Authorizing new projects (water, flood, stormwater, ecosystem restoration, etc)
  - Setting National policy and priority
  - (Does not provide any funding)
- Conventional wisdom suggests it should be passed every other year. But:
  - 2014, 2007, 2000, 1996, etc

# The Water Resources Development Act

- Water Resources Development Act (WRDA) of 2016 (S. 2848).
  - Formally reported out of the Senate Environment and Public Works Committee in July.
  - 284 pages
- Water Resources Development Act (WRDA) of 2016 (H.R. 5303).
  - Mark-ups approved in May by the House Committee on Transportation and Infrastructure.
  - 100 pages

# The Water Resources Development Act

- Themes:
  - Resources and funds from non-Fed to Fed:
    - Monies to fund USACE review.
    - Monies and materials for repair and replacement where projects constitute risk.
    - Monies for Federal reservoir reoperation.
  - No net increases in funding
    - De-authorized existing projects.
    - Limit life of new projects.
    - Limit funding on unrelated projects.

# The Water Resources Development Act

- Themes (continued):
  - Water conservation and development
    - Ex: Federal evaluation and implementation of conservation measures as a separable cost.
  - Transparent reporting of Section 7001 Report and use as an authorization tool.
  - More consideration of dredging issues:
    - What to do with dredge spoils.
    - Database of dredge information.
    - etc...

# The Water Resources Development Act

- Authorize Chief's Reports
  - House: Authorizes 28 USACE Chief's Reports received since WRRDA 2014. All Reports have been fully vetted by the Committee at hearings this year
  - Senate: Authorizes 27 USACE Chief's Reports for new projects and four project authorizations.
  - Some not in both: Mill Creek, TN; Green River Locks;

# The Water Resources Development Act

- Authorize New Studies
  - House: Authorizes 29 studies of new projects or modifications of existing projects, apparently based on the Section 7001 process.
  - Senate: Authorizes 26 studies of new projects or modifications of existing projects, apparently based on the Section 7001 process



# The Water Resources Development Act

## ■ House De-authorization Goals

The purposes of this section are—

- (1) to identify \$5,000,000,000 in water resources development projects authorized by Congress that are no longer viable for construction due to: (A) a lack of local support; (B) a lack of available Federal or non-Federal resources; or (C) an authorizing purpose that is no longer relevant or feasible;
- (2) to create an expedited and definitive process for Congress to deauthorize water resources development projects that are no longer viable for construction; and
- (3) to allow the continued authorization of water resources development projects that are viable for construction.

# The Water Resources Development Act

- House De-authorization Process:
  - USACE to create a list of projects authorized before 2007 for which no planning/design has been done, or have not been funded in last six years.
  - Public process to review list.
  - USACE to recommend \$5 billion in deauthorizations from the list, largely chronologically.
  - Unless Congress acts in 120 days by resolution on a project, projects will be deauthorized.
  - And see section 137: Backlog prevention (7 year rule)

# The Water Resources Development Act

- House Policy/Direction:
  - Train veterans for historical preservation
  - Use Youth Conservation Corps where can
  - Deauthorize LPP increment for Sutter Basin
  - Inventory Federal breakwaters and jetties
  - Pilot program for use of dredge materials
  - Contributed funds for reservoir ops
  - USACE to assist with conservation during drought
  - USACE designated drone lead

# The Water Resources Development Act

- Senate Policy/Direction:
  - Section 408 reform (section 14):
    - Decisions to be made by District Engineer;
    - Concurrent NEPA review.
  - Leverage Fed facilities for water supply.
  - District HQ buildings.
  - Tribes added to States, local agencies, etc
  - Use of Youth Conservation Corps
  - An aquaculture study
  - Levee vegetation report

# The Water Resources Development Act

- Senate's extra 150 pages:
  - Harbor maintenance trust fund
  - PL 84-99 Betterments when funded by locals
  - Safe Drinking Water Act amendments
  - Water Infrastructure Financing
  - Drinking water disaster relief
  - Advanced Technology Vehicle Manufacturing loan prohibition

# The Water Resources Development Act

- WRDA predictions:
  - September-October passage?
  - Lame duck session?
  - 2017/18 Congress?

# Observations on 408

- USACE perspective
- Challenges in our region:
  - NEPA compliance
    - Haven't yet been able to use CatEx
  - Clarity on projects requiring 408
  - Hydraulic impact standard
  - Funding of 408 review
- Successes
  - Frequent communication and coordination

# Agriculture and the NFIP

- Features of the Central Valley of CA
  - 50 miles x 450 miles
  - 1600 miles of Project Levees
  - Basin depth and topography
- NFIP grandfathering
- Effect of Map Modernization
- Central Valley Flood Protection Plan
  
- Statement of the Problem...



# Agriculture and the NFIP

- Rice Dryer:



# Agriculture and the NFIP

- Flow-through vents:



# Agriculture and the NFIP

- Flow-through vents?



# Agriculture and the NFIP

Issues of out-structures:



# Agriculture and the NFIP

- Charge given to Agricultural Floodplain Ordinance Task Force:
  - Explore use of relief cuts to affect NFIP mapping.
  - Use of a Zone D
    - Eliminates building restrictions
    - But may undermine effort to increase insurance purchases
  - Develop modifications to wet-flood-proofing ordinances

# Agriculture and the NFIP

- After several months, we have some pending recommendations:
  - Rating non-accredited levees:
    - Light switch and life insurance analogies
    - Significant data exists
    - Actuarial approach
    - Initial review suggests significant savings available if 25, 50, and 75-year levels used
    - Criteria would need to be applied to freeboard, stability, through and under-seepage, etc,

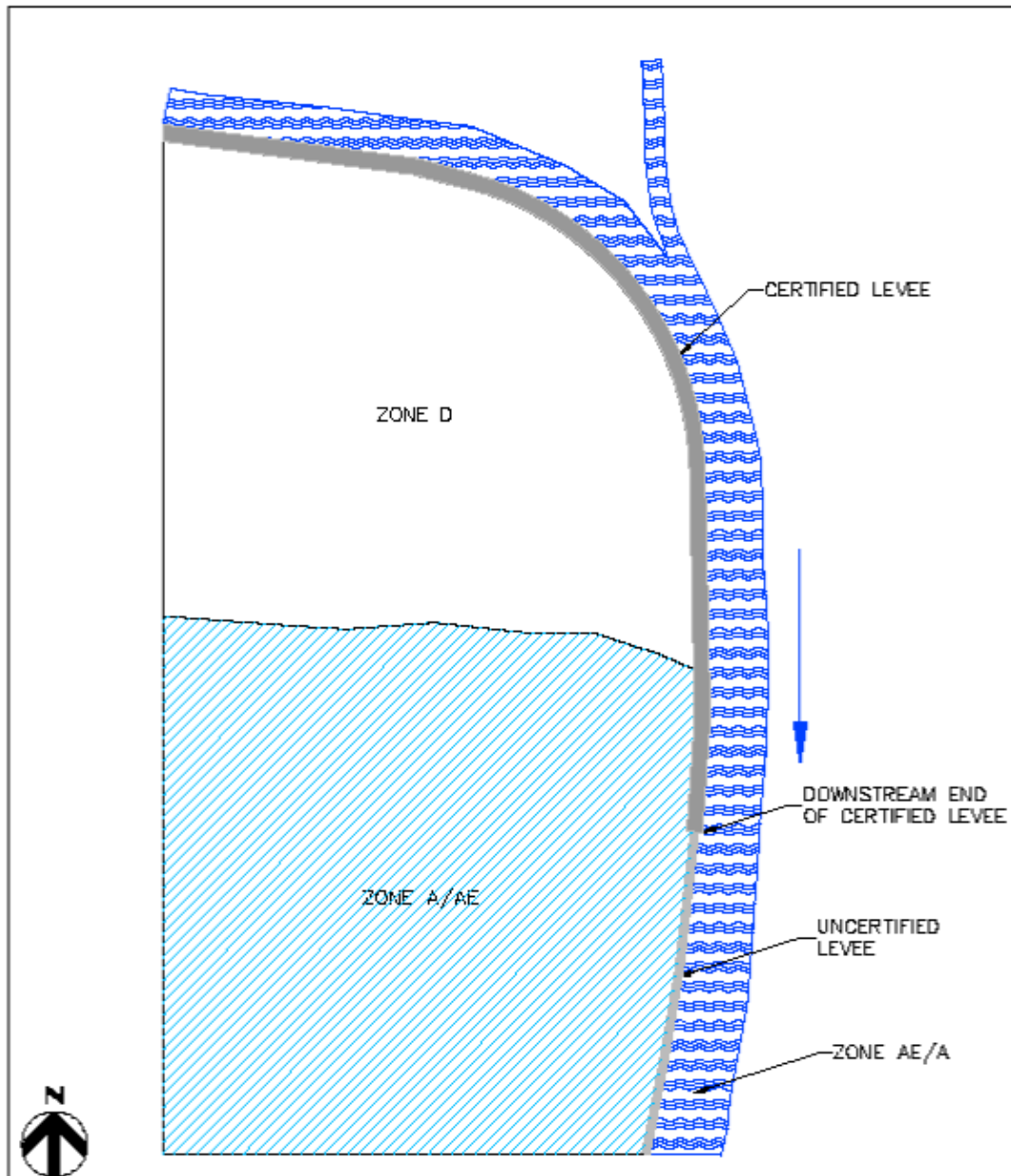
# Agriculture and the NFIP

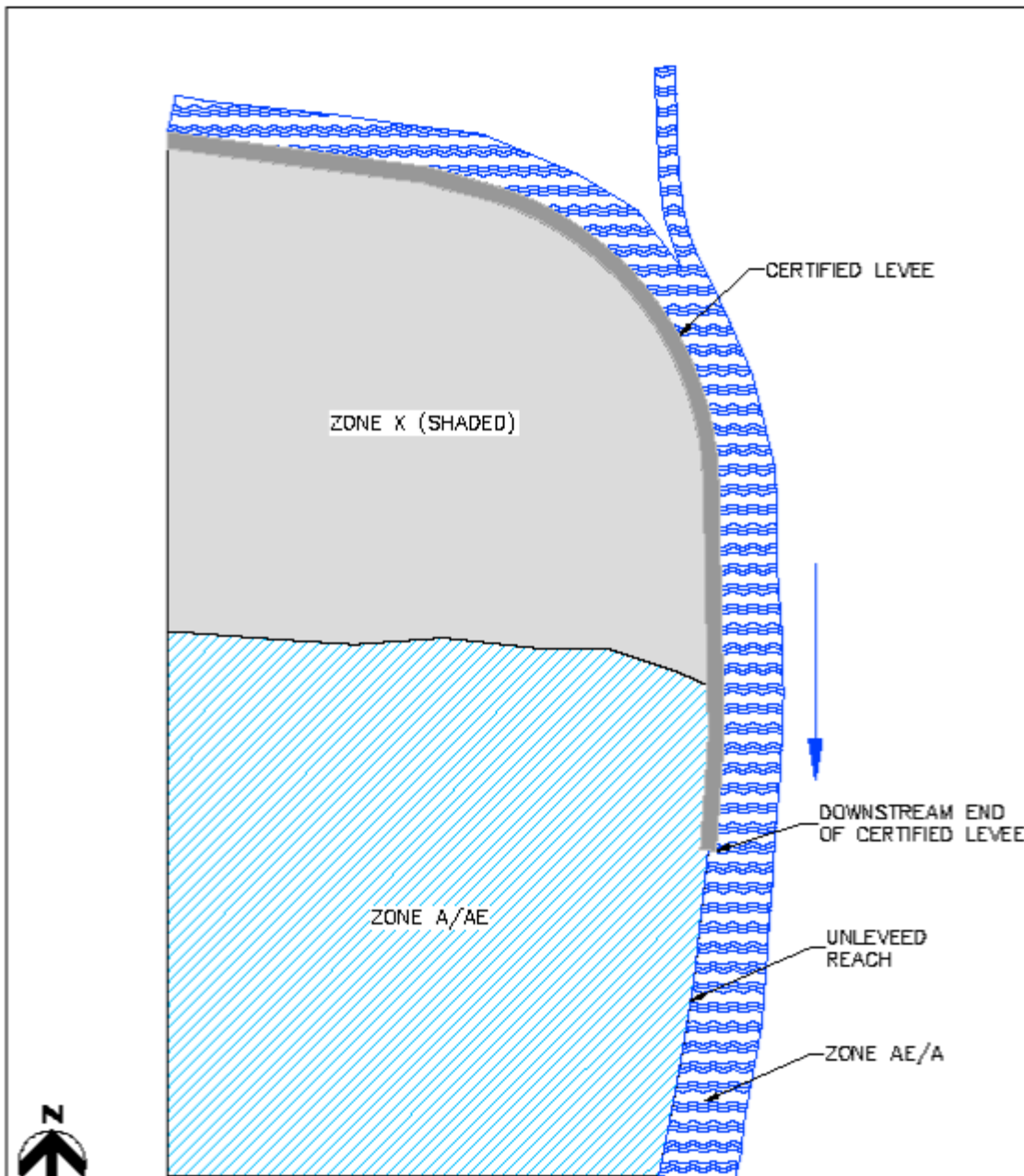
- After several months, we have some pending recommendations:
  - Use of Zone D:
    - But partner with an aggressive floodplain management ordinance.
      - No new residential structures allowed
    - Consider mandatory placement of group insurance policy
      - Use of GHAD or JPA for O&M/Capital/Insurance funding
  - Use of GHAD or JPA for insurance/capital

# Agriculture and the NFIP

- After several months, we have some pending recommendations:
  - Allow Shaded X behind certified reaches:
    - Current rules allow certification of reaches but state that if entire system cannot be certified then Zone D will be used, rather than Zone X, even though risk is known.
    - Zone D discourages insurance purchase through higher prices.







# Agriculture and the NFIP

- Approach going forward:
  - Develop consensus among stakeholders:
    - Farmers, flood districts, environmental NGO's, State regulators, counties, farm bureaus
  - Seek solutions that do not require statutory or regulatory changes
  - Incorporation into the CVFPB
  - Work with FEMA to consider implementation

# Current Legal Issues of National Interest

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