

**AMERICAN RIVERS * AMERICAN SOCIETY OF CIVIL ENGINEERS * ASSOCIATION OF STATE DAM
SAFETY OFFICIALS * HYDROPOWER REFORM COALITION * LOW IMPACT HYDROPOWER INSTITUTE *
NATIONAL HYDROPOWER ASSOCIATION * THE NATURE CONSERVANCY * UNION OF CONCERNED
SCIENTISTS**

December 15, 2021

Ms. Deanne Criswell
FEMA Administrator
500 C Street, Southwest
Washington, DC 20472

**RE: IMPLEMENTATION OF THE BIPARTISAN INFRASTRUCTURE BILL AND RECOMMENDATIONS FOR A
21ST CENTURY DAMS PROGRAM**

Dear Administrator Criswell,

The passage of the Infrastructure Investment and Jobs Act (the Act) includes an unprecedented injection of funding for national dam safety programs. Passage of the Act also demonstrates extraordinary support by Congress and hard work and commitment by several national non-profit and industry organizations to encourage its passage. These organizations, including those listed here and collectively known as the Uncommon Dialogue Coalition (the Coalitionⁱ), collaborated to find balanced solutions for dam rehabilitation, dam removal, and retrofit of dams for hydropower and worked directly with champions in Congress to secure this funding.

If used as envisioned by the Coalition, this funding will undoubtedly improve the safety of many dams across the country and create stronger State and Federal dam safety programs. And, when passed, the 21st Century Dams Act, will add additional direction and funding to dam safety and rehabilitation programs, dam removal goals and hydropower improvements and retrofit concepts.

As the organizations that conceived of and shepherded these sections of the Act through Congress, we offer ourselves as a resource as FEMA begins the important implementation process.

We offer the attached detailed thoughts and recommendations. In summary:

- It is extremely important to work with the State Dam Safety Programs and others working “in the field” on implementation and on reimagining the National Dam Safety Program. It is recommended that a series of listening sessions and implementation workshops be conducted and a new strategic plan for the National Dam Safety Program be written and deployed in conjunction with the Association of State Dam Safety Officials and others within the dam safety community.
- A senior leadership level position should be created within FEMA to head the NDSP. This will allow the program to get the oversight as intended in the 1996 Dam Safety Act and envisioned currently.
- Due to the much larger dollar amounts going into the State Assistance Grant Program, we encourage FEMA to be as flexible as possible in defining the reasonable cost of implementing the state program and the funds committed by the state to implement dam safety activities.
- We strongly encourage FEMA to decrease the level of burdensome paperwork and streamline the application and management processes for the High-Hazard Potential Dam Rehabilitation Program (HHPD) to be more in line with its other FEMA grant programs and those in other agencies such as the EPA CWSRF.

- It is recommended that unnecessary strict definitions of eligibility criteria for dams to qualify for the HHPD that FEMA is using and burdensome requirements that States are being asked to use to determine dam eligibility be removed and that additional review of all application criteria be performed considering the direction by Congress that a percentage of these funds go toward dam removal projects.

Sincerely,

American Rivers
American Society of Civil Engineers
Association of State Dam Safety Officials
Hydropower Reform Coalition
Low Impact Hydropower Institute
National Hydropower Association
The Nature Conservancy
Union of Concerned Scientists

Implementation Recommendations

Reimagining a 21st Century National Dam Safety Program

For the FEMA National Dam Safety Program (NDSP), \$800 million has been appropriated. This once-in-a-generation funding opportunity should be used to reimagine what a 21st century National Dam Safety Program could be. To accomplish this challenging task please consider the following:

Engagement with the primary recipients of this funding, State Dam Safety Programs, is critical. Close coordination with State Dam Safety Programs is needed during development of spending and implementation plans to ensure States can effectively utilize this funding to make needed improvements for dam safety nationwide. The Association of State Dam Safety Officials (ASDSO) is well positioned to assist FEMA in these efforts and should be consulted as these plans are being developed.

Recommendations:

It is recommended that a series of listening sessions and implementation workshops be conducted and a new strategic plan for the National Dam Safety Program be written and deployed.

The National Dam Safety Program will receive \$67 million over 5 years for Operations and Support.

Recommendations:

A senior leadership level position should be created within FEMA to head the NDSP. This will allow the program to get the oversight as intended in the 1996 Dam Safety Act.

Additional staffing support should be placed, not only at the headquarters level, but in all FEMA regions, consistent with regional support levels currently provided for other FEMA Hazard Mitigation Assistance (HMA) programs. These personnel should have dam safety experience or be provided with adequate training to coordinate and assist the State Dam Safety Programs.

A 21st century NDSP should provide for consistency between FEMA Regions on management of the State Assistance Grants. All State participants should be required to meet the same criteria and expectations and communications between FEMA Regions and State participants should be consistent.

FEMA should devote enough funds to review and update its important national guidance documents and consider additional manuals as determined by the NDSRB with input from the DHS Dams Sector Specific Agency, the States, and the NGOs devoted to dam safety.

Create a comprehensive and coordinated approach to carry out the public outreach, training and research elements of the NDSP, with guidance and participation from the States, the NGOs, the NDSRB, universities, the national research labs and other relevant players.

Funding should go toward a National Academy of Science, Engineering and Medicine (NASEM) national Extreme Precipitation Study to include evaluation of Probable Maximum Precipitation (PMP) and NOAA Atlas 14 Precipitation Frequency estimating tools and methodologies. Federal tools and methods to estimate PMP and NOAA Atlas 14 precipitation frequency rainfall have become outdated. We recommend that FEMA support NOAA's effort to both assess and update these data, methods, and tools for use in the design of spillways at high-hazard potential dams and to model flood risk through FEMA's Risk MAP program.

The State Assistance Grant Program will receive \$148 million over 5 years.

The NDSP was established to improve dam safety nationwide and coordinate the state and federal entities regulating dams. The NDSP authorizes FEMA to provide direct assistance grants to support and strengthen state dam safety programs focusing on improving capacity to effectively inspect, regulate,

and ensure proper oversight of state-regulated dams. Recent dam failures and incidents have shown that traditional visual inspection practices are not sufficient to prevent dam safety incidents. Expanding the assistance to states is intended to provide additional resources to each state for more comprehensive dam safety evaluations, risk assessments, and enforcement. This will allow regulatory follow-up to mitigate the identified risks of dam failure for the nation's nearly 22,000 state-regulated high- and significant-hazard potential dams.

Recommendations:

We encourage FEMA to be as flexible as possible in defining the reasonable cost of implementing the state program and the funds committed by the state to implement dam safety activities. Current authority caps the amount of funds a state can receive from the NDSP at 50 percent of the reasonable cost of implementing the State dam safety program, and the funds may not exceed the amount of funds committed by the state to implement dam safety activities. These limitations could be problematic for some smaller state programs with the larger state assistance grant amounts provided for in the Act. There are other requirements in the law that are sufficient to ensure that States will not eliminate State funding for dam safety if they receive a larger State assistance grant amount.

We further recommend that if a state has difficulty achieving the budget limitations in the early years of increased appropriations, that FEMA consider holding that state's unclaimed funds for a future year. This could give the state time to increase its own budget and still benefit from the increased federal assistance.

The High-Hazard Potential Dam (HHPD) Rehabilitation Grant Program will receive \$585 million over 5 years with no less than \$75 million earmarked for removal projects.

The HHPD Program has the potential to effectively address the highest priority dam safety projects in the country. However, despite its potential, this program faces numerous challenges that limit its effectiveness. These include burdensome project eligibility criteria, an unnecessary amount of grant application and administrative paperwork, and lack of a cohesive, uniform communication system between FEMA Headquarters, FEMA Regions, and the State grant recipients. In three years since the program was launched, the number of applicants has decreased. There were 25 the first year, and 29 the second year, and only 15 States applied in 2021. States have communicated that this is due to the level of paperwork, lack of time to apply, and new criteria that cut out many if not all eligible dams in some States.

Language in current legislation should be clarified to address many of the implementation issues but it is strongly recommended that FEMA consider the following strategies within existing policy.

Recommendations:

It is recommended that FEMA discontinue the current interpretation of 'eligibility criteria.' Under the law, the eligibility criteria for the HHPD Grant Program says funds are reserved for dams classified as high-hazard potential with an Emergency Action Plan (EAP) in a State with an established dam safety program. Furthermore, a qualifying dam must also meet minimum State safety standards and pose "an unacceptable risk to the public," as determined by FEMA. Under FEMA's current interpretation of this criteria, most HHP dams must pose a risk to downstream populations of over 100 people and in some cases over 1000 people. The requirement that an eligible dam must be a High Hazard Potential dam and failure will result in probable loss of life *implies* that it is an unacceptable risk to the public and *further* restrictions based on how many lives must be at risk are *not* reasonable. This eliminates hundreds of deficient high-hazard potential dams (as determined by State dam safety programs) that present real danger to hundreds of people. With this type of restriction, many states have indicated that they will have zero or close to zero eligible dams and will not be able to participate in the program.

Do not implement a Benefit-Cost Analysis (BCA) requirement to determine eligible dams. The FEMA BCA system, applied to dams, typically removes many high-hazard potential dams in need of rehabilitation from eligibility.

It is recommended that FEMA provide the risk-based prioritizing tool to the States for project ranking purposes as it does for other FEMA grant projects like BRIC and HMGP where the *State* establishes the priority list rather than FEMA. States should rank eligible projects. The statute requiring this type of risk-based priority system for States to use in prioritizing multiple applications in a single year was written to assure that the highest risk dams are rehabilitated, as determined by the State. This program can be vastly improved by expanding these eligibility criteria and by providing a risk-based priority system that could be used by States in prioritizing multiple applications in a single year.

Allow more time for the NOFO to be available and the application process to be open. The current window has been one month while other grant programs at FEMA, including the BRIC program, have an application window of several months.

Review all current policies to determine if they should be required for dam removal projects and modify them as appropriate to encourage the use of grant funds for public-safety dam removal projects.

It is recommended that FEMA consider updating grant guidance to make it clear that the floodplain management plan is to specifically address the controlled or uncontrolled release from the dam or management of water levels in the area impacted by the dam. For dam removal, guidance should be written that clarifies that a plan for a dam removal project must be in place at the time of the grant award and that a communication plan for the dam removal project is acceptable as the floodplain management plan. The current law says that floodplain management plans are required to be in place for eligible projects. Some of the wording in the law is unclear on the purpose and extent of the plan and on the contents of a plan, specifically for a dam removal project.

It is recommended that FEMA consider how current cost shares and other restrictions on which projects receive funding should be considered within its larger interest in equity and accessibility to assistance by underserved communities. Clearly, there are legislative updates that would have to be made to change the non-federal 35 percent cost share overall, but, in a general sense, there is support among State Dam Safety officials for considering equity during the implementation process. While cost sharing mechanisms are important to ensure adequate funding for many projects and for maximizing overall financial impact of the grant, many communities are not in a position to assume such a cost-share. Many of these communities own a dam in need of repair and often their own community falls in the downstream failure inundation area from the dam. If grant funds are not available for rehabilitation of these dams, not only could these communities face the devastating consequences of dam failure, but recovery assistance costs from other federal grant programs could prove to be higher than assuming the full cost of a HHPD grant. It is recommended that FEMA consider a policy to allow exemptions to this rule and allow an applicant defined as a “Small Underserved Community,” which reflects communities that own or could be significantly impacted by a dam failure and do not have sufficient resources to afford the required match. This exemption would relax the 35 percent non-federal cost sharing requirement for these communities. These changes will help ensure that small, disadvantaged communities are not placed at greater risk of disaster from a failing dam.

¹ The Uncommon Dialogue Coalition includes: American Rivers, Association of State Dam Safety Officials, American Society of Civil Engineers, Gravity Renewables, Great River Hydro, Hydropower Foundation, Hydropower Reform Coalition, National Hydropower Association, Low Impact Hydropower Institute, Rye Development, The Nature Conservancy, Trout Unlimited, Union of Concerned Scientists, United States Society on Dams, World Wildlife Fund