

Updates on the U.S. Army Corps of Engineers Interim Policy for the Levee Rehabilitation Program

Summary: The U.S. Army Corps of Engineers' (USACE) Levee Rehabilitation Program provides federal aid to repair eligible levees damaged by floods or storms. The USACE is currently making revisions to eligibility criteria, and recently announced a new interim policy that includes the latitude to allow trees and other vegetation on otherwise eligible Delta levees. Other eligibility issues, however, remain uncertain. This briefing will be conducted by the USACE Sacramento District Emergency Manager who will describe the program, the interim policy and its implications for levees and reclamation districts in the Delta.

Background

In order to accomplish the Delta Reform Act's requirement that "*the Delta Plan shall attempt to reduce risk to people, property, and state interests in the Delta by promoting effective emergency preparedness, appropriate land uses, and strategic levee investments*" (Water Code Section 85305 (a)), the Council must, among other actions, consider the role and track activities of key federal and state agencies responsible for flood emergency response and recovery in the Delta.

This is the fourth in a series of presentations made to the Council since October 2012 regarding state and federal Delta levees and Delta emergency response programs.

At the Council's October 2012 meeting, a Delta Levee panel comprised of representatives from the Federal Emergency Management Agency (FEMA), Governor's Office of Emergency Services (Cal OES), USACE, and the Central Valley Flood Protection Board (CVFPB), was convened to discuss levee-related issues with the Council, including how changes in what was then called the USACE Rehabilitation and Inspection Program would impact available disaster recovery assistance.

At the Council's October 2013 meeting, a panel consisting of representatives from Department of Water Resources (DWR) and the CVFPB provided information on programs/projects that address the state's emergency preparedness for major flood events at the state and local levels.

At the February 2014 Council meeting, a panel consisting of representatives from FEMA and Cal OES discussed the status of negotiation on the FEMA-Cal OES Hazard Memorandum of Understanding (MOU) negotiation. The purpose of the MOU is to clarify the requirements for FEMA Public Assistance funding for emergency flood fighting, emergency repair, permanent restoration, and/or replacement of eligible damaged non-Project Levees within the reclamation districts in the Delta.

A key element for the Council to consider is that, for decades, the federal government has played a key role in disaster recovery in the Delta through providing post-disaster assistance for rebuilding eligible Delta levees and other public works through FEMA's Public Assistance Program and the USACE's Levee Rehabilitation and Inspection Program (now called the Levee Rehabilitation Program).

The eligibility standards for these programs are known as the FEMA Hazard Mitigation Plan (HMP) standard and the USACE PL 84-99 standard. According to a 2012 report by DWR, 25 Delta reclamation districts, protecting about 31 percent of the legal Delta's land behind about 516 miles of levees, are at or above this standard.

Recent changes in these programs, however, have generated concern and confusion regarding the eligibility for available federal funding sources for emergency response and post-disaster recovery for Delta Reclamation Districts (RDs) and Delta residents.

USACE Levee Rehabilitation Program

The USACE Levee Rehabilitation Program provides federal aid in repairing levees damaged by floods or storms. It also provides an assessment of levee conditions as an important step in shared efforts with state and local authorities to communicate flood risk and make informed decisions on how best to reduce it.

Recent changes to USACE programs of interest include the following:

- **USACE Headquarters released a memorandum to direct USACE Districts to temporarily suspend PL 84-99 eligibility determinations on November 25, 2013.** This memorandum directs the USACE Districts, until further notice, to suspend rehabilitation eligibility decisions for all flood risk management projects being considered for eligibility or removal of its eligibility status. This decision has had both negative and positive impacts. Negative for those reclamation districts who may have been seeking eligibility under this program and unable to gain access. For those districts that may have been at risk of being removed from the program this decision has provided a reprieve.
- **USACE Headquarters issued an Interim Policy for the Rehabilitation Program on March 21, 2014, pursuant to Public Law (PL) 84-99.** According to this Interim Policy, the USACE is in the process of revising its policies, including those related USACE's Flood Risk Management Program and the Levee Rehabilitation Program. The purpose of this Interim Policy is to allow the USACE Districts to once again make eligibility determinations for rehabilitation assistance, using specific criteria outlined in the interim policy that are consistent with the anticipated future direction of the USACE's Rehabilitation Program. The interim policy will allow continued implementation of these programs while revisions to the applicable federal regulations are developed and promulgated.

The combination of these changes may create uncertainties and substantially undermine the potential for disaster recovery in the Delta. It also could significantly increase demand for the state to pay some disaster recovery costs previously reimbursed by federal agencies. For example, under current state law, reclamation districts that do not qualify for federal disaster recovery assistance may apply to the state for reimbursement of levee reconstruction costs through DWR's Delta levee program (Water Code Section 12993).

Today's Briefing

Ms. Paige Caldwell, the USACE Sacramento District Emergency Manager, will brief the Council about the Interim Policy for this program and its potential impacts to the Delta.

During the panel's presentation or in follow-up discussion, the Council may wish to consider these questions:

1. From USACE's prospective what are the potential impacts on available federal disaster recovery assistance in the Delta area and for Delta reclamation districts?
2. What are the major issues or concerns that have caused the USACE to revise these policies? Also, what are the biggest potential impacts that may affect the Delta levees and relevant flood control systems?

Staff Recommendations for Next Steps

1. Utilize outcomes of this briefing to guide direction for the Council's work as it considers actions that affect emergency response and preparedness.
2. Consider how these policies shape priorities that the Council recommends for state investment in Delta levees. State investment recommendations could reflect strategies for maximizing eligibility for federal assistances for key elements of the levee system.
3. Council staff will track the development of the USACE's policies revision and may invite USACE staff to brief the Council with updates as needed.

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