

MEETING MINUTES

NATIONAL COMMITTEE ON LEVEE SAFETY (NCLS): National Levee Safety Act, Title IX of the Water Resources Development Act of 2007 (WRDA)

MEETING #4

18 November 2008 – 21 November 2008

Embassy Suites Deerfield Beach
Deerfield Beach, FL

EXECUTIVE SUMMARY

These minutes cover the proceedings from the fourth meeting of the National Committee on Levee Safety (NCLS, referred to as “Committee”), which took place from 18 November 2008 – 21 November 2008. The meeting was comprised of the Committee’s voting and non-voting members, other support and technical staff from the USACE facilitators from SRA International, Inc., and various presenters. The objectives of this meeting were to:

- Develop draft recommendations
- Provide input on draft recommendations
- Agree on interim draft recommendations for some goals

Voting Members in attendance:

- Mr. Eric Halpin, Committee Vice Chair, USACE
- Mr. Bill Blanton, FEMA
- Mr. Don Basham, Private Sector
- Mr. Les Harder, Private Sector
- Ms. Karin Jacoby, Kansas City, MO
- Mr. Dusty Williams, Riverside County Flood Control District, CA
- Mr. Rod Mayer, State of California
- Mr. Mike Stankiewicz, State of New York
- Mr. Jon Sweeney, State of Arkansas
- Ms. Marilyn Thomas, Commonwealth of Kentucky
- Mr. Robert Turner, State of Louisiana
- Mr. Paul Perri, State of Colorado

Non-voting members in attendance:

- Mr. David Garcia, City of Dallas, Flood Control District
- Ms. Sam Riley Medlock, ASFPM
- Ms. Susan Gilson, NAFSMA
- Mr. Steve Verigin, Private Sector, ASDSO

Support staff in attendance:

- Carol Sanders, USACE
- Terry Zien, USACE
- Craig Kennedy, FEMA

Action Items

- By Dec. 1, SRA will provide:
 - A strawman document of what the Review Team would receive
 - Agenda for Dec. 3-5 meeting
 - Agenda for Dec. 8-12 meeting
 - Agenda for Review Team meeting
- By Dec. 1, each Working Group lead will send Linda Manning the latest version of its team's recommendations
- By Dec. 2, SRA will complete the mapping of recommendations to goals

TUESDAY, 18 NOVEMBER 2008

Agenda Review, Review of Action Items and Approval of Minutes from Meeting Two – Linda Manning, Facilitator

Ms. Manning discussed with the Committee the goal of creating a compiled set of recommendations from each Working Group by the end of the week, and then completing a gap analysis to determine where the recommendations may be lacking information, detail or other elements.

Plenary Discussion. Communication Plan Proposal – Carol Sanders, Public Affairs Officer, USACE

Ms. Sanders introduced a draft of a communications plan for the Committee, which included: a proposed statement of purpose; audiences to be addressed; key issues; Committee timeline; key messages; talking points; products; and metrics for success. Ms. Sanders recommended that the Committee develop a glossary of terms to be included with communications materials to ensure common understanding of concepts such as assessment, inspection and evaluation. She also asked that the Committee members suggest additional audiences that should be targeted.

Members noted that the audiences listed in the proposal were largely non-technical, which could affect the type of recommendations that are issued. Ms. Manning suggested that the group prioritize the audiences to determine where the Committee should spend more of its time. Members then discussed how the Committee will communicate to Congress and the public about the urgent need for a National Levee Safety Program (NLSP). The group was concerned that without such efforts this work will wind up on a shelf, rather than put into action. As such, a good deal of the current work will be focused on how to engage interest, make people care about this issue, and determine whose support is critical for the success of the program.

Question: Do we as a group or as individual members make members of Congress aware that we made these recommendations ahead of time and ask for their support? We want to try to sell it or be an advocate for it.

Response: The task laid out now is to create a buzz and inform people of the need for this. How do you bring data, messages to bear so that people say we really need an NLSP.

The Committee broke into small groups to address the following discussion questions:

- What are the most important audiences to reach to support NLSP?
- Feedback on messages and talking points? Changes? New/important?
- Products/venue?

Question 1: Audiences

- Congressional Committees – stay on the lawmakers’ radar screens
- Identify anticipated opponents (developers, real estate industry)
 - Identify group; create messages for that group; consider what objections might exist and how to overcome them
- NGOs, including technical societies
 - Organizations that work with water issues, levee drainage departments
- Media

Question 2: Messages, talking points

- Important key words/concepts: infrastructure, systems approach (reflect change in national thinking about levee safety), economic revitalization through infrastructure investment – add levees/flood control projects to those “stimulus” activities
- Accurate figures on age of current levees; link with Midwest floods in summer of 2008
- Other facts: inventories, ownership, communities at risk, acres of land protected, populations protected, past events, etc.
- Absence of standards, fact that most levees were built at the turn of the 20th century to protect agricultural land.
 - Understand that the levee protecting your land was not meant to protect million-dollar homes
- Projected population behind levees

The Committee discussed adding to the communications plan the fact that this effort was mandated by Congress, rather than the USACE, and represents the first time the government has tried to address national levee issues. One participant said he explains to others that the Committee is learning from past levee disasters and that the Act was passed to find solutions and improvements. The members said it is very important to communicate to the public: (1) that the national flood protection system has been neglected by all levels of the government and the public for generations; (2) the importance of levee safety at the individual, local, state and federal levels; and 3) the national security component of levee safety, especially as it relates to pipelines, refineries, defense installations, utilities, and other infrastructure.

Also, the point was made that there is an opportunity to tell the “good story” – that the Committee potentially will have a solution to problems surrounding levees. Standards and codes are only one part of the program – it is also a program of continuing evaluations. This is related to the idea of investing in infrastructure, rather than in recovery. The recommendations would be geared toward shifting the focus away from an over-reliance on structural methods, like levees, toward flood risk management instead. The way things were done in the past was not always

“bad,” but they were based on ideas from 100 years ago. As circumstances have changed (more people and development behind levees, climate change), the risk has grown. As such, the NLSP must be a dynamic system.

Question 3: Products/venue

- Create a “newsroom” tab on NLSP website and provide a list of recognized levee experts
 - Add a list of people who can be media contacts solely regarding the work of the committee, policy, etc., in addition to Eric Halpin
 - Go through Carol first as media POC (can offer media training)
- Other ideas: Utilize Facebook, YouTube, Linked-In, podcasts; internal blog where Committee can track presentations, releases, that includes dates, audiences and presenter notes, as well as feedback (what went well and what went poorly)
- Recognizing the diverse opinions on the Committee, create talking points and a standard set of marching orders about how and whether members may talk about the Committee and its work.

Background Piece. Overview of Risk Communication and Behavior Change – Peter Mitchell, Marketing for Change

Mr. Mitchell’s presentation was entitled “A Focus on Behavior Change: Applying Social Marketing to Reducing Risks Around Levees.” He addressed several facets of risk communication, including the idea that there are many “risky” things competing for people’s attention. Rather than focus just on the notion of risk, he suggested that it is helpful to think specifically about the behavior you want to change in your audience. The drivers of behavior change are:

- Consequences (what happens if you do not do it)
- Efficacy (ability to accomplish task)
- Social Norms (what is expected of you) – most powerful driver

Mr. Mitchell explained that a social marketing approach treats behavior like a choice and considers what is being offered in light of people’s needs. Rather than just telling someone what to do, it’s more effective to look at determinants of their behavior, such as consequences, rewards, risks, penalties, and confidence. Mr. Mitchell outlined the steps involved in a behavior change methodology:

- a. Discovery: what does the audience need
- b. Design: define your offer to meet a need
- c. Interrupt: spark an interest in the need
- d. Interact: turn the interest into action
 - Do not just throw information at people; wait until they want it
- e. Engage: build a base of believers

He described examples of social marketing that created heuristics that resonated with the targeted community. For instance, on a project aimed at communicating the risk of springtime lawn fertilization to Chesapeake Bay Blue Crab, the campaign avoided just telling people to stop fertilizing. Instead, Mr. Mitchell and his team linked the behavior change (stop fertilizing) to the audience’s needs. In this case, they found that the strongest determinant in behavior was

lifestyle. People in the target audience valued being able to eat and serve Blue Crab. As such, the campaign's message was that avoiding fertilizing protects the fate of the "appetizers" you like to offer at your backyard barbecues. Taglines of the campaign included "Protect the crabs, then eat them" and "No appetizers were injured in the making of this lawn."

Mr. Mitchell stressed to the Committee that it is less useful to just tell members of the public that they should be focused on levee safety because a big storm might come one day. Instead, the Committee should strive to make a relationship between risk and behavior. To do this, the Committee (or others) should determine, among other things, why people should act, and also identify and establish behavioral norms (ex: everyone in this town puts their home on stilts).

Question: There are misperceptions about concepts like the 100-year flood. What if people only plan to live somewhere for 10 years, or if there was already a flood in 1972 and they don't expect another one to occur? We could use percentage chances; we are struggling with high consequence and unknown probability.

Response: How much of the complicated stuff can be withheld, and instead make it about something simpler? I just have to know that houses in this area have this potential flood situation and I have to build on stilts or I can't build here. Resale value could be a good way to communicate – might do to encourage participation/support of real estate industry in the national levee safety program.

Question: One of our drivers is public safety and loss of life risk. That is a very governmental thing – a hard thing to leverage. The economic arguments are much more straightforward.

Response: Try to put the risk in terms of now – land values, property values, what you can do to impact now, which is when people are "shopping" for information. Maybe it is about how you add more value to a home.

Comment: It is not just about the problem, but about the outcome you want. How to make that resonate with them?

Comment: We are selling something nobody was to buy.

Response: Focus on what you want people to do. Make the link to the individual. If there are 20 behaviors, then cluster them around main themes. Start building a brand, and have all the things you need to do to "protect the appetizers."

Question: This group is trying to change individual behavior as well as public policy. Is there a way to sequence that? Where do you go first?

Response: Figure out where it will make the biggest difference. Don't spend money on telling people exactly what the risk is. Make it so I do something almost by accident, maybe it is part of something else. Give me a simple way to do it when I need to.

Question: We want investment in levee safety programs. How can we do that?

Response: Example: zoning. Think about how you can make it easier for people who do zoning to figure out stuff. Make it more transparent when they are putting people at risk; an online tool for planners would include elements like a checklist that would help them see what needs to be done in levee protected areas.

Question: What about trying to tell a person who is about to buy a house to protect their investment because they are buying a floodplain?

Response: How about, a house in a floodplain is worth \$10,000 less. If you could get that figured into the market, it would have a huge impact. Realtors compete on the fact they know more than other realtors.

Comment: What if there was a green zone. When people are looking for a house, they want to be in the green zone. Almost have that align with the 100-year floodplain. It is something you can ask about. If you can make a clear zone – keep it simple – then it is a quick heuristic. You are not saying anything about risk. Then it is all about publicizing a map. You do not want 100 talking points because people stop listening. If you had different zones denoting different levels of risk you could effect how you build the levee. Let's say I am a county commissioner and have a white zone. I want to find out how I can turn it into a blue zone. If you get the right system, everything is incentivized. Have a big idea that is simple.

Comment: We have responses and behaviors we want to change depending on the audience. As we nail down those discrete audiences and the behaviors we want to change, we may be able to come up with specific messages.

Mr. Mitchell's full briefing is available at <http://www.iwr.usace.army.mil/ncls/>

Report Out. Working Group 7: Incentives/Disincentives

- Link delegation to qualified entities with incentives and disincentives
 - There should be qualified entities that can receive authority to run a levee safety program and should receive awards for exceeding standards. Two-level approach: qualified (minimum) and highly qualified. Put in place a system of incremental incentives to provide rewards for a broad range of activities and parameters that could be adjusted over time.
 - Minimum – inventory, inspections, public notification
 - Highly qualified – regulatory powers over levee systems
- Incentives for minimally qualified entities
 - Insurance discounts; cost sharing with FEMA grants programs, NLSP and other federal programs; loans from infrastructure trust fund for flood damage reduction projects; eligibility for NLSP Board membership; eligibility for HUD community development grants; ability to require flood insurance; collect a surcharge on NFIP insurance premiums.
 - Some of these ideas represent significant changes in federal law.
- Incentives for highly qualified entities
 - Many are the same as above, but with bigger benefits, as well as eligibility for limited federal immunity for certain activities, such as taking over maintenance of poorly maintained levees.
- Rationale

- Delegation should be highly encouraged and, therefore, achievable with few qualifications. Incentives should encourage entities to seek delegated responsibilities and perform basic activities. There may be a need to provide entities with incentives to assume responsibility for additional activities. In order to build nationwide support for the NLSP, only modest disincentives should be applied, including: prohibiting access to loans from infrastructure trust fund, grants from NSLP and HUD; cap cost sharing.

Working Group 1: National Levee Safety Functional Governance (flow chart)

- National Levee Safety Program (NLSP) Governing body
 - Advocate for authorizations, appropriations
 - Support NLSP implementation
 - Allow for action if no programs are delegated
- Program Administration
- Executive Committee
 - Standing committees: Technical, Public Awareness, Delegated Program Oversight

The Committee discussed the need to explore governance issues around delegated programs as well as the idea of hiring full-time staff to administer the national program. On the latter point, one participant suggested creating a separately staffed entity to reduce the chances that the levee safety program would siphon money away from existing programs. The Committee also discussed the challenge of coordinating the national program between state, local and other entities that may be responsible for levee safety. Furthermore, creating pots of project money for states could complicate matters if it requires locals to get into line to apply for funding. That could result in a lot of pushback from locals. In areas where levee-affected watersheds cross state lines, there may also have to be a good deal of coordination (e.g., priorities, delegation).

The concept of liability protection was a primary focus of this conversation. Some participants expressed concern that states avoid taking on a delegated levee safety program due to liability issues. Inventory, risk communication, emergency planning, etc. – all these tasks may be easier to sell because there is little associated risk of liability. If local entities already feel they have the liability, they will be receptive. But if it means taking on new liabilities, they will balk.

Plenary Discussion. Remaining Recommendations from Working Group 1

Working Group 1 developed 10 recommendations:

Goal 2

Recommendation 1: Levee definitions and standards

Recommendation 2: National Levee Safety Code

Recommendation 3: Expanded National Levee Database

- Working Group 7 will handle recommendations for non-federal levees.

Recommendation 4: Research and Development Program

Recommendation 5: National Tolerable Risk Guidelines

Recommendation 6: Liability Protection

- Not a blank check, offers limited protection
- Thomas Amendment – needs to be waived. Some discussion over the mechanics of how that would happen and the implications of doing so.

Goals 7, 8, 9

Recommendation 7: Guidance for Levee Safety Programs (for states)

Recommendation 8: National Levee Safety Training Program

- The Committee discussed the meaning of “Certified Levee Professional:” what it would require, how it would fit with current educational and licensing programs for civil engineers, how it would affect state and local programs.
- Requiring certification to manage federal programs can raise difficulties. If it is not legislated, the certification may not be enforceable. Members strongly suggested that any work in this area requires conscious investigation and exploration.

Recommendation 9: Technical Assistance Materials (developed by USACE)

Recommendation 10: National Levee Safety Program Website

The Working Group plans to tweak most of these and work on better implementation plans and other components. The group will revise and reissue the recommendations.

Question: Hazard classification. If we are going to go with 10,000-person threshold, we will have to defend that (how we considered different ideas and rejected them). The number is way too high. Having 9,999 people at risk is considered significant but not high – people will really challenge that. Need to include discussion of our method, the lack of data, and our plans to further refine the classifications.

Question/Comment: On Recommendation 6, why should people working in this area have protection from liability when others do not? Offering some type of protection to an entity that is properly implementing a delegated/qualified program would be a very strong incentive.

Comment: We could cite other areas where limited liability has been given. If a state has highly qualified levee safety program and follows the rules, it should have some protection as a reward for doing it right.

Question: Design stands out as an issue. On inspections, evaluations, etc., providing liability protection for design seems beyond the levee safety program. If someone is designing a levee and it’s found to be faulty, do you really want to provide them with liability protection?

Comment: Regarding requiring a firm to get certification; states ought to determine whether a firm gets liability protection. That's a states' rights issue. There are no national standard codes for levees. There is no consistency among engineers on how to build them. What would make a lot of this go away would be to have a code that everyone would use. The USACE guidelines don't rise to the level of a national code, even if it's the default standard.

Comment: You do not have to solve the problem in order to report this to Congress. Congress won't ask the Committee to write this legal language. Explain what the problem is, why it is a problem, and the incentives and disincentives, and will get you far down the road.

Comment: It's a troubling issue because it gets to professional standards. You can't just provide liability protection – there has to be a standard of care and recognition of negligence.

Comment: Articulate the intent of this so that someone with a depth of legal background can check what you are saying. The question is why we should give liability protection here. It's not all or nothing – let people with the legal tools flesh out and operationalize it.

Comment: Within the Federal Tort Claims Act, there is an exception – if you are doing something that the government mandated you to do, you have some immunity. But there is discretion in applying that. The Flood Control Act of 1928 says you shall not hold the federal government liable for losses to flood. The government could extend that to entities that are performing a federal function. But this relates to a profession and gets into the code of ethics for professional engineers. The recommendation may say that this requires a lot of exploration, input and public involvement.

Question: Regarding Recommendation 4: Did you consider adding a forensics program in there to look at causes of failure?

Response: There probably would be some form of technical assistance that gets at other means to repair a levee and mitigate my exposure.

Question: We need a definition of “major system” since we are applying some of these recommendations at that level.

Response: The definition would be “all the infrastructure, manmade or natural, that provides protection for more than a single consequence area.” If you build a levee system on one side of a river that would affect the other side of the river – that's a major system.

Question: Why do you need this definition?

Response: You may want to provide greater incentives for a large systems approach. Still, you need to know how you are going to use that definition in order to flesh it out. A major system would control permitting on both sides of a river, for instance. Need to figure this out. Examples: Mississippi River Commission and Delaware River Basin Commission.

Question: Would one state have the authority to regulate what another state does?

Response: Might have to create new jurisdictional authorities to manage larger watersheds.

Comment: In your recommendations, are you at the point where you want to say that you can have both kinds of delegated entities (states and regional commissions)? If so, we need a definition that gets at both of them. Hold off on definition question until that answer is reached. We need the physical definition.

WEDNESDAY, 19 NOVEMBER 2008

Background Presentation. FEMA Programs as Incentives or Disincentives to National Levee Safety Program, Bill Blanton and Craig Kennedy, FEMA

Mr. Blanton walked the Committee through FEMA's mission and showed examples of how the agency maps flood risk associated with levees. The mission includes identifying flood hazards, communicating risk, and enabling homeowners to protect themselves. The maps assist in the task of communicating risk and are part of an effort to incentivize flood risk management. FEMA estimates that it will receive \$200 million in appropriated funds in FY09 for mapping and \$80 million from fees generated through the sale of flood insurance. The latter figure represents nearly a doubling of fee-based revenue from the prior fiscal year. Mr. Blanton said the increase was based on several factors, including increased marketing of insurance, risk awareness resulting from map modernization, and new mandatory insurance rules from Congress.

Mr. Kennedy offered a presentation entitled "Disaster assistance, mitigation grants, and the Community Rating System (CRS) Program." FEMA offers individual and public assistance. Disaster assistance is meant to supplement other sources of aid in the event of a federally declared disaster, and is usually in the form of grants or loans. In certain areas, homeowners must have flood insurance in order to be eligible for federal assistance. The Committee talked briefly about how flood insurance works and public perceptions of the National Flood Insurance Program (NFIP). Mr. Kennedy explained that there is a myth that federal disaster assistance will pay for flood damage. In reality, fewer than 50 percent of floods are declared disasters, which prompts federal aid; most aid is a loan that has to be paid back with interest; and if you are uninsured and receive assistance, you must purchase flood insurance to remain eligible for future disaster relief.

FEMA also offers Pre-Disaster (PDM) and Post-Disaster mitigation programs, which require local governments to apply through their state and have a hazard mitigation plan in place in order to be eligible. Some Committee members asked whether the plans consider levee safety; Mr. Kennedy said that FEMA does not necessarily know whether a community houses a levee. One participant suggested that hazard mitigation plans might be a good source of information and that one recommendation could be to require FEMA to make communities update their hazard mitigation plans by 2025 to reflect all levees or lose program eligibility.

Other programs within FEMA include the Flood Mitigation Assistance Program (an annual mitigation program for NFIP policyholders); Repetitive Flood Claims Program (funds mitigation projects for certain repetitive loss properties in communities); and the Severe Repetitive Loss Program. Many people apply to these programs but are ultimately ineligible. There also is the Hazard Mitigation Grant Program, which is activated after a disaster declaration and is intended

for long-term measures to reduce vulnerability to natural hazards. This program funds localized, minor flood reduction projects, not major flood control efforts.

Question: Are there any of these programs you would recommend against leveraging as a means to incentivize participation in a levee program?

Response: Because all of the programs have separate funding pots, they suggest creating a new grant program. That way, you are not taking money away from existing programs.

Question: If this committee were to recommend no assistance for communities that don't have plans, etc., it would be harsh. Are there any assistance programs that should remain available for communities that don't participate?

Response: The post-disaster programs are more the ones that "kick people when they're down." Instead, look at the programs that help in pre-disaster situations.

Comment: On the PDM side, it is the wrong approach to disincentivize people who are trying to take proactive approaches to pre-disaster mitigation.

Comment: Public assistance is not repayable, but it is available after the disaster. Why should there not be some investment in looking at/paying for problems up front and reducing the overall investment down the road (especially regarding recovery)? The personal assistance is 100 percent reimbursable.

Comment: That might work logically, but politically it could be a hard sell.

Comment: If you are in a repetitive disaster area, that could be part of the equation. It focuses on the community and state level. Make them deal with more post-disaster efforts.

Finally, Mr. Kennedy introduced the NFIP Community Rating System (CRS). The objective of the CRS is to reward communities that are doing more than meeting the minimum NFIP requirements.

Comment: A levee safety program could supplant or replace what is in the CRS.

Mr. Blanton's and Mr. Kennedy's full briefings are available at <http://www.iwr.usace.army.mil/ncls/>.

Report Out. Working Group 7: Governance Model

The Committee discussed the Functional Governance model/organizational chart that Working Group 7 created. It features a governing board, an executive committee, administrative officers, and technical advisory committees. The Committee explored and debated numerous aspects of this draft model, as well as the concept of providing Congress with an interim plan that would precede the final organization; whether it should be sent up as an independent agency or housed within USACE; how to build support for the program within Congress; and who would serve as the chair of the commission.

Question: Can you explain the lines of communication between the Board, Executive Committee, and other groups?

Response: Solid lines show where you are given direction, and dotted lines are where you provide feedback. The standing committees would report to the Executive Committee, which

would provide feedback to Program Administrators, and ultimately to the Governing Body. The staff is going to be from USACE and FEMA. In the future, it could be that the staff is hired by the Board. This is an interim suggestion.

Phasing

Question: Why not make this recommendation now?

Response: It's too much to stand up a new organization outside of any current organization in only 2-3 years.

Comment: Maybe interim suggestions should be part of the implementation steps. But the legislation should be the proper end state. The interim strategy is to stand up the 'big box' [on the organizational chart] and then direct the next two years have the administration done by two agencies (USACE and FEMA).

Response: But we are more sure of the interim state than the end state. We want the interim set-up to shape the final steps. We should take the first step and recommend to Congress how to take the second step.

Comment: If this is an interim step toward a standalone board, then what is this option of having two existing agencies run the program?

Response: It is independent to some degree, but just not to the degree of the end state. We established a governance structure that addresses some of these principles.

Question: Does this require legislation to set up?

Response: Yes. It would be funded in the interim between USACE and FEMA.

Independent vs. Imbedded

Question: Where would it be housed?

Response: We have not come to closure on that issue.

Question: Why not set it up from the beginning as a separate entity and have legislation create it?

Response: Not sure we know what the second step, ultimate governance model should be. A couple of years of this interim step will inform that quite a bit. Plus, it will be a multi-year process to go from zero to final. The government works off a three-year budget cycle. Anything you want to influence in FY09, you wanted to start working on in FY06. There is a lag in the federal budget cycle.

Question: So what makes this feasible in the short term? What is the difference?

Response: Direct access to current people and current agencies that can budget for it make it faster to start up the program. And it still will not be lightning fast. Right now, if Congress really likes this, it could pass supplemental appropriations to the USACE and FEMA and say go do it.

Question: What data are we bringing to bear that make us think that going through the bureaucratic budgets of the USACE and FEMA will be a faster process?

Response: It's where existing federal agencies have budgets and can get appropriations from congress. It might not be the slickest thing, but it is better than an organization that doesn't exist. It would have to be a supplemental for FY09 and a new initiative for FY10.

Question: What is the advantage of saying this is a separate entity that warrants its own budget. If we believe that is what it takes, what is the value in asking for less or other than that?

Response: Supplemental appropriations bills are generally related to existing programs. This is not going to rise to the top of the heap. If you are looking for an authorization, you have to look for a Water Resources Development Act reauthorization. When you look at authorizing this, you have to look for the closest vehicle to get you there. You have to answer these questions to get into the cycle.

Question: What do you gain by going to an independent commission? You are still talking about USACE and FEMA people.

Comment: How do these separate boards and commissions fare in the budget cycle? This could possibly never rise to the level of attention and attract any scrutiny.

Comment: There are hundreds of such boards. We looked for those that have separate budgets. By being in the USACE, it could get mired in a USACE culture that may make it harder to do the kind of innovative policy that is going to be necessary going beyond the engineering aspects of a levee. I view the Mississippi River Commission (MRC) as being part of the USACE culture.

Comment: It takes the agencies to add up the budget to fund programs. It could be perceived as taking away from other programs. If funding comes through an independent board, it could be viewed as an enhancement. Have a core group of people who work for the board.

Comment: Up until this point, we have tabled discussions about all types of feasibility. We have only looked at what we need to make the program successful. If we are going to modify the structure of what we are willing to propose based on feasibility, I want to be sure we do that with our eyes open. Congress is not asking us to make recommendations that solve all these problems. If there are feasibility issues associated with budgets and agencies, let Congress sort it out. If they can't, it's on them. But at least we didn't censor ourselves based on what we think is achievable. Instead, we looked at what is necessary.

Comment: All commissions do not fare equally well. They need political connections to support them. Some commissions are advisory, and that is all they do. To the extent that they have real operations, they are small. When running a delegated program, Congress wants accountability.

Comment: I assume the chair of the board would report to the President. The chair usually has to submit reports to Congress either annually or biannually.

The Committee listed the positive and negative aspects of embedding the national levee safety program within USACE or creating it as an independent agency.

► **Agency Imbedded**

► **Independent Commission**

- (-) agency culture could be limiting
- (-) agency politics
- (-) competition for agency programs
- (-) Multidisciplinarity is harder to achieve in an engineering environment
- (+) More certainty, fewer unknowns
- (?) Length of time to start up
- (+) can increase agency funding
- (-) accountability less clear
- (?) Can it sustain itself? Who carries the water?
- (+) Leverage DOT, HUD resources, puts agencies on equal footing

Questions:

- Should there be an interim governance model?
- How do commissions fare in the federal budget process?
- Can independent commissions have a delegated program?
- What are the pros/cons on appointment by the President vs. influence of multiple appointments and the stagnation of not completing appointments?
- How are independent commissions established by Congress?

Champion within and before Congress?

Question: Who will carry the water for this program in the budget process?

Response: Depends on the incentives, which can help people carry water. It depends on what we want to do. We should look at the Federal Energy Regulatory Commission (FERC) model. They started with much of their funding coming from the Department of Energy, but now it's an independent agency. Most of the commissions were defined as independent agencies.

Comment: FERC is also a regulatory agency. You can ask yourself how your governance model supports the activities you are trying to accomplish. The governance model doesn't change that much, structurally, if it becomes independent.

Comment: Regarding carrying water, it depends on whom the President appoints to run it. That person can go and lobby Congress. But the Administration didn't ask for this, Congress did. So who will be your advocate to Congress? As far as an interim step, you could put in language to have the assistant secretary of the USACE temporarily appoint someone as Chair. That person would put together a slate of candidates for review by the President.

Membership of the national levee safety board

Comment: Whether or not it is independent, it is critical that the Chair be qualifications-based and not a political appointee. Same for the list of people submitted to the President.

Comment: Not sure that just having one appointment from the President is a good strategy. Putting all the water-carrying on one person would be too much, it might be better to have a team of three people to support political connections, etc. Having the state and local reps, private sector and tribal reps on the Board would all help to carry water as well.

Comment: If you are going to have this many appointees, you are going to have to put a limit on how many are from each political party (ex: FERC, National Transportation Safety Board, etc.) If you are qualification-based, it is less likely to be influenced by political affiliation.

Question: Those folks were hired so they would become USACE employees. Does that mean the program administration staff of the interim body is will be USACE employees?

Response: They will have to belong to someone – either an independent commission or the agency.

Comment: The concern is that they are enmeshed in the agency culture and may have a difficult time operating within that culture if they are not a part of it.

Organization

Comment: Could see the executive committee and the standing committees existing in any model. Maybe we should decide who should lead each of those within the governance model. Working Group 1 has said the technical piece ought to be led by the USACE. FEMA has gravitated toward this public awareness piece. The delegated program oversight has a natural state flavor to it – a state person operating on a national board for that function. I am trying to envision our recommendations actually becoming legislation. It goes to the credibility of our recommendations and the model.

Comment: You are not going to be able to find someone who doesn't have a stake in the levee issue.

Question: What would one of these standing committees look like? Would they be representatives from other entities?

Response: Membership would be qualifications-based.

Question: Who is in the different boxes?

Response: Program administration is staff people. Executive committee is made up of the chairs of the standing committees and board chairs. Members of standing committees are approved by the Board as advisors.

Comment: Is the executive committee a decision making body? If not, they are not an “executive” committee. We may need to make it an “advisory” committee.

Comment: Some issues would require a majority and others a super-majority. Also, we have to determine what would make up a quorum. Question is how much you allow one entity to be able to bog something down.

Comment: Whether it is one or three political appointees, it will take a year to 18 months to get that appointment through Congress. If you are in Congress, you want to see what is being recommended. If you just provide interim, they will ask for the next step. You could do both, but the minimum is the long term.

Ideas to move ahead

Comment: Develop the end state, and then have interim language if you need it. Put interim in the start-up task.

Comment: Could have an agency (such as USACE) provide some services to the Board, such as contracting or personnel and human resources. That would increase efficiency without having to

staff up. You could still maintain independent decision making with “reachback” to the USACE/FEMA/other for expertise and services, at a price. Have an administrative home in an agency.

Report Out. Working Group 2

Recommendation 1: Enable better cooperation and consistency on levee safety education and awareness efforts between involved federal agencies until a permanent solution can be enacted.

- Get off the ground ahead of time.

Recommendation 2: Establish a Public Education and Awareness Committee as a standing committee of the National Levee Safety Board. The committee should include federal, state and local experts in communication and would be responsible for the development and implementation of public education and awareness programs (including the communication of residual risk).

Recommendation 3: Public education and awareness programs designed to increase public acceptance and support of national and state levee safety programs must be developed at the national level. Implementation of public education and awareness programs designed to increase public acceptance and support of state and national levee safety program should take place at all levels (national, state and local). Emphasis, however, should be placed on communication at the local level.

Recommendation 4: The Public Education and Awareness Committee will oversee the development of a standardized terminology and graphics that will be used to explain risk to the public, which will be developed by a team of risk communication experts. The products should be researched, tested and used consistently by agencies at all levels.

Recommendation 5: Develop a program to communicate risk to the affected public. Programs developed to communicate risk should be tailored to the Hazard Potential Classification of the levee system and should include information on how risk can be mitigated. The most intense campaigns should be targeted to stakeholders in the higher hazard potential levee classification.

Recommendation 6: Delegated Levee Safety Programs (state/local) must contain a strong Public Education and Awareness component.

Question: Several of the recommendations appear to be overlapping.

Response: We have already combined some, so the process is ongoing. Which are the ones that you think we could group together?

Comment: 1 and 2 – 1 is an interim version of 2; could nest 1 within 2.

Comment: I can almost see each Working Group coming up with things that can happen right now, interim low-hanging fruit. Just doing some things now could show the commitment of the agencies while we are working toward the next steps.

Question: On delegated programs, there is a lot of required work. How would that work for a state program that doesn't control the levees? If a state wants a state program, then how will it mandate that the locals publish all that information? That may actually be tough. But if they don't do it, they don't qualify.

Response: Since Hurricane Katrina, every inspection we do in Louisiana is published on our website, as are our financial records. It is not difficult to do these things if the levee owner is taking care of business and has access to a computer.

Comment: There can be a lot of pushback from locals. They might have small staffs, not enough time or money, don't have a computer, much less a website. We have to think about different levels of communication based on the technology that each levee owner has.

Security vs. public awareness

Comment: If the main focus is the people's right to know, you may have to have some seed money to help people do that. To get the money, there could be some strings attached.

The Committee discussed instances in which the Department of Homeland Security (DHS) has prohibited agencies from publicly releasing information about deficiencies in U.S. infrastructure. From a national security perspective, publishing information about faulty or unsafe levees could invite action by terrorists or others. However, people living behind those levees have a right to know about their risks. The DHS has recently created a levee sector that is tasked with establishing a security program around levees; the Agency already has such a program for dams.

Comment: When we look at the governance model and the standing committees, maybe should include the levee sector/DHS to provide that perspective.

Question: Regarding Recommendation 3. The national team will develop a training program. Is there a stance we want to have for going above and beyond at the national level and those that do not have a delegated levee professional? There needs to be some basic information that is communicated to everybody.

Comment: Working Group 1 suggested an expansion to the database of information that Working Group 2 has said should be published. There should be one source of data – the database – that each levee-owner could link to. Use the database to get to this level of transparency, but do not make a requirement for publication of something that can be referenced in the database.

Question: There is the database that is being stood up now. Are you suggesting that the better tool at the local level is the database?

Response: No, a new website that extracts data from the database and makes it more user friendly. We could develop that for people so they can have more of a tool.

Question: Would annual reports would be required for delegated programs?

Response: Not sure what we would do with states that are not part of the program.

Comment: Regarding the training programs, whether a state or entity exhibits interest in the national program, will you preclude them from using that tool? If everyone used every tool, technique and training you put out there, and did not adopt the national program, it would still be a great success.

Question: The goal does not say anything about risk communication. But the recommendations miss the opportunity to focus on the behavior, as Peter Mitchell suggested (see minutes from 18 November). Have you thought about incorporating the idea of what behavior you want to see and incorporating training and outreach based on that?

Response: We want to look at our recommendations through that approach, but have not yet listed out the behaviors we want to see. The behaviors are in our metrics, however. You decide on your behavior change, then develop the program and measure success based on evidence of behavioral changes.

Comment: We talked about a before-and-after picture and using that as a way to communicate to Congress, the public and others to show what we would like things to look like at the end. We do have some desirable actions already captured and it would be worth trying to start painting that picture. Even when we try to sell this program, we need to be able to articulate that. Working Group 2 should take that on.

Question: We are going to recommend that the USACE adopt these hazard potential classifications. The USACE will have to determine an area of consequence, count the people there, and then paint the levee as low, significant or high. How are you going to communicate that information, which would be valuable to the public? Would the USACE do that, or the state or locals?

Question: Is there a difference between what you recommend for a levee vs. a canal structure?

Response: That would depend on the structure. If it was an irrigation canal, it would be different. If it's a canal structure like the Inner Harbor Navigation Canal (IHNC) in New Orleans, then it would be similar.

Comment: We are creating and delivering a significant message if we are moving toward employing a system approach to manage levees. We need to have a plan on how we are going to get that information out there. These messages need to go to Congress, but also beyond that.

Response: That will be in the strategic plan and recommendations. There will be a big overlay in our talking points and our call to action.

Comment: One of our recommendations is that the key messages should be communicated broadly. Congress could refer to these messages when they have questions about what would be contained in our communication plan.

Comment: The Mississippi River Commission was effective in listening in listening to the public. The power of the MRC was getting feedback from public meetings. You should build in strategies for listening at multiple levels. It's an effective thing they do to help their local and regional programs.

Question: Should the following things be part of a communications program or are they the responsibility of the state/delegated program? 1) Requiring seller disclosure of levees, 2)

notifying levee owners/operators when development is proposed in consequence zone, 3) notifying the state if upgrades are necessary?

Response: When the governance group comes up with qualified programs, it can accept or reject these as incentives or disincentives. The communications group can determine which will help inform people of risk and encourage them to change behavior.

Comment: Many target audiences have representation on your committee.

Comment: Communication is among the most important aspects of the program. It must be early and continual. Regardless of whether a disaster occurs, there must be people out there reminding people of the issues. There are certain messages that have to go to everybody, and those messages have to be dynamic depending on circumstances. Also, we must continue to look at what has worked and not worked.

Plenary Discussion. Review of Agenda and Media Plan for Public Meeting on December 16th – Carol Sanders, USACE

Ms. Sanders reviewed a draft agenda and media strategy for a public meeting, including workshop design, agenda review and getting the message out. It was proposed that Mr. Halpin would chair a media call-in session in advance of the Dec. 16 meeting, which was scheduled to take place in Quad Cities, near the border between Iowa and Illinois. The region experienced significant levee-related flooding in 2008. Ms. Sanders explained that the media strategy would also include a national roll-out plan that would start after the recommendations were submitted to Congress. The Committee engaged in a discussion of the positive and challenging aspects of how the public meeting had been designed. Several participants were concerned that the date (so close to the holidays), location (a small city in the Midwest), and the design (not a formal comment-gathering session for the public) could result in a backlash. The Committee agreed that Mr. Halpin should bring these concerns to Steve Stockton, chair of the Committee, for his consideration.

THURSDAY, 20 NOVEMBER 2008

Background Piece. Overview of the Delaware River Commission's Organization and Structure – Carol Collier, Executive Director, Delaware River Basin Commission

Ms. Collier presented the Committee with an overview of the Delaware River Basin Commission's (DRBC) mission, history, organizational structure, internal dynamics, and role within the Delaware River watershed. The DRBC was formed in 1961 after major regional water shortages and water allocation litigation, as well as problems with pollution in the river. The flood of record occurred in 1955. The DRBC is committed to resolving disputes between the four states within the Delaware River watershed (New York, New Jersey, Delaware and Pennsylvania). The states work through the Commission, which has the authority to coordinate, plan, and regulate, as well as manage development. The DRBC's functional responsibilities include managing the water supply without regard to political boundaries, pollution control, regulation/permitting, flood protection, watershed management, education and outreach.

The DRBC has the authority to engage in flood protection, but has not used it, largely because the watershed did not experience any major floods between 1955 and 1993. After that point, and subsequent floods from 1994 to 1996, flood-related recommendations came out of an interstate flood task force. The Commission also has bonding authority, but similarly not used it.

Fundamentally, the DRBC leads on issues that cannot be solved by any one state. It is a forum for adaptive management and offers a coordinated response to change. Organizationally, the DRBC is led by the governors of the four states and a presidential appointee. Each seat gets one vote; the members give up a portion of their sovereignty in order to more effectively manage the watershed. The DRBC has seven advisory committees that are made up of representatives from the regulated community, academia, the public and private sectors, and non-profit organizations. Each committee member serves a three-year appointment. Each 15-person, all-volunteer committee is assigned a DRBC staff member who works with it on planning and conducting meetings, developing materials, and making recommendations to the Commission leaders. Each advisory committee creates its own bylaws.

Ms. Collier said the DRBC has handled a wide variety of water issues in a way that engages the maximum number of stakeholders. For instance, concerns over PCBs prompted the DRBC to do new testing of the watershed; expand its Toxic Advisory Committee and increase the frequency of its meetings; ensure the DRBC executive director or deputy attended all committee meetings; work with enviros and the regulated community to develop a strategic plan; and create an expert panel for third-party review.

The four state governors are allowed to have multiple alternates serve on the DRBC. These alternates are usually the head of the state's Department of Environmental Protection or the deputy in charge of water. Ms. Collier said that the governors were very engaged at the beginning of the DRBC, and do get involved in some issues, such as flooding. As the level of engagement ebbed, the DRBC saw more technical, rather than policy-oriented, people becoming involved. She noted that it is important to ensure that the representatives involved in an organization like the DRBC have authority to make decisions regarding water quality and quantity, or can engage the people who do.

Ms. Collier listed several strengths of the DRBC model:

- Ability to plan, regulate and implement
 - This group can move forward on what they decide needs to happen
- mechanism to bring decision makers together
- organization that thinks about the Basin 24/7
- continually pushing to move from My to Our needs, problems and solutions
- doctrine of equitable apportionment
- been tested – no return to the Supreme Court
- No more authority than members wish to use
- Open window on the process – open engagement

Aspects of the DRBC model that would be relevant to levee safety:

- Forum for adaptive management
- Way to bring equity among authorities

- The “nudge” to focus on levee issues

Problems that the DRBC has encountered and should attempt to be avoided:

- Funding
- Ensuring that the people at the table have policymaking authority

Governors of involved states have become more involved in DRBC activities, especially after high-profile flooding events. They coordinated with other commissioners and governors to direct the DRBC to create the flooding task force. The governors also raised money to create a flood model that can be leveraged to work with USGS, USACE and NWS to have a model based on recent floods and do scenario testing throughout the Basin.

Question: Where are you housed, for support, human resources, and finance reasons?

Response: We are based in New Jersey because it demanded that the office be there to get their signature on the compact. New Jersey also hosts the website. We are independent as far as payroll and building retirement fund, but linked to New Jersey for health benefits (though we fund it ourselves).

Question: Our Committee has been thinking about how levees and flooding do not respect political boundaries and the interconnection between sides of the river, upstream and downstream. You mentioned floodplain management, and issues with headwaters – issues that the DRBC mediates. Do you think that, in the absence of the commission, the states would be able to deal with that?

Response: At least two states have gotten together on certain issues, though it ended up in a lawsuit. You would have to have enough interest on both states sides to keep them engaged on an issue. We usually see that one state feels superior to another state. Why would the other state want to come to the table? The DRBC creates “peer pressure” to get them engaged. If the states were to do it individually, you would still want somebody who can keep the dialogue going and the focus on the interstate issues. Not sure how you do that if the levee resides in separate states.

Question: Is there a limited term on commissioners, or is it staggered?

Response: It is based on governor’s elections. The federal person on the DRBC is the Commander for the North Atlantic, which changes every two years. It can be that a new governor can still keep the same alternates to serve in his or her stead.

Question: Is your staff employed by the Commission?

Response: We are all employed by the DRBC. We can set the requirements for the health plan (i.e. premiums). We are connected with New Jersey on the pension program, and use their list of health providers. You don’t want it to seem like you are tied in to one state more than another state.

Question: Regarding oversight, who looks at your annual audit?

Response: We do an annual audit and make presentations to the commission biannually. The audit is sent to the commissioners, who have a discussion during their meeting. We have a water supply fund in two different brokerages and they come in quarterly to talk about progress and the future.

Question: Are there other ways that you get public input?

Response: We have a very active website. We have an annual report, an email list to get new information out, and a communications team that does press releases and coordinates with press offices of states and the USACE. We haven't had too much trouble getting the public engaged, especially since the floods. We do project-specific stakeholder involvement. I encourage my staff to get the word out on what we do at other events. We also do the worldwide monitoring day sessions with schoolkids.

Question: Is your \$5 million budget for staff?

Response: We do some outside contracting, but 75% is for staff.

Question: How does your project development authority work?

Response: The compact is quite strong, but we don't use it. It states that we can promote, build, work with others or take it on ourselves, to do water supply project, reservoirs, flood mitigation projects, etc.

Question: Are you the sponsor of a federal project?

Response: We can be. It has been for inundation maps and the like, rather than building structures.

Question: Seems like you derive action through coordination and regulation. Do you have incentives or disincentives for development?

Response: When the commission was started, it was all about projects. We worked closely with USACE to develop a list of reservoirs. In the 1970s, with the environmental movement, that changed. One major proposed project, a main stem dam for water supply and flood control, had poor authorization, poor appropriation, and came down to a vote at DRBC. It was voted down. We've only had one project since then; we promoted it but did not fund it.

Question: Are you looking at current authorities in states to drive action through the use of incentives and disincentives?

Response: We can't do anything the states and feds don't want to do. They are the commission.

Comment: The leadership of the states are at the table, and they signed a contract that gave up some of their sovereignty. You are going to spend money – do you want to spend it on lawyers or projects? Are you going to get 50 state governors together to drive a compact? I don't think so.

Response: I don't think the DRBC would be created now. But there is a lot of interest in watershed commissions, rather than project-by-project appropriations.

Question: The ownership pattern for levees is diverse. What would be the possibilities of an entity like DRBC getting a handle on that topic?

Response: We would be in a good position to do all the data management and maintain the analysis of who owns what, when it was last inspected, etc. There would have to be some sort of regulatory reporting requirement so you had that information coming in. That can be within the purview of an organization like ours. We have enforcement authority, so you could use that with private levee owners. We have Memoranda of Understanding with each of the states. One of the

issues is that DRBC was created before the Environmental Protection Agency and state departments of environmental protection. We are making sure we are not stepping on each other's toes but are filling gaps the states want us to fill. The commission could have a regulatory role and require dockets from levee owners, or we could set uniform standards across the basin but the states have the regulatory authority.

Question: Do you have any direct dealing with local/regional governments?

Response: With the staff I have, I can't hold hands with individual municipalities. We make sure they have the information and know what the requirements are.

Question: Could you have those folks on the advisory committees?

Response: Cities of Philadelphia and New York are on many of the advisory committees. In order to better implement our new plan, we are thinking about setting up regional organizations so that it goes to a geographic scale, rather than a functional scale. That would engage more counties and municipalities.

Question: How fixed are the advisory committees?

Response: Some may have subcommittees; one was disbanded. Based on recent need, no new ones have been created. Regarding coordination, we meet every two weeks to discuss what is happening in committees. When we see commonality, we may have group meetings. There is enough overlap, through membership, that they see connections. Each has a chair, and its up to each committee to set that. Some rotate between the regulated community, federal and state government. Technical staff people from states are on these committees. The Water Quality subcommittee is comprised of members from EPA, agriculture, all four state water quality representatives, regulated community, scientists, and academia.

Question: How much time does staff person put into committee?

Response: It varies, but it's a tall order. There is a lot that the staff tees up for committee, so it's at least a half full-time employee.

Question: Is your staff of 45 set in the compact?

Response: Not based on compact. Some staffers are funded by projects and grants, others are half-and-half.

The Committee discussed whether there were aspects of Ms. Collier's presentation that could serve as further input for Working Group 7 and its effort to create a governance model for the NLSP. Committee members said that the public involvement aspect of the DRBC would be beneficial to incorporate, as well as the idea of having advisory committees report directly to the program's leadership. That would give the committees more a voice and prevent the executive staff from filtering the committees' ideas.

Question: The executive committee would also do reports on the success of the commission in meeting its objectives. Who does that in the DRBC?

Response: Staff tees that up for commissioners. We have an annual report and each person has a work plan for the year as part of their personnel review. They have to document what they did and build a plan for the following year.

Comment: Seventy-five percent of the DRBC budget goes to staff salaries. In our case, a good deal of money will go out to many people, and someone will have to portion money out. The levee safety commission's executive committee, which is made up of chairs of technical committees, will help determine how much money needs to go where. There is an integration role. I would not have an insulating group between the executive director, board and committees. I would put the chair of each committee on the executive committee, with an executive director at the helm.

Comment: One of the strengths is that the DRBC has four governors that can carry water, and five funding sources.

Response: It's the DEP that really puts our request in the budget. USACE has not been willing to do that. There is no one speaking for us there.

Question: Please explain how the representative from USACE represents all federal interests.

Response: It could be that the representative reaches out to EPA and votes based on what that agency would want or need. The USACE person has to coordinate. But once that is set, how the federal representative votes is supposed to be accepted by the other agencies.

Question: Would you rather have multiple federal agencies involved?

Response: You'd be out of bounds with state reps in terms of voting. It is important to have state buy-in and power.

Comment: We have not had an incentives and disincentives discussion with the DRBC is because it was bottom-up driven. We have federal pushing something down, which causes us to talk about incentives and disincentives.

Ms. Collier's full briefing is available at <http://www.iwr.usace.army.mil/ncls/>

Plenary Discussion. Recommendations from Working Group 7

Working Group 7 presented a list of incentives that would be available to minimally qualified and highly qualified entities with delegated levee safety programs. The rationale is to introduce only modest disincentives and ensure that the program would be largely palatable to members of Congress.

Surcharges/fees/taxes/discounts associated with the National Flood Insurance Program (NFIP)

Question: Who has oversight of the ability to collect a surcharge on NFIP? Where would enforcement action be? It might be hard at the local level.

Response: It doesn't really exist. It would not be a state issue. Texas has this oversight ability, and it did not require a federal action. It was done through state legislation that tacked a state tax on all flood insurance policy premiums. That tax comes into the state treasury and is delegated out to a state floodplain management program. It affects all policies across the state. It's bringing in about \$3.1 million a year.

Question: The state would have to pass these laws?

Response: Right now, every state has the authority to do that, regardless of a national levee safety program. Insurance companies collect the premiums. They send the premiums into the national insurance fund, which pays out on claims through insurance companies. The companies are the interface with the policyholder, not the NFIP.

Comment: There are some states that can't do that. It's the same with some stormwater programs. It depends on what you call it – a fee or a tax. We have to be careful with that. Keep it general and don't get into the state tax issue.

Comment: In the past, there has been opposition and concern with creating new fees or taxes. But with the current attention on levees, not sure if that would still be the case.

Comment: Legislation would have to be passed by FEMA to charge this surcharge. The disincentive is that you are hitting the individual, but the money would come back to the local levee operator. If a community develops a levee safety program somewhere down the line, it would start reaping the benefits. There is a chance that surcharges or fees would drive people away from purchasing insurance, if they are not mandated to.

Question: Will the assessment of fees ever make sense? Will it ever drive people to be part of a high-level program?

Response: There is 10% discount for minimally qualified entities, and another 10% on top for highly qualified entities.

Comment: This is more about the concept, than the actual numbers. You don't have the data to make that determination.

Question: Can a community today require flood insurance?

Response: If a levee is accredited, then a community may not mandate insurance. It would require legislation to add that requirement. Mandatory purchase is tied to the 1 percent annual chance of flood. The only entities that have the capacity to require further insurance is a lending institution.

Question: For a community, it's politically sensitive to put burdens on their people. I can't imagine a community trying to be 'good' by requiring its residents to buy insurance, when neighboring communities don't.

Response: It will vary state-by-state whether or not the local jurisdiction has the authority to require that a private contract be executed between lenders and borrowers.

Question: Is this imposed by the federal government or is it a state issue? Are the reductions for NFIP within FEMA's jurisdiction, or does it require legislation?

Response: FEMA can do that without legislation. We can do something through the Community Rating System, but not sure if we can just drop insurance rates for whole areas.

Comment: The issue is to look at the benefits of doing this and weigh if it's one of our priorities.

Question: Wasn't this one of the ways we wanted to communicate risk, by requiring flood insurance?

Comment: I thought we were offering the surcharge as a recommendation. Also, we have a lot of different things related to insurance. All of them are interconnected. If we try to recommend them all we don't know what the combined effect will be. Some of them may work out individually. But others may conflict.

Response: The level of data is not going to be there, so some of these recommendations are going to be conceptual in nature.

The Committee discussed whether it would be more beneficial to make communities eligible for FEMA grants rather than collect revenue by taking it from the flood insurance fund. The members debated whether it is the responsibility of all taxpayers to support communities that have built sub-standard levees that have failed. Some participants said the beneficiaries of levee protection should pay for post-disaster needs, not all taxpayers. Other Committee members explained that it is not in the country's best interest to let some communities flounder. The Committee also discussed whether offering discounts on flood insurance to people who live behind levees in the national levee safety program could encourage people to live in or develop land behind levees and in floodplains.

Comment: People question the economic viability of the NFIP now. To add discounts and surcharges makes that even worse. We have talked about grant opportunities to encourage better behavior in communities, like the USACE's 84-99 program. Why isn't a certain level of standing required in order to participate? My big concern is linking our program to NFIP that has a specific purpose and function. This could end up making insurance prices lower for people living in the floodplain than for those who live on higher ground.

Comment: If you can make the incentives and disincentives work, then do the links to NFIP and FEMA make sense?

Response from group: Yes.

Some Committee members suggested that the group avoid getting into the details of the NFIP for several reasons, including the feeling that it is outside the Committee's jurisdiction and also because Congress is currently working on a flood insurance reform bill. Ms. Manning asked the group to consider what major questions must be answered about the NLSP. The following list was developed:

- What type of program this is?
- At what level will this be communicated to Congress (re: phasing)? Do you communicate phase 1 or the end state with some phasing within it? A four-year program or a 25-year program?
- Is it regulatory or voluntary?
- Is it delegated or not?

The Committee engaged in a discussion about each of these questions, and although there was some agreement on certain high-level aspects – e.g., to be at all feasible, the levee safety program must be implemented in phases, and future levees demand a different approach than existing levees – the group stopped short of pushing for consensus on all of the points. Among

the challenges the Committee noted was the fact that they are attempting to create a national levee safety program in the absence of a national floodplain management program.

Work Group 7 was tasked with developing a relatively general, conceptually based program that would include basic phases, rationales for each, and milestones by which to measure progress.

Comment: We don't have any notion that a national levee safety code would include a requirement that the country would have to seek a certain level of protection. It would give instructions on how to achieve any level of protection. The companion piece that goes with the levee safety code is tolerable risk guidelines. The tolerable risk guidelines go to the issue – it makes you choose a structural solution, or zoning requirements, etc. I have to move into an acceptable level of risk.

Question: What if a community only has enough money to go from 30-year to 50-year protection. Would they be precluded from assistance in reducing flood risk?

Response: Principles & Guidelines will provide more options. My hope is that they are looking at more than building a levee. If they don't have the money to do it, and can't get USACE partnership, we are not going to pay for it.

Comment: Six out of 7 new levees will be built without federal money.

Response: There has got to be some means to control the risk that we are facing out there. We want future levees to be built to a rigorous national standard.

The Committee briefly discussed its different expectations of what would be involved in a levee safety code. Some of the participants expected that the code would include more than just instructions on assuring structural integrity – it would contain some elements of policy. The Committee also talked about laws regarding what the federal government may require of states. Because the Constitution forbids the federal government from telling states what to do, the federal government instead uses systems of incentives and disincentives to encourage certain behaviors by states. Among the most powerful disincentives at the federal government's disposal is the withholding of federal funds from states, such as money for roads. This method is used in a variety of federal programs, such as the Clean Air Act and in wastewater treatment programs. In the case of a levee safety program, a state that has not developed a levee safety program by some date – even when it was offered federal assistance – will begin to lose federal funds. This discussion touched on the wisdom of delegation – if the states fail to act, does the federal government step in?

Comment: We are talking about starting a program and requiring certain things at the national level. We keep going back to what is regulatory program and what is expected right away. There has to be some national entity backing up a delegated program. Whatever that entity is, there has to be something. But if activities don't get done, that doesn't mean the federal government is then holding the bag.

Comment: The state program has to be achievable and something that is not going to cause the state to balk.

Comment: In getting to the end state of a national levee safety program, you will have to pump in a ton of federal dollars to help states people get there before the hammer falls. It may take cajoling, facilitating, training, tools, inventory, and assessment up front to help bring them along. By the time you get to the end, the states will have seen federal dollars to help them get there.

Regarding the Dec. 16 Public Meeting

Mr. Halpin announced that Mr. Stockton agreed to conduct the public meeting as an online-only session, rather than a live meeting in Quad Cities. This will allow for greater participation by the public so close to the holidays. Mr. Halpin will participate in the meeting, as will the Working Group leads, Ms. Sanders and other members of the Committee. SRA and Ms. Sanders will work on creating materials for the public meeting. Committee members will suggest invitees from the media, public and private sector and provide that information to Ms. Sanders.

FRIDAY, 21 NOVEMBER 2008

Report Out. Working Group 7

Working Group 7 presented its draft of the NLSP, as had been discussed on Thursday, 20 November.

Major activities of the NLSP

- National levee inventory
- Inspections
- National levee safety standards
- Evaluations of risk (priorities)
- Reports
- Public awareness
- Technical assistance/training
- Funding/Grants/Incentives

Major Elements of the NLSP

- Board and Staff
 - Federal agency support
- Minimum state levee safety programs
 - Required to be adopted/implemented by certain time or loss of existing federal funds
 - Some activities picked up if states do not establish minimum program
 - Grants/assistance incentives to states, regional/local entities, and levee owners/operators

Basic Requirements

- Minimum state levee safety program
- Maintain and update state levee inventory
- Ensure routine levee inspections
- Adopt national levee safety standards
- Reports summarizing inspections, risks and priorities

- Public awareness program
- Grants and incentives
 - Can be given to states
 - Can be given to local agencies separately

Timeline (all take place after enactment/appropriation)

- National Board in place in 1 year
- Interim levee procedures in 1 year
- Initial levee inspections in 3 years
- Early implementation states qualify for grants
- Hammer time within 5-10 years
- Federal government maintains levee inventories and some other activities for recalcitrant states

More refined timeline

- Public awareness campaign kickoff
- National levee safety act enacted
- National board in place in 1 year
- Interim levee procedures in 1 year
- Federal agencies adopt interim levee procedures
- Technical assistance training programs begin in 1-2 year
- Certified levee profession
- NFIP reforms
- NLSO FEMA grant programs/CRS modification
- Initial levee inspections complete within 3 years
- Early implementation states qualify for grants
- Hammer time within 5-10 years
- National levee safety standards complete in 5 years
- Federal government maintains levee inventories and some other activities for recalcitrant states

What did you like? What you want to see change?

Comment: It gets us back from the microscopic details and into overarching, thematic things that we need to be focusing on.

Question: One slide mentioned insuring routine levee inspections. If a state accepts the program does it have to look at every levee? Do they assume potential liability? If there are any actions on the part of the state, it could look that way.

Response: It is not the intent that the states do the inspections themselves. We wanted to make sure a state levee safety program didn't change liability – indemnify against or increase liability. This is doing an inspection and reporting on the risk, not doing operation and maintenance.

Question: You said initial levee inspections within 3 years?

Response: This would extend USACE inspections to all levees. If some states want to do it themselves, the USACE can pay for it. States are going to have to pass legislation to indemnify. It might be a requirement to do future inspections – demonstrate that they are going to limit their liability.

Comment: How many states own levees? California does, but Kentucky and Arkansas do not. Those that own won't see a change in their liability. Kentucky had to pass state legislation to indemnify state against liability when it created a levee inspection program.

Question: Why demonstrate indemnification?

Response: There will be no value to pass on inspection responsibility if they were not protected from liability. The local owner would be responsible.

Comment: Legislation could provide a model ordinance based on the indemnification laws regarding dams. You don't want to drive increased liability for states overall because it could make the program less attractive.

Question: Will states have to pass their own legislation?

Response: Dam safety legislation offers immunity for a regulatory body. Where a state owns the dam, it still has liability.

Milestones that the NLSP should cross

The Working Group developed a list of milestones that would be achieved in a timeline. It decided that the Committee should agree on and adopt the milestones in advance. (The list below is in chronological order.)

Principles and Guidelines

National Levee Safety (NLS) Act enacted

NLS/Committee board stood up
NFIP Reforms

Interim national standards and criteria
Levee inspections

New NLSP FEMA grant
Pilot program starts/early implementation
Delegation opportunity opens

Existing FEMA grants programs linked/modified
NLSC codes, standards complete
Training and education program kickoff
CLP program kickoff

CRS links

Initial National Levee Database complete

All jurisdictional levees included in NLSP

Federal levee programs comply with NLSP
Where no NLSP, fed program kicks in

Pilot Program complete

State implementation plans due
No new levees constructed that don't meet new NLSP standards

No FEMA non-emergency fed assistance in non-NLSP entities

NLSP funds available

No new federal investment (Housing and Urban Development, Department of Transportation) in non-NLSP states

All levees in the United States are safe and reliable

The Committee discussed how to deal with lowering or eliminating aid to communities that fail to meet the NLSP standards by the final deadline for implementation. While the Committee generally agreed that such communities should not be able to repetitively access recovery aid if they disregard the levee safety program requirements, some members suggested that the group consider reducing aid in a stepwise fashion, rather than all at once. They discussed reducing assistance by percentages, rather than turning the 'spigot' off. If a state was making a good faith effort, maybe only cut 25 percent. If a state was doing nothing, more could be cut. Rather than look at aid to individuals, a Committee member suggested looking at PL 84-99 (USACE rebuilding money). Another member said the penalty could be that rebuilding money would have to go towards some other effort.

Are these the main milestones that you want to see?

Comment: Would encourage adding to flow chart ways to show how long the program should be authorized from the beginning. Then show when the next authorization would come up. If you want to make adjustments, the authorization could provide that opportunity. Also, we should add a levee safety rehabilitation program – money that goes to fix levees (change name from NSLP funds).

The idea of writing a levee safety code into the ultimate legislation was largely rejected. The problem would be that it would require a change to the law every time the code needed updating. The code will require flexibility as science, policy, social norms and political circumstances change. The Committee also discussed the complexities around the notion of tolerable risk guidelines and how they would potentially relate to a set of levee safety standards.

Comment: You could meet the standards to achieve a low level of protection. Is that acceptable, if you meet tolerable risk guidelines? The missing element is what you do to address the appropriate level of protection that aligns with the hazard potential. In these areas, this is what you should have to reduce risk to infrastructure and to life. We need to grapple with that so we know what we are shooting for.

Comment: This is also a policy decision. A level of protection approach with tolerable risk is not incompatible.

Comment: You don't want to be silent on this topic in the report. We need to make sure the tolerable risk component addresses these issues, and should be added to the timeline.

Comment: If we are successful in establishing tolerable risk guidelines for levees, it will change everything about how we do levees. Let's not get too prescriptive on how we will implement this until we have figured that out. Not sure what the implications are.

Agreement: Big pieces are in the timeline and the major activities as laid out by Working Group 7.

Federal agency requirements

The Committee discussed what knowledge and expertise currently resides in various federal agencies that could be tapped to assist USACE and FEMA in the development of the NLSP. Utilizing these agencies would provide a direct benefit to the NLSP development and administration, while coordinating with existing agencies would help to identify programmatic and information gaps. In addition, this exercise would result in the necessary harmonization and/or tweaking of existing federal programs to achieve consistency across the federal sector.

- *USACE*
 - Completion of national levee database
 - Help develop standards
 - Provide guidance to streamline environmental permitting
 - Seismic design guidance
- *FEMA*
 - Complete floodplain mapping as it relates to levee systems
 - Communicating risk
 - Public awareness
 - Modify the Community Rating System
- *U.S. Bureau of Reclamation*
 - Identification of national canal database
 - Canal safety standards
 - Evaluating risk and tolerable risk
- *U.S. Fish and Wildlife Service*
 - Develop streamlined environmental permitting
- *Department of Homeland Security*
 - Development of security procedures for canals and levees
- *U.S. Geological Survey*
 - Information on seismicity
 - New technologies for earth sciences

- *National Oceanic and Atmospheric Administration*
 - How climate change relates to levees

The Committee touched on the idea that everything that states are developing would apply to the federal government when it is a levee owner and operator. Also, a state would not be disqualified from having a levee safety program, or achieving the NLSP standards, if the federal government failed to meet standards on federal levees in that state.

Briefing on next meetings

The Committee discussed the next set of meetings, what products to complete at each step, who would work on which elements, and how the Committee would work together to vet a set of recommendations before the next Review Team meeting (Dec. 12, 2008). The group discussed what it wanted to present to the Review Team – high-level recommendations or more detailed recommendations – and the pros and cons of each approach. On the downside, providing a high level of detail to the Review Team could spark questions that the Committee cannot yet answer. On the upside, offering fleshed-out recommendations would potentially help move the Committee further toward its goal and show the Review Team all of the work that the Committee has accomplished. One participant suggested the need to connect the recommendations to the list of questions that the Review Team received in October at its first meeting. The Committee decided to create mini-teams to work on answering questions before the Committee’s Denver meeting (Dec. 2-5). SRA will put together a document aligning the recommendations with the goals and also look for gaps. That document would be provided to the Committee before the Denver meeting and could wind up being a communications tool for the Review Team. Working Group leads will send to SRA by Dec. 1 the latest versions of their recommendations. The Committee assigned members as leads on specific tasks within Working Group 7’s governance proposal.

By Dec. 1, SRA will provide:

- A strawman for what the Review Team would receive
- Agenda for Dec. 3-5 meeting
- Agenda for Dec. 8-12 meeting
- Agenda for Review Team meeting

Dec. 2, SRA will complete the mapping of recommendations to goals

Ideas for how to prepare for and conduct the Review Team meeting:

- Spend time in Denver determining what the Committee will present to the Review Team
- Answer the questions that the Committee previously presented to the Review Team at a high level, rather than in a detailed manner
- Flesh out major elements of program (governance, authorities, funding)
- Show NLSP timeline and milestones
- Present all 40 recommendations (rationale only)
- Give information to Review Team by Dec. 9; give them a week to respond

Schedule

Dec. 2-5, 2008

Denver, CO

Dec. 8 – Dec. 12, 2008

Meeting 5, Landsdowne, VA

Dec. 12, 2008

Review Team Meeting 2, Landsdowne, VA, and WebEx

Dec. 16, 2008

Public workshop, WebEx only