

What Leveed Communities Are Fighting For *...and Why*

- PL 84-99, the “Levee Ready Program”
- We’re partners, right?
- No Mandatory Insurance!
- Transparency, Transparency, Transparency

TWCA Annual Convention
March 1, 2023
Lost Pines, Texas

Dan Delich

Levee Rehabilitation & Inspection Program (Public Law 84-99)



Source: US Army Corps of Engineers Portland District Website

Enrollment in the Rehabilitation & Inspection Program under Public Law 84-99 (PL 84-99) provides reimbursement for specific damages to levees that result from high-water events.

Post-Katrina Narrative



Levees in Risk Rating 2.0

February 2022



Why Transition to Using Risk for Levees?

- 154 failures happened even for structures designed to USACE standards
- Seepage/piping and riverside erosion are significant risks
- Risk analysis and data consolidation improved our understanding of structural performance



Levee Unit 8 – Wabash River 2011



8 SEC. 209. NEW ZONE FOR LEVEE-IMPACTED AREAS.

9 Section 1360 of the National Flood Insurance Act of
10 1968 (42 U.S.C. 4101), as amended by the preceding pro-
11 visions of this Act, is further amended by adding at the
12 end the following:

13 “(1) LEVEE-IMPACTED AREAS.—

14 “(1) IN GENERAL.—To facilitate the implemen-
15 tation of subparagraph (A)(iii) of section
16 100216(b)(1) of the Biggert-Waters Flood Insur-
17 ance Reform Act of 2012 (42 U.S.C. 4101b(b)(1)),
18 the Administrator shall—

What We Have Learned About Our Nation’s Levees

California’s State Engineer, William Hammond Hall, reportedly stated:

“...There are two kinds of levees, those that have failed and those that will fail.”



9/14

Draft Presentation for the Virtual Stakeholder Meeting from the National Committee on Levee Safety, 12/16/08



WE NEED YOUR SUPPORT

USACE AND FEMA ARE MORE SUCCESSFUL TOGETHER

- Complementary authorities, missions, and skillsets
- Congress and the public have called for our two agencies to work together

CHALLENGES

- Our infrastructure first culture of Building Strong and Move Dirt
- Legacy of keeping FEMA at arm’s length related to the NFIP
- It will become more challenging before it gets better – talking about risk is complicated

HOW YOU CAN HELP

Increase understanding of the National Levee Safety Program

- Participate in HQ-led webinars
- Review resources available on www.leveesafety.org

Share information externally

- Share resources and opportunities to engage with external partners

Coordinate with HQ team for support

- Relay local/regional concerns/issues to the HQ team
- Identify communication materials/training that would help with local/ regional communications

Help change cultures and attitudes

- Promote comprehensive flood risk management



Communities for Fair and Balanced Flood Policy

PL 84-99 Program: What Is It?



US Army Corps
of Engineers

USACE Disaster Operations Public Law 84-99

Flood Control and Coastal Emergency Act (PL 84-99)

USACE also has authority under PL 84-99, Flood Control and Coastal Emergencies (FCCE) (33 U.S.C. 701n) (69 Stat. 186) for emergency management activities. Under PL 84-99, the Chief of Engineers, acting for the Secretary of the Army, is authorized to undertake activities including disaster preparedness, Advance Measures, emergency operations (Flood Response and Post Flood Response), rehabilitation of flood control works threatened or destroyed by flood, protection or repair of federally authorized shore protective works threatened or damaged by coastal storm, and provisions of emergency water due to drought or contaminated source.

- **Preparedness:** The Flood Control and Coastal Emergency Act establishes an emergency fund for preparedness for emergency response to natural disasters; for flood fighting and rescue operations; for rehabilitation of flood control and hurricane protection structures. Funding for USACE emergency response under this authority is provided by Congress through the annual Energy and Water Development Appropriation Act. Disaster preparedness activities include coordination, planning, training and conduct of response exercises with local, state and federal agencies.
- **Response Activities:** PL 84-99 allows the Corps of Engineers to supplement State and local entities in flood fighting urban and other non-agricultural areas under certain conditions (Engineering Regulation 500-1-1 provides specific details). All flood fight efforts require a Project Cooperation Agreement (PCA) signed by the Public Sponsor and a requirement for the Sponsor to remove all flood fight material after the flood has receded. PL 84-99 also authorizes emergency water support and drought assistance in certain situations and allows for "advance measures" assistance to prevent or reduce flood damage conditions of imminent threat of unusual flooding.
- **Rehabilitation:** Under the authority of PL 84-99, an eligible flood protection system can be rehabilitated if damaged by a flood even. The flood system would be restored to its pre-disaster status at no cost to the Federal system owner, and at 20% cost to the eligible non-Federal system owner. All systems considered eligible for PL 84-99 rehabilitation assistance have to be in the Rehabilitation and Inspection Program (RIP) prior to the flood event. Acceptable operation and maintenance by the public levee sponsor are verified by levee inspections conducted by the Corps on a regular basis. The Corps has the responsibility to coordinate levee repair issues with interested Federal, State, and local agencies following natural disaster events where flood control

Establishment

- Sec. 5 of the 1941 Flood Control Act (33 U.S.C. 701n)
- Implementing reg (33 CFR Part 203)

Purpose

- Flood Control and Coastal Emergencies line item (regular annual and supplemental) funds—
 - **Preparedness:** planning, training, exercises, inspection
 - **Response:** flood fighting activities include technical assistance, sandbagging, supplies, equipment loaning, rescue, debris removal
 - **Rehabilitation:** post-storm repair of "Active" projects to *hasten project readiness*

Eligibility

- Fed authorized, locally operated and maintained
- Locally built, locally operated and maintained
- Active in Rehab program and found Acceptable or Minimally Acceptable on 18 eligibility criteria

PL 84-99 Program: What Are We Fighting For?

(c) ELIGIBILITY

(1) LEVEE OWNER'S MANUAL

Not later than 1 year after October 12, 1996, in accordance with chapter 5 of title 5, the Secretary of the Army shall prepare a manual describing the maintenance and upkeep responsibilities that the Corps of Engineers requires of a non-Federal interest in order for the non-Federal interest to receive Federal assistance under this section. The Secretary shall provide a copy of the manual at no cost to each non-Federal interest that is eligible to receive Federal assistance under this section.

(2) COMPLIANCE

(A) In general

Notwithstanding the status of compliance of a non-Federal interest with the requirements of a levee owner's manual described in paragraph (1), or with any other eligibility requirement established by the Secretary related to the maintenance and upkeep responsibilities of the non-Federal interest, the Secretary shall consider the non-Federal interest to be eligible for repair and rehabilitation assistance under this section if the non-Federal interest—

(i) enters into a written agreement with the Secretary that identifies any items of deferred or inadequate maintenance and upkeep identified by the Secretary prior to the natural disaster; and

(ii) pays, during performance of the repair and rehabilitation work, all costs to address—

(I) any items of deferred or inadequate maintenance and upkeep identified by the Secretary; and

(II) any repair or rehabilitation work necessary to address damage the Secretary attributes to such deferred or inadequate maintenance or upkeep.

Fighting For

- *Adherence to clear statutory purpose: levee and floodwall readiness for the next flood*
- *Understanding that “maintenance and upkeep” complement program purpose of readiness*
- *Recognition that new floodplain management duties conflict with Congressional levee readiness intent*
- *Sustaining eligibility determinations centered on project maintenance and upkeep, not local sponsor performance of Federal approved practices*
- *Legislative limitation on changes to eligibility determinations*

LEVEE READINESS

PL 84-99 Program: USACE Proposal



Dedicated to a greater understanding of the widespread public benefits of our nation's water resources infrastructure.

Submitted by Email to: 33CFR203@usace.army.mil

February 16, 2023

The Honorable Michael L. Connor
Assistant Secretary of the Army (Civil Works)
108 Army Pentagon, Room 3E446
Washington, D.C. 20310-0108

Re: Comments on the Proposed Rule: "Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers" (33 CFR Part 203) Docket No. COE-2021-0008

Dear Secretary Connor:

On behalf of the National Waterways Conference ("NWC"), and our partners the Mississippi Valley Flood Control Association ("MVFCA"), Missouri Levee and Drainage District Association ("MLDDA"), Fort Bend Economic Development Council Flood Management Committee ("FBEDC FMC"), Association of Levee Boards of Louisiana ("ALBL"), Floodplain Alliance for Insurance Reform ("FAIR"), and Upper Mississippi, Illinois & Missouri Rivers Association ("UMIMRA"), I am providing comments on the U.S. Army Corps of Engineers ("Corps") proposed rulemaking to revise the Corps' natural disaster procedures under Title 33, Part 203 of the Code of Federal Regulations (33 CFR Part 203), which implement Section 5 of the Flood Control Act of 1941, as amended (33 U.S.C. 701n), commonly referred to as "Public Law (PL) 84-99." Thank you for

giving us an extension of the comment period to do so.

- 1) The Statute for the PL 84-99 Program (33 USC 701n) does not--
 - Provide the Corps with authority to pursue broader, prospectively-focused mandatory risk management activities or impose such duties on sponsors

- 2) Recent Statutory Amendments to the PL 84-99 Program--
 - Bear only on rehabilitation of levees damaged by floods

- 3) Proposal Would Benefit Corps and Shows No Net Societal Benefits--
 - Non-federal sponsors "may see an initial cost increase" while "the costs to the Federal government... ..to remain roughly the same"

We're Partners, Right?

Fighting For

- Informed, engaged Corps Commanders
- Informed, engaged Congress
- Levee owner-operator Equity

Committee on Levee Safety

- Parity for levee owners
 - 50 percent representation
 - Independent reports of levee owner views
 - FACA transparency and protection
 - Public notice and comment
 - Local needs
 - Precedent: Inland Waterways Users Board

- Successful conclusion of Senate-ASACW talks

CECW-CE

Circular
No. 1165-2

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CINDY HYDE-SMITH
MISSISSIPPI

United States Senate
WASHINGTON, DC 20510-2405

COMMITTEE ON
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AGRICULTURE, NUTRITION,
AND FORESTRY
COMMITTEE ON
ENERGY AND
NATURAL RESOURCES
COMMITTEE ON



Notice

The Honorable Michael
Assistant Secretary of the
108 Army Pentagon
Washington, D.C. 20310

Dear Secretary Connor,

Thank you for the recent
August in response to our
Applications for Stakeholder
(Committee)." As representative
continued performance of
protection. In pursuing the
the intergovernmental cooperation
achieved the unprecedented
levee system reliability through
full partners and that partnership

To further this vision, our
must be observed in recommendations
developed in a collaborative
our ongoing flood control

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- The Federal Advisory Committee Act (FACA) shall apply to all Committee proceedings to assure that minimum standards of participation and transparency are met;
- If the Federal Emergency Management Agency (FEMA) requires an advisory committee, it should pursue its own committee. The Committee must concentrate on Corps projects and authorities while avoiding conflicts with the mission and goals of FEMA;
- The Committee shall hold at least half its meetings outside Washington, D.C., within venues protected by levee systems.

We believe each of these recommendations would contribute meaningfully to achieving our shared goal of safe, reliable levee systems, and are essential to successfully formulating sound advice for the Corps and the Congress. The fair and full participation of those who bear a major share of the economic and financial burden of assuring reliable levees also parallels the same principle that informed the Inland Waterways Users Board in the Water Resources Development Act of 1986—those who bear the burden of waterways investment must have a strong voice in that investment. We cannot achieve effective intergovernmental cooperation for levee safety without the application of these principles.

Please review these principles and advise us of your decision to incorporate them in the charter for the new Committee under FACA. Thank you for your attention to this important matter. We look forward to your prompt response.

Sincerely,

Cindy Hyde-Smith
United States Senator

Roger F. Wicker
United States Senator

John Kennedy
United States Senator

Bill Cassidy, M.D.
United States Senator

ENGINEER MANU

No Mandatory Insurance Behind Accredited Levees



Fighting For

- Preservation of “no mandatory insurance” for communities with accredited levees
- Maintain statutory levee accreditation on flood maps when inspection and evaluation confirm confidence about 100-yr protection
- **Legislative limitation on changes to accreditation determinations**

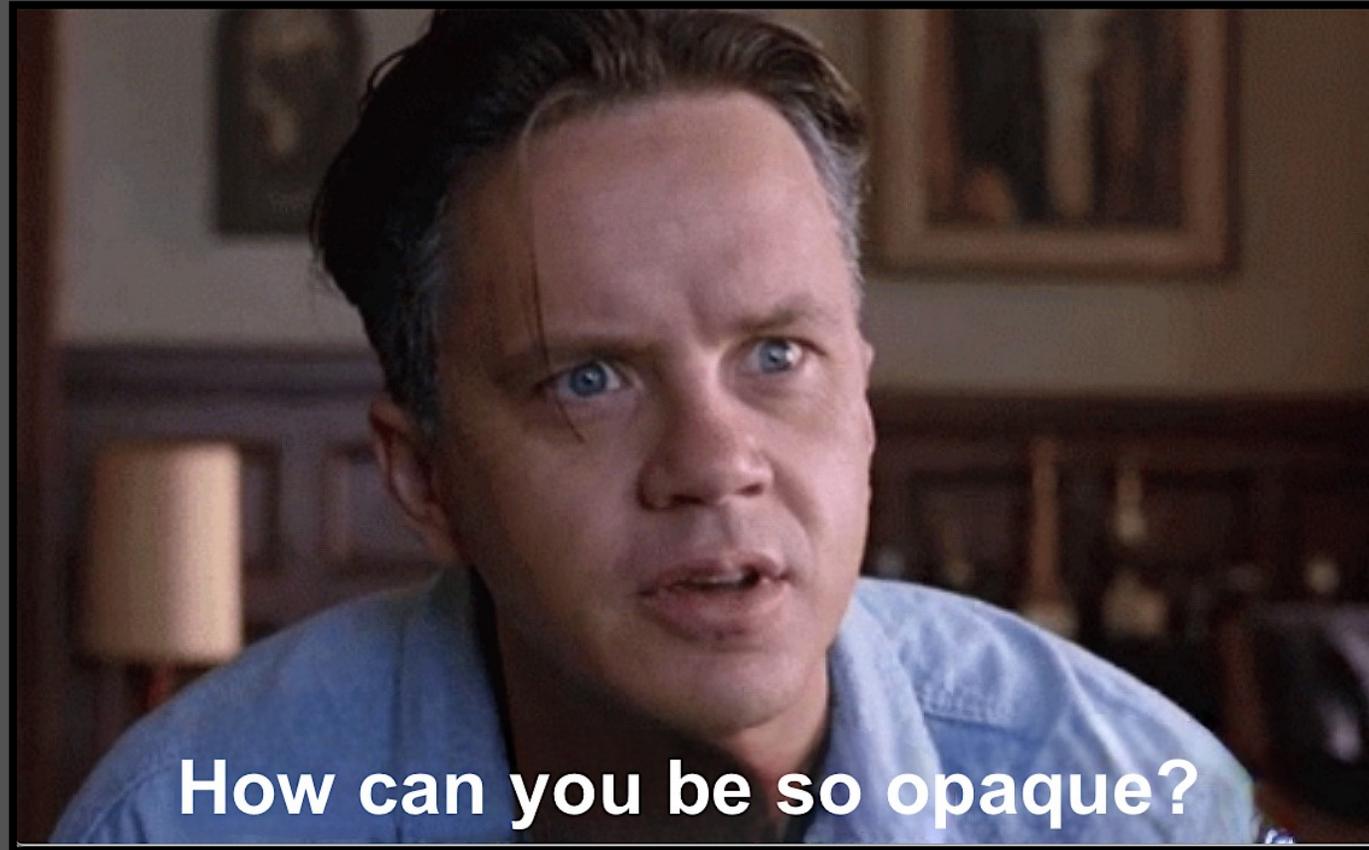
Why?

- Nation is not experiencing frequent or ongoing failures of accredited levees
- Historic certification/accreditation process and local commitment to pass manifest as highly effective
- Accredited levees characterized by extremely low probabilities of flood damages
- NFIP insurance is very unlikely to have benefits greater than costs in communities with accredited levees
- Property owners will resist accredited levee O/M millage and mandatory flood insurance
- Perception or reality of future storm worsening does not demand sudden, wholesale “all levees in NFIP” approach

Background

- 17M live or work behind levees in all 50 states
- 1 in 5 is accredited or provisionally accredited
- One catastrophic accredited levee failure: New Orleans (2005)

Transparency, Transparency, Transparency



FEMA and the Corps fail to reconcile their synthetic data with observational data and block public disclosure and scrutiny

Congress of the United States
House of Representatives
Washington, DC 20515-1806

April 06, 2022

The Honorable Shalanda Young
Director, Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Dear Director Young:

On April 1, the Federal Emergency Management Agency's new pricing methodology went into effect for all National Flood Insurance Program (NFIP) policyholders. In advance of Risk Rating 2.0's rollout, I repeatedly expressed my concerns to FEMA about what this new rating system would mean for coastal and riverine communities and homeowners on a fixed or low- to moderate-income.

Under Risk Rating 2.0, 90% of Louisiana ratepayers subject to an increase in their flood insurance premiums can expect to see their annual cost increase by 18% per year for the next ten years. In practice, this means that a policy that was zoned to cost \$572 per year in 2021 may eventually exceed \$8,000 per year. While FEMA assured us that most ratepayers would not see exponential increases, the proof is in the quotes that the NFIP has provided to homeowners over the last 6 months. When the program was rolled out for new policies on October 1, Louisiana communities immediately began reporting concerns that Risk Rating 2.0 will have a chilling effect on local economies by jeopardizing planned construction, forcing people out of their homes, diminishing property values, and taking entire neighborhoods out of commerce. Furthermore, I am concerned that Risk Rating 2.0 will have an overall negative effect on NFIP participation, driving up federal disaster recovery costs.

The Office of Management and Budget is tasked with coordinating and reviewing all significant Federal actions. Under current law¹, a "significant regulatory action" triggers a review by OMB's Office of Information and Regulatory Affairs (OIRA) if it is likely to 1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, or State, local, or tribal governments or communities; 2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; 3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or 4) raise novel legal or policy issues. Not only is Risk Rating 2.0 a material alteration of the NFIP (a user fee program), but it is also an

¹ Executive Order 12866. Regulatory Planning and Review; 58 Fed. Reg 51735 (September 30, 1993).



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

January 24, 2023

The Honorable Garret Graves
U.S. House of Representatives
Washington, DC 20515

Dear Representative Graves:

Thank you for your letter to Director Young about the Office of Information and Regulatory Affairs's (OIRA) review of the Federal Emergency Management Agency's "Risk Rating 2.0." Director Young asked me to respond on her behalf. Your letter requested information regarding OIRA's review of Risk Rating 2.0 under Executive Order 12866 (E.O. 12866).

Based on a search of our records, OIRA did not review the Risk Rating 2.0 update. The Department of Homeland Security did not submit any Risk Rating 2.0 related documents to OIRA for a significance determination pursuant to Section 6 of E.O. 12866. We forwarded your letter to the Department for their awareness.

Thank you again for sharing your important perspective on this policy. If you or your staff have any questions, please contact OMB's Legislative Affairs office at OMBLegislativeAffairs@omb.eop.gov.

Sincerely,

Richard L. Revesz
Administrator
Office of Information and Regulatory Affairs

Bipartisan/Bicameral Legislation on RR 2.0

117TH CONGRESS
2D SESSION

S. 3934

To permit policyholders under the National Flood Insurance Program to elect to have previous premium rates remain in effect until the Administrator of the Federal Emergency Management Agency satisfies certain conditions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 28, 2022

Mrs. HYDE-SMITH (for herself, Mr. WICKER, Mr. CASSIDY, Mr. KENNEDY, and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To permit policyholders under the National Flood Insurance Program to elect to have previous premium rates remain in effect until the Administrator of the Federal Emergency Management Agency satisfies certain conditions, and for other purposes.

117TH CONGRESS
2D SESSION

H. R. 7364

To permit policyholders under the National Flood Insurance Program to elect to have previous premium rates remain in effect until the Administrator of the Federal Emergency Management Agency satisfies certain conditions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 2022

Mr. GRAVES of Louisiana (for himself, Mr. PASCARELL, Mr. WEBER of Texas, Mr. CARTER of Louisiana, Mr. PALLONE, and Mr. ROUZER) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To permit policyholders under the National Flood Insurance Program to elect to have previous premium rates remain in effect until the Administrator of the Federal Emergency Management Agency satisfies certain conditions, and for other purposes.

Fighting For--

Giving policyholders the option to have risk and premiums set under legacy approach until FEMA—

- *Releases all data and methods used to establish premiums*
- *Provides policyholders with final full-risk actuarial premiums*
- *Publishes economic impacts (flood insurance affordability, property values, local revenues)*
- *Reexamines 2018 NEPA analysis*
- *Complies with Data Quality Act*
- *Gives public notice and comment (Administrative Procedure Act)*
- *Develops policyholder challenge opportunity*
- *Reintroduction and adoption of Hyde-Smith and Graves*
- *Legislative limitation on reduction of private property value*

Synopsis

What Leveed Communities are Fighting For

1) Adherence to statutory “maintenance and upkeep” eligibility criteria (only) to fulfill the PL 84-99 levee readiness purpose

2) Real collaboration on levee performance involving those who bear the costs and liability of project operation and maintenance (the levee owners)

3) Adherence to statutory preservation of “no mandatory insurance” for communities with accredited levees

4) Adherence to statutory transparency, data quality assurance, and public input requirements

...and Why

Corps rule seeks to deny PL 84-99 safety funds unless levee owners comply with broad new and unauthorized floodplain management duties (note: most levee owners are not authorized to perform floodplain management duties)

Levees, levee owners, and leveed communities are on the outside looking in as the Corps-FEMA “power couple” pursues a top-down, unsupported regulatory future

Corps and FEMA are withholding flood protection credit for levees on flood maps

FEMA and the Corps fail to reconcile their synthetic data with observational data and block public disclosure and scrutiny