

**Water Resources Reform and Development Act of 2014**  
USACE Listening Session III

10 September 2014

Jan Rasgus: Hello everyone and welcome to the third WRRDA 2014 listening session. My name is Jan Rasgus, I'm a senior policy advisor in the Civil Works Planning and Policy Division and I'm directly involved in the implementation of WRRDA guidance.

As most of you know, President Obama signed the Water Resources Reform and Development Act of 2014 into law on June 10, 2014. WRRDA is the primary legislation by which the Congress authorizes the US Army Corps of Engineers key civil works missions, including navigation, flood risk management and environmental restoration. It is important to note that this is an authorization bill, not an appropriations bill.

The Corps is currently developing implementation guidance for the provisions listed in WRRDA 2014 in coordination with Assistant Secretary of the Army for Civil Works. This guidance will provide the policies and procedures to be used in implementing this new law.

As part of this development, we have scheduled four listening sessions to hear from our stakeholders and the public regarding their comments, concerns and issues related to WRRDA 2014. We will take your comments into consideration as we prepare the implementation guidance.

Each of the listening sessions will cover a different collection of the more important general program and policy provisions of WRRDA. These policy provisions have been categorized into general theme areas so that the listening sessions can concentrate on two or more important theme areas or categories.

To date we have had two listening sessions and the transcripts and recordings for those two previous listening sessions have been posted on the Corps' website. If you have an interest in hearing what has been said before on the other two sessions or reading it, please go to the website and get that information.

Our next listening session will be on September 24 and on that listening session we will cover the non-federal implementation of Corps of

Engineers projects, water supply and reservoirs, as well as those provisions pertaining to navigation.

If you have a comment that does not fall into one of these theme areas, you may email it to [wrrda@usace.army.mil](mailto:wrrda@usace.army.mil) along with any comments on any of these WRRDA provisions. I believe for those of you who are on the webinar, you can see that web address on the slide. Otherwise, you can also get that email address on the Corps' public website related to the listening sessions.

Today's listening session will focus on several key WRRDA '14 provisions that address the Corps' levee safety programs, dam safety, and those provisions which are related to the evaluation and processing of Corps permits under the authorities of 33 USC 408 and Section 214 of the Water Resources Development Act of 2000 as amended.

Today's session will be recorded and transcribed and these files will also be made available on the Corps WRRDA website. On behalf of the Army Corps of Engineers, we welcome your commentary and look forward to hearing from you. I will now turn this session over to Gene Pawlik with the Corps' Public Affairs Office to review the ground rules for this session.

Gene Pawlik:

All right, thank you Jan. This is Gene Pawlik with the US Army Corps of Engineers Public Affairs Office and before we go into the ground rules, Colin, if you would please give instructions on how folks can start to queue up to make their comments.

Thank you. For those you may be in telephone only mode and can't see the slides that we're using today, they are also posted to the WRRDA website, so they are accessible. There's not a lot of detail in those, mostly it's a slide showing the specific provisions that we're talking about today and some of the basis of what has already been gone over.

Just to be clear on the ground rules, speakers are allowed three minutes to make comments. During those three minutes, somewhere around the minute or half minute point before your time is out, I will try to let you know how much time you have left so that you can bring your comments to a close.

Again, this is a listening session for us to solicit your input on the implementation of WRRDA provisions. It will not be a back and forth discussion. We will strictly be listening to you. It is really important that you state your name, and if you're representing an organization please

tell us what organization you're representing and specifically which provision you're referencing.

Again, as a reminder for everybody, this session is being recorded and the recording and comments will be posted on the USACE website. Having said that, unless there are any other comments here in the room, Colin, we are ready to start taking comments.

Arlan Juhl: My name is Arlan Juhl with the Illinois Department of Natural Resources. I'm the director of the Office of Water Resources. I have a comment on Section 9005, the levee safety initiative. In particular, the section deals with state and tribal levee safety programs. I want to request that any guidance written acknowledge and provide for the several different administrative types of levees that exist.

By administrative types I refer to the fact that some levees are contained within one state, some actually go into multiple states, and some on border rivers have impacts on multiple states. Further, there are levees that are under federal control and management where states have limited authority to regulate those levees. During emergency flood response, states do not always have full authority to regulate what happens in a flood response.

I'm just simply asking that guidance acknowledge and provide for those circumstances and administrative types of levees. Thank you.

Gene Pawlik: All right. Thank you for those comments. Colin, next.

Diane Ross-Leech: Hi, this is Diane Ross-Leech with Pacific Gas and Electric Company. Thank you for the opportunity to participate in this listening session related to implementing guidance for WRRDA 2014.

I want to speak specifically regarding Section 1006, expediting the evaluation and processing of permits. PG&E is headquartered in San Francisco and in one of the largest combined national gas and electric utilities where we serve over 15 million people in Northern and Central California.

At PG&E we have over 48,000 miles of gas transmission and distribution pipelines and approximately 160,000 circuit miles of electric transmission and distribution wires which cross diverse landscapes, including wildlife habitat, the Sierra Nevada mountains, deserts, central valley agricultural fields and waters of the United States.

In 2014, we expect to spend over \$5.3 billion in electric and gas and generation infrastructure to provide safe and reliable and affordable service to our customers. On any given year, we have over 60 major gas and electric or hydroelectric projects that require complex regulatory review and approval such as that with the US Army Corps of Engineers, in addition to other federal, state and regional agencies.

We applaud Congress for approving WRRDA 2014, especially Section 1006. This legislation efforts builds off the authority already established under the Water Resources Development Act of 2000 and is consistent with other federal and state agency permitting practices.

For us at PG&E this means a more transparent, timely and predictable evaluation of permits, which will facilitate infrastructure investment that ultimately supports economic growth and job creation in our communities. PG&E has entered into several regulatory agency funding agreements with both federal and state agencies to support our critical high priority gas and electric and hydrogenation projects.

We realize that both the federal and state regulatory agencies have been faced with significant budget cuts that have caused staff reductions. At the same time, PG&E's workload for these agencies has dramatically increased and we have deadlines that affect public safety that must be met.

These agreements with other agencies have helped us to meet our critical deadlines. We see efficiencies with dedicated staff who become familiar with their specialized gas, electric and hydrogeneration infrastructure work activities. The agency staff gives us ideas on how to improve our permit applications and other documents to further expedite our reviews and approvals.

For example, we have over 45 projects in any given year with the Army Corps of Engineers with our San Francisco, Sacramento and Los Angeles Districts. We need the Corps of Engineers to swiftly develop common sense and reasonable guidance for the implementation of Section 1006 of WRRDA so we can expeditiously review our permits with our three Corps districts.

We would like to promote funding of designated positions at the Corps. We would like to see performance metrics, such as turnaround time on review. We would like to see itemized hourly billing for projects. We would like to have regular status meetings to keep projects on track and

create a process for headcount increases on budget changes on a quarterly basis for qualified entities looking to sign funding agreements.

Thank you again for the opportunity to participate in today's discussion.

Gene Pawlik: All right Diane, thank you for those comments. Colin, next.

Amy Larson: This is Amy Larson from the National Waterways Conference. My comment pertains to Section 3016, Levee Safety which amends Section 9005 of WRRDA 2007. That section establishes a levee safety initiative and calls for the development of levee safety guidelines.

In developing those guidelines the law requires that prior to finalizing the guidelines the Secretary shall issue draft guidelines for public comment, and in addition consider any comments received in the development of those draft guidelines. We would suggest that those requirements call for a notice and comment kind of procedure under the Administrative Procedure Act so that due process is provided to all interested stakeholders. Thank you.

Gene Pawlik: All right, thank you Amy. Next Colin.

Ralph Hicks: This is Ralph Hicks with Re Staite Engineering. We're a small family dredging company located in San Diego, California and we would like to see more clarification on the private/public partnerships as it relates to ports in California. That ends our remarks. Thank you.

Gene Pawlik: Okay, thank you Ralph.

Mike Klingner: Yes, this is Mike Klingner, Chairman of the Upper Mississippi, Illinois and Missouri River Association in Quincy, Illinois. I have some comments on Section 408, Item 6.N, Hydrologic and Impacts. I think it would be helpful to have some clarification of definition of substantial adverse impacts. What is the thought on the regional range of those acceptable impacts? That'll be helpful for those that are considering projects.

Also, in 408, 6.T, the Decision Level on Item 1 - we see that as somewhat vague and a wide range in interpretation. If an impact is positive, does this require headquarters review? It's stated just that there is an impact. Then in Section 6.T, Item 3, if approving a level protection safe from a one to 50 design to a one to 100 or one to 500, is this a change and authorized purpose? An example might be helpful in the clarification.

Finally, in Section 7001, clarification on what level of detail is needed at the proposal stage due December 3. That will be helpful for a planning project that we are considering submittal. Thank you for this opportunity to comment.

Gene Pawlik: All right, thank you for those comments. Next Colin.

Melissa Samet: Good afternoon, my name is Melissa Samet. I'm the Senior Water Resources Counsel for the National Wildlife Federation and I wanted to comment briefly on three sections today - sections 1006, 3013 and 3017. Regarding Section 1006, the expediting the evaluation and process of permits. NWF is urging the Corps to establish strong criteria and other type requirements for the section to ensure that the public can have confidence in the decisions that are made under the section.

From our perspective, it's critical to ensure that funding and processing of permits doesn't result in the permittee receiving preferential treatment, and more importantly it doesn't result in permits being issued that don't comply strictly with the statutory and regulatory requirements established under the Clean Water Act and other applicable laws.

We also ask that the Corps include all the permitting information carried out under this section in a single publically accessible internet site. Section 1006 requires the Corps to develop such a site for all active agreements under the section and we think that this site should also include all the permit applications, review documents and final decision documents for permits processed under this section so that the public can see everything in one spot.

We also ask that the Corps provide information on the same internet site that will allow the public to compare the percentage of permit approvals, permit modifications, amount of mitigation and permit denials for permits that are processed under this section as compared to permits processed in a regular manner.

Quickly on Section 3013, the levee vegetation management policy, improving the Corps' levee vegetation management policy is critical for wildlife and for public safety and we are urging the Corp to make strict compliance with this section a top priority, including the timelines established the section.

We're also urging the Corps to establish a process for the consultation required under this section that will ensure that the Corps is both hearing from and carefully incorporating input from the full array of stakeholders

and from a large segment of the outside scientific and engineering community. We think that haphazard and/or a limited consultation is not going to be sufficient to adequately address this critical issue.

On Section 3017, which is rehabilitation of existing levees, when carrying out projects under this section, NWF believes that it's going to be extremely important for the Corps to fully examine where it's appropriate to utilize nonstructural and restoration approaches in helping to restore the authorized level of flood protection.

The thought position should not be to simply build the levee bigger but instead we think that the Corps should fully and carefully evaluate options. Such as levee setbacks, upstream and downstream wetland restoration, restoration of the river's natural channel, voluntary buyouts and other nonstructural measures to obtain the authorized level of flood protection, and we hope that the implementing guidance will really layout processes and the types of activities that should be evaluated when looking at the section.

We also think that it's going to be critical under that section for the Corps to ensure that a federal investment in the levee at issue is still appropriate. That concludes my comments were today. Thank you very much.

Gene Pawlik: All right, thank you, Melissa. Colin next.

Jordan Macha: Thank you. My name is Jordan Macha and I'm the Gulf Policy Analyst with the Gulf Restoration Network in New Orleans. First, I'd like to comment on the levee safety initiative in Section 3012. In drafting the implementation guidelines, we encourage the Corps and emphasize the fact that even though the Secretary of the Army is authorized to consider combining two or more flood projects in a single program for budgeting purposes, if so requested by a nonfederal interest this combining is not required. We feel that the projects must be very interrelated to qualify under this section.

In Section 3021, regarding the use of innovative materials we hope that the implementation guidelines will be very specific when it comes to using potentially harmful materials as levee supplements. Not only should the Corps look at the impact to the community and environment during construction of the levee, but also during periodic levee lifts and the impact of exposure due to levee breaches.

In the regulatory section in Section 1006, regarding expedited permitting, we request that the Corps be very specific in stating that expedited permits will receive the same environmental scrutiny and level of review as any other permit.

In Section 1007, in a federal bureaucracy 45 days much less 180 days is the relative timeframe to review modification of permits. Therefore, we request that the Secretary of Army be given a high level of discretion when determining whether a project is complex enough to warrant the 180 day benchmark. That concludes my comments. Thank you.

Gene Pawlik: All right, thank you Jordan. Colin next.

Gavin Risley: Yes, this is Gavin Risley with Klinger & Associates. We represent a multitude of levee and drainage districts in the upper Mississippi River basin. Comments regarding Section 408, more specifically Item 6R. There are concerns from levee and drainage district sponsors regarding the sharing of sensitive information to permit requesters. I believe sponsors would like to be at the very least notified of any release of information regarding their projects.

The next section item under that 408 guidance, Section 6S, further information is requested on how categorical permissions will be handled or published moving forward for planning purposes.

Then finally further information regarding Executive Order 11988 and its bearing on 408 permits and what I guess that will entail moving forward. Thank you.

Gene Pawlik: All right, thank you Gavin. Okay Colin, next.

George Qualley: This is George Qualley with the California Department of Water Resources. I'll be commenting on Section 3013 on levee vegetation policy. There's been some uncertainty expressed regarding the Section 3013 referencing the 2009 version of the ETL as a component of the guidelines to be reviewed. As a DWR, it's understood that Congress intended the base document for the Assistant Secretary's review to be the current version, April 30, 2014, not the 2009 version.

Since the content of the 2014 ETL is not substantially different than the 2009 ETL, all other review directives contained in Section 3013 should remain applicable. With regard to the second component to the guidelines, the draft policy guidance letter on variances, it's apparently unchanged from the version published in the Federal Register on

February 17, 2012. DWR's comments later dated April 13, 2012 in numerous attachments have not been addressed to date and DWR request that these extensive comments be considered by USACE in preparing their implementation guidance for Section 3013.

Regarding Section B of 3013 on review, a stated purpose of this review is to determine whether current federal policy relating to levee vegetation is appropriate for all regions of the United States. DWR requests that USACE consider not only geographic differences but also the implications of set and design standards versus the complexity of managing legacy levee vegetation that has been in place for decades. It'd be useful to think of the ETL as primarily establishing design standards for new levee construction and the PGL as facilitating practical of management of existing federal levees.

While it makes sense for USACE to strive for nationwide consistency in levee design standards as embodied in the ETL, it makes equal sense for USACE to collaborate with nonfederal sponsors and local levee maintainers to move towards policy compatibility through management of legacy levee vegetation within the context of risk prioritizations, while acknowledging mutual environmental and public trust responsibilities and the generally limited resources that are available for annual O&M.

Regarding Section D, cooperation and consultation, cooperation and consultation's nonfederal entities, especially with USACE's cost sharing partners, should include opportunities to exchange and discuss alternative approaches to revising the guidelines. For example, California DWR is developing a tree threat assessment approach to serve as guidance for field identification and assessment of trees that may present an unacceptable threat to levee integrity.

This guidance is a key component for implementation of the adaptive levee vegetation management strategy articulated in the Central Valley Flood Protection Plan adopted by the Central Valley Flood Protection Board in June 2012. California's strategy is a "risk prioritize" approach and meets public safety goals and protects and enhances sensitive habitats.

With regard to Section E, independent consultation, DWR strongly urges USACE to engage the National Academy of Engineering and the National Academy of Sciences as independent experts, and for peer review. Peer review and consultation with both academies on the preparation of a revised national guideline would reinforce USACE's commitment to ensure appropriate consideration of the complex engineering

environmental issues associated with the managing legacy levee vegetation.

The two academies are well positioned to enlist experts from around the nation to conduct this important peer review in a technically competent, transparent and cost efficient manner.

One more section, Section F, revision of guidelines: the USACE implementation guidance should allow consideration of guidelines that have been adopted as a public process, such as California's levee vegetation management strategy as an alternative approach that is accepted as being compatible with USACE guidelines. I thank you for the opportunity to provide comments.

Gene Pawlik: All right, thank you George.

Todd Strole: This is Todd Strole with the Nation Conservancy. I have a handful of comments. The first comment is regarding Section 3013, authorizing a review of the guidelines for vegetation management on levees. Guidance should instruct the Corps' staff to engage with stakeholders and develop policy that reflects regional differences and takes into account a range of relevant public values.

Location, design, construction material and the presence of critical habitat for species of concern, including threatening and endangered species, may warrant different treatment for levee vegetation.

Next comment is regarding Section 3016, under definitions. Guidance should indicate that the definition of flood plain management options include levee removal, levee setbacks, buyout and relocations.

Regarding the definition of a levee, guidance should clearly indicate where this definition applies. It appears that the definition will be used to qualify for the inclusion of the levee into the National Levee Database, but other programs such as PL 84-99 program which is referenced could use this definition. That needs to be clearly explained.

Guidance should also clarify the exclusions under levees. There are certainly important levees that protect less than 1,000 acres and protect less than 50 people that would be excluded by this definition. Guidance should also describe how levees protecting less than 50 people are being treated. This may have an unintended consequence of communities promoting people to stay within floodplain areas in an effort to stay above the 50 individual threshold unless guidance can clarify.

The language in Section 9005 regarding levee safety initiatives that will develop a set of national levee safety guidelines is sufficiently broad to allow guidance documents and assistance to states and tribes to include a range of features, such as flood plain storage areas, bypasses, hardened overtopping points and activities that promote the management of a collection of levees as one unit in a systemic fashion.

Emphasis should be given to natural and nature based features used in conjunction with built infrastructure and flood risk reduction strategies. In addition, the local actions should also be encouraged to include buyouts and relocations out of flood prone areas.

Under the section describing how to measure the success of the levee safety initiative, the section describing the development of flood plain management plans by states and tribes should include this guidance. Guidance should clearly indicate that the restoration of functional flood plains adjacent to or near levee protected areas is an important feature in overall flood risk production and should be included in these assessments. Thank you, this concludes my remarks.

Gene Pawlik: All right. Thank you Todd for those comments.

Nathan Bracken: Hi, this is Nathan Bracken and I'm the Assistant Director and General Counsel for the Western States Water Council, which represents 18 western states on water policy issues. The council supports the development of a national levee safety program and standards for levees and flood water conveyance canals as contemplated in Section 3016 in WRRDA.

However, we believe that such a program should not apply to federal or nonfederal water supply canals. It is also our understanding that that is the intent of Congress in creating WRRDA and therefore we ask the Corps to ensure that any guidance or subsequent implementation activities make it clear that water supply canals are not included within the levee safety program. Thank you very much. This concludes my comment.

Gene Pawlik: All right. Thank you Nate.

Dan Delich: Hello, this is Dan Delich. I represent the National Levee Issues Alliance out of Dallas, Texas. I want to comment today on Section 3016, creating the new section 9005. The overall focus of my comments relates to creating appropriate processes for consultation.

The levee safety guidelines in 9005 have the potential classification related closely intertwined. Notwithstanding use of the word voluntary in Section 9005 C1, subsequent provisions in Section 9005 C1A, C3A and B, Section 9005 C4 makes clear that federal, state, tribal and local agencies and the private sector are to adhere to these new federal safety guidelines.

My first of two comments is, the levee safety guidelines we expect will have impact on standing regulations implementing PL 84-99, certainly the eligibility therein, flood control OMRR&R, as well as various elements within the National Flood Insurance Program.

These impacts could be significant economically with consequences effecting property rights, property values and incomes of Americans from coast to coast. We believe agency guidance may or may not be adequate for an action of this magnitude. We believe that rule making should be used with all administrative procedure act requirements, including notice and comment.

Now the law does require, as another caller indicated, a public notice and comment in 9005 C5 and that is useful. The magnitude of this requires, we think, more than a monologue style webinar, I say respectfully. Hazard potential classification is authorized in Section 9005D by three sentences. There is no definition or explanation of its purpose, its scope or its benefit in the law.

The levee safety guidelines in Section 9005 C2 include a requirement that has a potential classification be taken into consideration, that it be rolled in. This too is significant. There is a worry about the quality and transparency of this tool as there has been in some quarters with levee safety action classification, also referenced in the statute.

Levee safety guidelines can only be as good and will only help all of us achieve our common goal of helping keep people safer if the quality of this significant levee safety guideline input has potential classification and is understood and workable. That can't happen without real involvement by levee owners, operators and other experts in the field. We think that a rule making, or at minimum a sort of public notice and comment contemplated in the agency good guidance practices bulletin of 2007, be used to enhance transparency and quality of future federal actions. Thank you.

Gene Pawlik:

All right, thank you Dan.

Dawn Shirreffs: This is Dawn Shirreffs with the Everglades Foundation. Just a quick comment is that we would request that levee safety guidelines be developed to specifically address where projects are designed to eliminate levees for restoration purposes, particularly where there are levees that are only being implemented on a temporary basis or are only intended to protect adjacent wetland areas. That's the end of my comment. Thank you.

Gene Pawlik: All right, thank you Dawn.

Karin Jacoby: Hello, this is Karin Jacoby representing the National Waterways Conference and MoArc (Missouri and Associated Rivers) Coalition. I would like to comment on Section 1007, expediting approval of modifications and operations of projects and nonfederal interest. What we're commonly referring to as the 408 permitting process spoken about here in Section 14.

We are pleased to see that in the development of the guidance for this, the Secretary is to provide notice and opportunity for comment for the Section 408 permitting process. We're pleased with that and also recognize that the Corps of Engineers recently released an Engineering Circular for 408 permitting. Looking at that in the context of these guidelines I'd love to make the comment that we would hope that the new process to be developed will be noticed and opportunity to comment to focus more forward looking on improvements that are going to be forthcoming. That there will be a process to assure that those reviews will be done in an expeditious manner in order that nonfederal sponsors can move forward with their efforts to reduce flood risks.

We have some concern that the recently released Engineering Circular is somewhat backward looking in that it speaks to identifying those alterations that may have taken place without having had the 408 permit in hand. Recognizing that that was a different time when things were done in a different way rather than distract nonfederal sponsors from reducing flood risks and flooding them with paperwork.

We would hope that the Corps would do as they have encouraged nonfederal sponsors to do and adopt a worst first approach and only require or focus on requiring permits for past activities if there's any recognized flood risks associated with that alteration.

That a similar approach be incorporated into the development that the new implementation guidance for the Section 14 applications that worst first processing of permits. As the Corps of Engineers recognize that

where there is a flood risk that they move forward to work with a nonfederal sponsor to get the necessary data to process the permits to most expeditiously allow for the reduction of flood risks by nonfederal sponsors. Thank you. That's all I have.

Gene Pawlik: All right, thank you for those comments.

Karin Jacoby: Hello, this is Karin Jacoby again, National Waterways Conference. I would also like to add that if the Corps develops the implementation guidance for Section 3016, the levee safety program, that they give due consideration and recognition to the fact that although some of the activities that are called for the development of a hazard potential classification, levee safety guidelines appear to be following the model of the development of advance safety program.

That the Corps give due consideration to the differences between levees and dams, particularly with respect to risks and consequences, both to life as well as property. Also, perhaps more importantly, when considering implementation that they give consideration to the administrative levee challenges that exist within that infrastructure that is not as readily seen in the dam infrastructure. Thank you.

Gene Pawlik: Thank you Karin. All right Colin, at this time I'll turn it back over to Ms. Jan Rasgus for closing comments.

Jan Rasgus: Again, as a reminder, the recording and transcript from today's session will be made available on the Corps' WRRDA website. There will be one more listening session on September 24. Again, the details regarding that session can be found on that website as well.

Thank you for your comments today. You can also submit comments via email to [wrrda@usace.army.mil](mailto:wrrda@usace.army.mil). We will take the comments received into consideration as we develop the implementation guidance. Thank you again for your participation in today's session. This concludes today's session.