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3/19/21

Mr. Taylor Ferrell
Acting Assistant Secretary of Army (Civil Works)
108 Army Pentagon
Washington, D.C. 20310-0108

RE: U.S. Army Corps of Engineers (USACE) Levee Safety Program Engineer Circular (EC 1165-2-218)

Dear Mr. Taylor,

We are writing on behalf of the Upper Mississippi, Illinois & Missouri Rivers Association (UMIMRA) to share our concerns about the revised draft U.S. Army Corps of Engineers (USACE) Levee Safety Program Engineer Circular (EC 1165-2-218/ 22 February 2021).

UMIMRA is a grassroots organization dedicated to improving flood protection in the Upper Mississippi River Valley. We represent levee and drainage districts, landowners, businesses, and communities affected by the Upper Mississippi River and its tributaries. The Upper Mississippi River watershed encompasses 118 million acres, which contains a total population of 13.4 million people.

Our organization has 66 years of experience in speaking as one voice for those living, working, and investing in the Upper Mississippi River Basin. During this time, UMIMRA has worked closely with USACE and other federal agencies, and levee districts on numerous issues and challenges, including several major flood events.

UMIMRA has submitted comments on the initial EC draft back in July and again on the revised draft in December. While we appreciate the opportunity to share our concerns and feedback on this important program, we do not feel that our concerns have been addressed in the most recent draft. We believe by allowing further comments and feedback on the revised EC draft it will make a better document with the goal of working together to reduce flood risk and improve flood protection for the Upper Mississippi River.

While we appreciate USACE's attempt to simplify the EC and reduce the excessive content as compared to the original February draft, there are still far too many unknowns and a lack of required detail for many critical issues. These include uncertainties for PL84-99 eligibility, Section 408 permitting, NFIP levee accreditation, sponsor appeals of Corps risk assessment results, LSP involvement and impacts to project design features, guaranteeing National Levee Database quality control, prospective LSP success metrics, and more.

We do not support the current revised draft and have many concerns that are outlined below.

#1 - The LSP Proposal DOES NOT improve the actual safety of levees.

The Levee Safety Program (LSP) is a travesty because the program as it has been implemented in the past and as outlined in the current draft does nothing to improve the actual safety of the levees! The LSP has been a failure from day one on the Upper Mississippi. The inspection process changed from the local district by Corps engineers that knew the area, to a team with no understanding of the system.

By condensing residual risk in flood plains with project performance factors, the proposed EC would have the Corps overlook the need to identify engineering deficiencies and remedies for flood projects. The proposal relies on internally developed risk assessments that lack transparency and reproducibility. Additionally, it features the use of federal safety ratings for projects that are unreliable and unimprovable with prospective project design, construction, and maintenance upgrades.

The LSP completely ignores the main failure mode of most sand levees on the Upper Mississippi—overtopping failures. If the LSP prohibits local sponsors from adding any sand to a levee, then it does not address the number one threat to levee failures. By failing to address the threat of overtopping failures the safety of these levees is weakened rather than strengthened. This lack of action to address the threat of overtopping failures goes against the stated goal of the EC "to ensure that levee systems provide benefits to those living and working behind them."

Rather than protect existing infrastructure investment and strengthen levees, the LSP seeks to create and manage a reduction in project benefits. In reality, the biggest threat to safe levees is the Corps Levee Safety Program. We urge USACE to get back to the basics and the original intent of Congress where the Levee Safety Program actually focuses on improving the safety of our levees.

#2 – Focusing on flood plain risk mitigation diverts resources away from flood protection and weakens levee safety.

The responsibility of assuring safe, reliable federal program levees and related infrastructure falls collectively on local sponsors, local people, and the Corps along with other agencies. For no good reason, the proposal abandons the common-sense approach of allowing the Corps, FEMA, and their respective partners at the local level to focus on their area of expertise and to allow for the division of these responsibilities.

Starting in 2010, the Upper Mississippi saw a significant shift in the relationship from the Corps District toward the local sponsor, a shift from a mutually beneficial partnership relationship to a regulatory relationship, with zero benefit to either party.

USACE is requiring "levee safety" actions such as land use zoning and building standards rather than continuing to partner with non-federal sponsors to help protect and improve existing federal investments in flood protection infrastructure. Most local project sponsors are not sovereign over the levee-protected area. While local sponsors are understandably obligated to help mayors and governors build public awareness of the residual risk that exists near projects, they possess neither the resources nor legal authority to administer prudent use and management of property that lies beyond their projects. Additionally, these expanded non-federal sponsor flood plain management duties would force property owners in leveed communities to pay twice for flood plain management activities: once through local land use agencies, and again through local levee districts.

USACE is focusing too much on landside flood risk mitigation with reduced Federal responsibility while retaining control at the expense of ensuring safe federal program levee systems. These levee systems have prevented more than \$3 trillion in flood damages, including more than \$1.2 trillion in just the last decade.

In the face of dynamic flood risk attributable to our growing infrastructure gap and shifting demographic, development, and climatic forces, Corps plans would have us divert our attention from vital infrastructure by refocusing levee districts from their primary purpose of operating and maintaining levee systems to performing remote flood plain management duties. This idea is misguided and dangerous. It muddles the rational division of resources, labor, and core competencies among intergovernmental authorities. This muddling of distinct missions, responsibilities, and orderly progress will sow confusion, undermine flood protection gains, and risk future success at the worst possible time. Every dollar and manhour spent by the Corps and local sponsors on flood plain risk mitigation duties is a dollar and manhour not spent to improve project performance and prevent catastrophic project failure. Does that sound like a way to improve levee safety?

#3 - Unjustified, Unwanted, and Unfunded Mandates

The preface for the EC draft reads: “[T]he purpose of this document is to provide high-level policies for implementing the USACE Levee Safety Program.” This is an unacceptable arrangement whereby the LSP assumes inherently political decision making and value judgment responsibilities otherwise reserved for the Congress. It should instead offer practical information to support and detail any new requirements and procedures that have undergone thorough analysis demonstrating net benefits to our leveed communities.

The USACE rewrite of its original guidance failed to address the chief concern that the agency, notwithstanding a statutory prohibition, is positioning itself for regulatory flood plain management at the expense of safer flood protection projects. This approach is inconsistent with the National Levee Safety Act goals of risk awareness and communication.

The self-appointed involvement by the LSP into PL84-99 eligibility, Sec. 408 permitting, NFIP levee accreditation, and project design constitute an inappropriate, unjustified, unwanted and unfunded de facto regulatory role. Moreover, we cannot see how the far-reaching and long-term impacts of this LSP will not translate into significant and substantial costs to levee sponsors that do not adequately correspond with actual system reliability gains. Further, we are concerned with the likelihood that this LSP will generate new liability for local levee owner-operators.

The P.L. 84-99 RIP is a successful program that has served levee districts well by incentivizing exemplary non-federal sponsor project operation and maintenance. Regular Corps inspections of levee conditions and performance identify deficiencies and determine continued eligibility for emergency federal assistance to perform post-storm project repairs. The Corps is proposing to minimize the worth of inspected levee conditions in lieu of contrived agency risk assessments for the land areas behind levees. Instead of building on this preeminent, results-oriented safe levee program at the Corps, the agency is threatening to block or delay issuance of post-storm emergency assistance under the P.L. 84-99 RIP. In June of 2020, the Corps confirmed its intent to link eligibility for P.L. 84-99 emergency assistance to project sponsors' performance of Levee Safety Program activities such as flood plain management zoning, building standards, relocations, and flood insurance. This is not acceptable.

Using the P.L. 84-99 RIP to coerce broader floodplain management actions beyond the project will threaten our intergovernmental partnerships and, more importantly, deny our citizens safer structural flood control projects as a component of the overall approach to flood protection involving the Corps, levee sponsors, FEMA, and local zoning and regulatory agencies.

The content of this and the previous drafts serves to increase, not alleviate our fears about LSP impacts to structural flood control investments across the country. This mirrors our overarching concern: the LSP is misinterpreting and misapplying congressional directives intended to provide advisory risk information.

#4 - Need for systemic flood control plan

The proposed EC gets the cart in front of the horse. We need a systemic flood control plan implemented for the Upper Valley that authorizes the structural improvements and higher elevations to convey major floods like 1993, 2008, and 2019 with minimal property damage and no loss of life. Agricultural enterprises including family farms, transportation networks, and local businesses protected by these levees make up the bulk of the economic engine in most counties along the Upper Mississippi. Adequate flood control improvements are essential for encouraging economic opportunities and providing security to this region's culture and society.

The economic damages of previous floods have been incredibly costly to governments and individuals. The 1993 flood damages ranged from \$15-\$20 billion, and the 2008 flood cost another \$15 billion. Again in 2019, there was devastating flooding throughout the Missouri, Illinois, and the Upper Mississippi River basins. Unfortunately, flooding and its negative impacts on our lives, our economies, and our natural resources have become all too common. Let's use our limited resources to improve our flood protection and limit the flood disasters and their impacts.

Precipitation events are becoming more intense and happening more often, which causes more runoff, which leads to more flooding. The second highest Mississippi river level ever recorded at Quincy, IL was on June 1, 2019 at 31.16 feet; this is second only to the flood of 1993.

By looking at 1930 era locks and dams and 1950 era flood control, it is evident that there has been a lack of investment in river infrastructure for the Upper Mississippi River. Recently, USACE in coordination with the Waterborne Commerce Statistics Center approved the creation of three Port Statistical Areas that encompass more than 600 combined miles of the Upper Mississippi and Illinois Rivers. Collectively, the ports rank as the 22nd largest port in the U.S., handling 31.1 million tons of freight in 2019. This recognition demonstrates the economic importance of this region and the critical need for a systemic flood control plan.

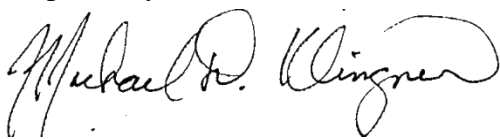
We cannot support the Levee Safety Act or changes to PL84-99 from a cost-benefit approach to a consequences evaluation approach until modifications are made to WRDA to revise the 729 Watershed Study to put flood control and main stem levee improvements as its top priority. In addition, significant structural improvements and adequate flood easements in key areas should be fully implemented.

We believe that the current EC draft would cause irreparable harm by interfering with the primary mission to continuously improve the performance and safety of structural flood protection projects. Any proposal that weakens the ability to maintain and improve our flood protection should be thrown out.

UMIMRA remains committed to working with you and your team to identify and pursue necessary and achievable options to reduce flood risk and improve flood protection for the Upper Mississippi River.

Thank you for the opportunity to offer comments on this proposal and for your consideration on this matter.

Respectfully submitted,



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