



Before the Natural Resources Subcommittee on Water and Power

Hearing to consider Creating Abundant Water and
Power Supplies and Job Growth by Restoring Common Sense to Federal Regulations

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Comments of

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Submitted on behalf of

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Good afternoon Chairman McClintock, Ranking Member Napolitano and Members of the Subcommittee, my name is Wade Noble and I am here on behalf of the National Water Resources Association (NWRA). I am the President of the Association and also an attorney in Yuma, Arizona.

NWRA is a federation of state water associations representing agricultural and municipal water providers in the seventeen Western Reclamation states. Its strength is due to "grassroots" participation on virtually every national issue affecting western water and power resources conservation, management, and development.

We appreciate the opportunity to comment on federal regulations impacts on water and power supplies. NWRA unequivocally supports *common sense* federal regulations. We are increasingly concerned about duplicative and unnecessary regulations, many of which may have negative consequences for western water users. Specifically, I will address the direct impacts the recommendations of the National Committee on Levee Safety will have on Bureau of Reclamation projects and irrigators west wide.

Western water managers are progressively apprehensive with actions of the National Committee on Levee Safety (NCLS). The group, authorized in the Water Resources Development Act of 2007 (WRDA), includes the U.S. Army Corps of Engineers (Corps) and the Federal Emergency Management Agency (FEMA) as the only federal agencies. The Bureau of Reclamation, with thousands of miles of levees and canals, is not at the table.

The Committee, established to deal with post-Katrina flood risk issues emphasizing Corps levees, plans to apply Corps-level engineering specifications and standards to levees and canals. There will be little or no coordination with the Bureau of Reclamation and Western water managers. Thus far, concerns raised by Reclamation and Western irrigation interests do not appear to be gaining traction with the Corps and FEMA.

Congress created the NCLS to develop recommendations for a national levee safety program, including a strategic plan for implementation of the program. The NCLS began development of recommendations in October 2008. The result so far is twenty recommendations for creating a National Levee Safety Program which were in a January 15, 2009 draft report, *Recommendations for a National Levee Safety Program: A Report to Congress from the National Committee on Levee Safety*.

The recommendations for a National Levee Safety Program (NLSP) are grouped into three concepts: (1) the need for leadership via a National Levee Safety Commission which would - support state delegated programs, provide national technical standards and risk communication, and coordinate environmental and safety concerns; (2) the building of strong levee safety programs in all states which would - provide oversight, regulation, and critical levee safety processes; and (3) a foundation of well aligned federal agency programs.

Federal legislation will be necessary to implement 12 of the 20 recommendations. The Corps and FEMA are working within existing authorities and funding to implement several recommendations addressing the basics of communication and outreach, use of common

language and refinement of their existing programs. The nonfederal members of the NCLS have drafted a NLSP addressing areas where NCLS foresees needed implementation legislation. The Corps is considering NCLS recommendations in development of levee safety standards and risk assessment and communication methodologies.

NWRA supports NCLS efforts applicable to Corps facilities. It is, however, not appropriate to apply similar standards and methodologies to water delivery facilities operated by the Bureau of Reclamation and its local partners.

Bureau of Reclamation Position on NLSP Applicability to Reclamation Facilities

Prior to the release of the draft Report, the Bureau of Reclamation circulated an internal memo regarding (non-) applicability of the Levee Safety Act (“Act”) to Bureau of Reclamation canals. The memo noted that the Corps’ interpretation of the Act included Reclamation canals.

Reclamation consulted the Interior Department Solicitor's Office and was told the provisions of the Act do not apply to Reclamation. The Solicitor determined the Act applies to levees defined as embankments providing protection relating to seasonal high water and other weather events. In contrast, Reclamation canals are designed to deliver water.

Additionally, the Act does not include inspection of Reclamation canals among the responsibilities of the Secretary of the Army. The test of agency jurisdiction assertion over another agency requires a clear congressional statement of intent that one agency have jurisdiction over another.

In this case, there is no clear statement of intent that the Secretary of the Army have jurisdiction over Reclamation regarding levees or canals. Further, there is no indication in the Act that Congress intended to subject Reclamation to the jurisdiction of the Secretary of the Army.

We agree with the Department of the Interior’s and Reclamation’s position.

Concerns of Western Water Users

There is a need to address deterioration of aging flood control facilities and preventing failures like the one which occurred in New Orleans. It should be an immediate national priority.

However, after reviewing the NCLS’ recommendations in detail, we have critical concerns.

- (1) The approach is overly broad.
- (2) *It mandates new standards that would apply to existing Bureau of Reclamation water delivery facilities.*
- (3) The focus should be on control facilities that pose actual risk to life or property in the flood plain.

(4) The Act was intended to deal with levees in and around New Orleans into which flood waters were pumped to be conveyed away from the low points in the city.

(5) Legislation should not define "levee" as used in the Act which created the NCLS.

(6) The legislation should only address a program for "levees" as that term is traditionally understood, with the embankment sections of water delivery canals and dams excluded.

Canals are designed and engineered different than levees. Applying flood control levee standards to water delivery canals is a non-sequitur. It will be expensive and for many, unaffordable. The nation-wide inspection program and new project condition and maintenance standards required in the legislative proposal would in most cases be duplicative and undermine existing operation and maintenance (O&M) standards and inspection procedures built into Reclamation contracts for both reserved and transferred facilities. The cost increase, both federal and non-federal, in almost every case would provide no increase in public safety.

There would be a potential for greater liability to water project operators because applying levee standards not meant for canal delivery structures would make compliance difficult, if not impossible, due to the excessive costs of rebuilding such structures. Although the draft legislation would authorize financial assistance to non-federal entities responsible for the maintenance of federally-owned facilities, it is not clear how or when that assistance would be realized.

Finally, and perhaps most important, Congress and this Committee recently provided new authority to Reclamation through *P.L. 111-11*, signed into law in March 2009. The law addresses aging canal systems in urbanized areas of the West. These authorities were proposed by Senate Majority Leader Harry Reid (D-NV) who in early 2008 introduced a bill (S. 2842) designed to make aging federally-owned canals safer across the West. Reclamation is inspecting urban area canals. This program for canal safety addresses the risk of canal failure in areas of highest risk. The NLSP should not duplicate or hinder this effort with more layers of federal bureaucracy.

The examples of the negative impact of the NLSP on irrigation projects with federally owned facilities in Arizona are:

1. Salt River Project, Maricopa County, Arizona
 - Reclamation project
 - 131 miles of canals
 - 30 miles of "urban" canals
 - Regular periodic inspections of canals
 - "Urban" canals have been inspected by Reclamation within the last year
2. Yuma County Water Users' Association, Yuma County, Arizona
 - Reclamation project
 - 60 miles of canals
 - 14 miles of "urban" canals

- Periodic canal inspection by Reclamation
 - “Urban” canals have been inspected by Reclamation within the last year
3. North Gila Valley Irrigation and Drainage District, Yuma County, Arizona
- 6,587 authorized irrigable acres
 - 2.5 employees
 - 20 miles of canals
 - 0 miles “urban” canals
 - Regularly safety inspected by Reclamation

Conclusion

In the American West, water supply systems are essential components of communities, farms, and the environment. These facilities are an integral part of the nation’s food-production system and their consistent operation helps ensure our farmers’ ability to provide a reliable and secure food supply for our own citizens and the rest of the world. Population growth, environmental demands and climate change are placing an unprecedented strain on aging water storage and conveyance systems designed primarily for agricultural use. The NCLS, with no membership or representation from Reclamation or Reclamation states in the West, represents a real and significant threat to the continued operation of the canals with no additional public safety benefit.

Our members have a long standing tradition of good working relationships with the Bureau of Reclamation and have supported updating Reclamation guidelines for analyzing projects to include considerations for urbanization and other effects that did not exist when these facilities were originally designed many decades ago. However, one-size still does not fit all, and blanket inspections and expensive, nonsensical standards for all Reclamation water delivery facilities are not appropriate or cost-effective. Further, many local districts do not have the financial capability to conduct required repairs or upgrades to their facilities to comply with a national levee standard on their canals, resulting in little or no commensurate increase in public safety. We believe this Committee and Reclamation have the appropriate knowledge and tools to develop strong safety standards for our water supply systems and should not be subjected to a “one size fits all” approach by the NCLS.