

**POSITION  
of the  
WESTERN STATES WATER COUNCIL  
regarding  
THE NATIONAL LEVEE SAFETY ACT OF 2007  
and the  
INTERPRETATION OF LEVEES AND WATER SUPPLY CANALS**

**Santa Fe, New Mexico  
April 15, 2011**

**WHEREAS**, Congress enacted the National Levee Safety Act of 2007 (the Act) in the aftermath of Hurricane Katrina and the failure of the levees and flood water conveyance canals in New Orleans, Louisiana;<sup>1</sup> and

**WHEREAS**, the Act created the “National Committee on Levee Safety” (NCLS) to develop recommendations for a national levee safety program, including a strategic plan for implementation of the program; and

**WHEREAS**, in January 2009, the NCLS released a draft report, “Recommendations for a National Levee Safety Program – A Report to Congress from the National Committee on Levee Safety;” and

**WHEREAS**, the report’s core recommendation calls for the creation of an independent National Levee Safety Commission to: (1) develop national safety standards for levees for common, uniform use by all federal, state, and local agencies; (2) inventory and inspect all levees on a periodic basis; and (3) develop national tolerable risk guidelines for levees; and

**WHEREAS**, Section 9002(3) of the Act defines the term “levee” as embankments that provide protection from weather events and are subject to water loading for only a few days or weeks a year, but also includes “structures along canals that constrain water flows and are subject to more frequent water loadings that do not constitute a barrier across a watercourse;” and

**WHEREAS**, the NCLS concluded that water supply canals are “... canals that constrain water flows and are subject to more frequent water loadings [than are levees] ...” and therefore treats the embankment sections of water supply canals as “structures along canals;” and

**WHEREAS**, the NCLS’s recommendations for a national program of safety standards and tolerable risk guidelines for levees would therefore apply to water supply canals throughout the West, including both non-federal facilities and federal facilities managed by the U.S. Bureau of Reclamation and state and local agencies; and

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<sup>1</sup> 121 Stat. 1288, P.L. 110-114.,

**WHEREAS**, Reclamation already has authority under the Aging Water Infrastructure and Maintenance Act, which Congress enacted as part of the Omnibus Public Lands Management Act of 2009,<sup>2</sup> to address the canals it owns, and inspections of those embankment sections of canals located in urban areas are in process; and

**WHEREAS**, the NCLS is now in the process of drafting proposed legislation that would implement the recommendations in its report; and

**WHEREAS**, the Act's definition of the term "levee" in no way binds the NCLS, which is free to recommend new definitions in any legislation it may propose; and

**WHEREAS**, all 50 states confront levee issues, but the issues associated with water supply canals are essentially confined to the 17 western states; and

**WHEREAS**, there are major institutional differences between levees and water supply canals and the "political systems" commonly used to govern levees that warrant treating them separately; and

**WHEREAS**, water supply canals are essentially standalone features whose integrity is not dependent on the performance of other canals, and therefore do not share the potential for systemic failure; and

**WHEREAS**, levees are designed to provide protection from flooding and make development behind them possible, while water supply canals serve a separate and distinct purpose; and

**WHEREAS**, the stakeholder communities and interests involved in addressing the issues related to levees and water supply canals are different, and addressing them jointly through a single national program would not be conducive to effectively addressing either set of issues; and

**WHEREAS**, potential public safety problems involving water supply canals do not often involve a lack of engineering expertise or design standards, but the ability to finance necessary improvements; and

**WHEREAS**, Reclamation and the states are in the best position to address the public safety issues presented by water supply canals because such issues are localized and minor in comparison to the risks associated with inadequately designed and maintained levees.

**NOW, THEREFORE, BE IT RESOLVED**, that the Western States Water Council supports the development of a national program of safety standards for levees and flood water conveyance canals; and

**BE IT FURTHER RESOLVED**, that any proposed legislation creating a national program of safety standards for levees and flood water conveyance canals should not apply to federal or non-federal water supply canals; and

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<sup>2</sup> 123 Stat. 991, P.L. 111-11.

**BE IT FURTHER RESOLVED**, that the Administration should request and Congress should appropriate adequate funding for the Aging Water Infrastructure and Maintenance Act; and

**BE IT FURTHER RESOLVED**, that the Administration and Congress should work together to encourage implementation of Title II of the Rural Water Supply Act of 2006,<sup>3</sup> and provide for the use of federal loan guarantees for addressing extraordinary maintenance needs related to the operation of federal Reclamation projects.

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<sup>3</sup> 120 Stat. 3345, P.L. 109-451.