

Expedite Rehabilitation of Flood Control Projects

Public Law 84-99 provides for federal rehabilitation, through the US Army Corps of Engineers (USACE), of flood-damaged flood control projects which meet certain criteria. The goal of the program is to restore flood-damaged facilities prior to the next “flood season” to increase resiliency and reduce the risk of flooding. While the PL 84-99 provides for rehabilitation of locally maintained projects by the federal government, it is limited to work performed or contracted by the federal government and does not provide an option for reimbursement of the cost of rehabilitation work executed by the local, non-federal sponsor of the project.

The expediency with which the federal government is able to affect the needed repairs on storm-damaged flood protection projects can be impacted by the timeliness with which federal resources become available.

The Program. The Flood Control and Coastal Emergency Act (Public Law 84-99) is USACE’s basic authority to provide emergency activities in support of State and Local governments before, during, and after flood events.

PL 84-99 includes authorities for federal (USACE) support under the categories of:

- Disaster Preparation (planning & staging of flood fighting supplies)
- Emergency Operations (flood fighting & post-flood emergency debris removal)
- Rehabilitation (post-flood damage repair)
- Emergency Water Assistance (including drought emergency assistance)
- Advance Measures (emergency pre-flood measures ahead of imminent extreme flood event)
- Hazard Mitigation

The area of interest for non-federal operators of major flood control projects in the PL 84-99 program (and the Texans protected by those projects) is the Rehabilitation category; specifically, the execution, timing, and cost recovery of the PL 84-99 eligible rehabilitation activities. The current law generally provides for repairs to levee systems and flood control project damaged by floods as follows:

- Federally constructed or enhanced projects which are locally maintained to the level necessary to remain “active” in the PL 84-99 program will be repaired by the federal government at 100% federal cost. (Pending a letter of request by the maintaining authority and funding by Congress.)
- Non-federally constructed projects which are locally maintained to the level necessary to remain “active” in the PL 84-99 program will be repaired by the federal government at 80% federal/20% local cost share. (Pending a letter of request by the maintaining authority and funding by Congress.)
- Systems not in the PL 84-99 program, regardless of who constructed the project, will not be repaired by the federal government. The program is limited to repairs to pre-event conditions and federal funding does not allow improvements or enhancements.

The USACE-stated intent of the rehabilitation program is to ensure that damaged flood risk management projects are operationally effective prior to the next flood season.

The Problem. The key issue/concern to local flood control project owner/operators is the potential delay in USACE completing the repair in a timely fashion following approval of the post-flood event Project Information Report (PIR) and USACE receipt of Supplemental Appropriations to fund project repairs. In waiting for the federal government to make repairs, local project owners are currently faced with either:

1. Operating a damaged facility for an often-extended duration (recently 2-4 years after the Hurricane Harvey flood disaster) while waiting on the federal government to find resources to execute the repair, or
2. Making the needed repairs in a timely manner, with the cost immediately borne by the local project operator (non-Federal sponsor), and thereby absorbing the entire burden of the repair without eligibility for reimbursement of any repair costs.

Request of Congress.

Amend PL 84-99 to include provisions for reimbursement to non-federal sponsors for repair activities otherwise eligible for repair by the federal government under the existing PL 84-99 provisions.