

Opinion file

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MEMORANDUM FOR: Wallace E. Stickney
Director

FROM: *191* George W. Watson
Acting General Counsel

SUBJECT: Comments on September 1990 Draft Report to the Office of Management and Budget, "Response to Hurricane Hugo and Loma Prieta Earthquake: Evaluation and Lessons Learned"

Grant C. Peterson, Associate Director for State and Local Programs and Support (SLPS), has provided me with a copy of the Draft Report to the Office of Management and Budget, dated September 1990 and entitled, "Response to Hurricane Hugo and Loma Prieta Earthquake: Evaluation and Lessons Learned." This memorandum is intended to highlight some of the more important issues I have identified in the draft report. My memorandum of July 11, 1990 to Mr. Jerry Jennings, Acting Director of the Federal Emergency Management Agency (FEMA), with my comments on an earlier draft of the report, is attached for background.

In the discussion below, I address: I.) Clarification of FEMA's Emergency Management Roles, II.) Criticism of the Performance of Other Federal Agencies, and III.) Comments on Individual Sections of the Report. My principal conclusions are:

Before seeking additional emergency preparedness authority or resources, FEMA should systematically, and in concert with other Federal agencies, evaluate the current authorities and resources of all Federal agencies; and

The draft report does not address in depth the issue of coordination among FEMA's components.

I. Clarification of FEMA's Emergency Management Roles

The draft report reflects some uncertainty about what FEMA's roles in response to emergencies are or ought to be. The first Weakness identified on page 25 is that "the role of the Federal Government in disaster response is neither universally clear nor accepted.... FEMA is hampered by the absence of clear legislative authority and the necessary resources to mount immediate and

Also see GCM-90-7-11

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effective emergency responses." There is general agreement that FEMA "coordinates" the response of several different Federal agencies, but there is considerable uncertainty about what that means in practice. There is also a good deal of uncertainty about how FEMA should be involved in protecting life and property, especially before the President has declared a major disaster or emergency. The possible meaning of these roles is discussed below in Subsection A. A related issue (addressed in Subsection B) is overlapping and parallel functions within FEMA.

A. FEMA as "Emergency Responder" or "Coordinator"

The first ten issues discussed in the "Issues and Recommendations" Section of the draft report deal with Federal efforts to protect lives and property when a disaster threatens or has just happened. Pages 35 - 58. They present a clear picture of FEMA's frustration at being criticized for not acting more aggressively when it did not have adequate authorities and resources to fulfill the many expectations of disaster victims and their elected representatives. Issue 2, "Federal Response in Catastrophic Situations," pages 37 - 38, raises the particular issue of FEMA's lack of authority to respond until a Governor has requested and the President has made a disaster or emergency declaration. On the other hand, the draft report acknowledges elsewhere (page 103, note 1) that the Department of Defense has emergency authority to protect lives and property from imminent danger. This authority is not contingent upon a Presidential declaration of disaster or emergency or a request from a Governor for such a declaration. There may be other authorities available to Federal agencies, but the draft report does not explore that possibility.

Clearly, the events considered in the draft report raise some fundamental issues: How can the Federal Government, as a whole, supplement State and local capabilities? Should an extended capability to respond immediately on a local level reside in FEMA? Should FEMA be expected to dispatch life-saving and property protecting help immediately, whether from its own resources or from those of other Federal agencies?

The recommendation to expand the use of the Plan for Federal Response to a Catastrophic Earthquake to cover a broad range of natural disasters (Response Recommendation No. 3, page 30) is a good one. My own recommendation is that the expanded plan needs to include far greater detail than the present one.

For FEMA to take on the role of first responder in localized emergencies would be obviously costly. That decision is a political one, and I express no view on the appropriateness of such a role for FEMA. On the other hand, FEMA has already been assigned the role of "Coordinator." That political decision was made over ten years ago when the agency was created. In my view, an essential part of FEMA's role as "Coordinator" is to catalogue the authorities and capabilities of the Federal Government and to negotiate a division of responsibilities in advance of an emergency. In light of this, it would not

be prudent to request additional emergency response authority without having first systematically explored and evaluated authorities and resources existing Government-wide.

B. FEMA's Internal Organization

One of the clearest themes articulated in the draft report is that FEMA and the Federal Government generally do not have adequate resources to respond immediately to a large scale disaster. (See pages 25 - 28 of the draft report.) One solution offered is for the Congress to provide greater resources, but the report gives insufficient attention to the alternative of making more efficient use of existing resources.

FEMA's mission, broadly stated, is to help individuals and State and local governments to protect themselves from the threat of various disasters and to recover from the effects of disasters. There are several different definitions of "emergency" in FEMA's legal authorities. The principal statutes which pertain are the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, et seq., and the Federal Civil Defense Act of 1950, as amended, 50 U.S.C. App. 2061, et seq., and there are many Executive Orders and other authorities which shape FEMA's programs. In my analysis, FEMA's mission is carried out in several distinct stages:

1. Technical assistance to State and local governments in planning and preparedness;
2. Coordination of efforts among Federal agencies, both before and at the time of an emergency;
3. Training of emergency responders and planners; guidance and technical assistance in risk assessment;
4. Civil defense and other emergency preparedness grants;
5. Direct response to immediate threats;
6. Monetary assistance for recovery after an emergency; and
7. Financial and technical assistance toward mitigation of the effects of future emergencies.

Each of the four Directorates in FEMA carries out some of these functions. Several of them are carried out in slightly different forms by two or three Directorates. In at least one place (page 41), the draft report commits FEMA to "adopt[ing] a functional approach for its own disaster response organizational structure." The organizational issues involved in a functional organization were considered in detail in a report prepared in 1988, entitled "FEMA Emergency Management Capability Project." The principal author was Dr.

John R. Powers, Senior Policy Advisor to the Associate Director for National Preparedness, and it is sometimes referred to as the "Powers Report." A copy of the unclassified Executive Summary is attached.

These organizational issues are critical because they directly affect the ability of FEMA to carry out its mission. They are not new issues and in a period of dwindling resources and escalating expectations, the analytical work which has already been done becomes even more valuable. In this vein, I would also point out that there are offices in each of the four Directorates whose task it is to develop policy, but only one poorly supported office (Program Analysis and Evaluation) which serves the entire agency. That strikes me as an especially costly inefficiency. It is inefficient since not all of the resources which might have been available at the time of Hurricane Hugo and the Loma Prieta earthquake were used. It is also inefficient because FEMA's fragmented structure and historical lack of coordination among components makes it unlikely that the available resources will ever be fully exploited.

While it was not the purpose of the draft report to suggest a different organizational structure for FEMA, it is reasonable to expect it to identify the consequences of the lack of internal coordination.

II. Criticism of the Performance of Other Federal Agencies

A. Small Business Administration (Issue 24)

Part III (Issues and Recommendations), Issue 24, makes the point that the Small Business Administration (SBA) loan application process is time-consuming and confusing and requires documentation that not every applicant can provide quickly. This section also identifies as a problem that some disaster victims perceived the Small Business Administration (SBA) loan program to be a FEMA program and they expected that the single application promoted by FEMA would be used for the loan program as well. The conclusion is offered that SBA should improve its application process.

I don't know whether this discussion in the draft report was coordinated with SBA. In any case, it does not go to the purpose of the report which was for FEMA to identify opportunities to improve its own performance. FEMA might constructively look at the possibility of 1) assisting grant applicants to gather the documentation which SBA needs or 2) making conditional individual and family grants subject to the completion of the SBA loan process in a reasonable time and repayment of the grant to the extent that the loan is granted.

B. United States Army Corps of Engineers (Issue 27)

The concern that the emergency legal authorities of the Corps of Engineers will encourage States to request assistance from the Corps rather than from FEMA, and thereby increase the share paid for by the Federal Government, would appear to be moot. The proposed legislation endorsed by the Corps seems certain to be enacted. "The Water Resources Development Act of 1990" (S. 2740) has passed the Senate; an amended version (H.R. 5314) passed the House of Representatives on September 26, 1990; the House has requested a conference.

C. Department of Defense and National Guard (Issue 28)

Issue 28, "Department of Defense and National Guard," is critical of the Department of Defense (DOD) as being confused and uncoordinated in response to Hurricane Hugo. In fact, the Directorate of Military Support (DOMS), in the Pentagon, did act appropriately in alerting U.S. Forces Command (FORSCOM) and the Commander-in-Chief, Atlantic Fleet (CINCLANT). FORSCOM and CINCLANT did carry out the mission assignments which FEMA gave them, and they briefed each other and DOMS at least daily. Base commanders did provide assistance in saving lives and protecting property, even before the disaster was declared, as footnote 1 on page 103 of the report indicates they are authorized to do. And while the Virgin Islands National Guard failed to stop looting, it is not true that the South Carolina National Guard failed to maintain order.

The first Action Required identified under Issue 28 is that "FEMA headquarters and regional offices should maintain a liaison with the Department of Defense on a continuing basis so that proper coordination for disaster response is established and maintained." FEMA has a liaison with FORSCOM stationed at Ft. McPherson, Georgia; FEMA Regions I, IV, VI, VII, IX, and X have U.S. Army Civil Preparedness Support Detachments in their offices; there is a Military Support Liaison Office located in room 801 at FEMA headquarters.

The second Action Required listed under Issue 28 was that DOMS should be prepared to alert and activate commanders of military installations in the vicinity of a disaster. DOMS routinely does this and in fact did so in Hurricane Hugo and the Loma Prieta Earthquake.

IV. Comments on Individual Sections of the Report

A. Definition of Private Non-Profit Facilities (Issue 15)

The recommended action to address this issue is, appropriately, to seek guidance from the staffs of the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation. It should also be mentioned that FEMA should eventually establish its own definition of

Private Non-Profit Facilities eligible for public assistance and publish it in the form of a regulation.

B. Federal Hazard Mitigation (Issue 16)

The proposed action is to convene a task force to recommend an executive order. I view mitigation as a critical element of FEMA's mission. The subject of mitigation does not generate much controversy; no one is flatly against it. However, it tends to be overlooked, since it usually involves significant and obvious short-term costs and indefinite long-term benefits. FEMA should be actively promoting mitigation in many different forms, even without a new executive order.

C. Department of Education (Issue 25)

The draft report proposes that FEMA assume responsibility from the Department of Education for assistance to public schools, as well as the private schools which FEMA already serves. I recommend that this be accomplished through the repeal of the Department of Education's legislative authority in this area.

D. Department of Transportation (Issue 26)

It is proposed that a Governor, when making a request for public assistance, be required to include any request for funds for repair or reconstruction of highways. FEMA cannot impose this requirement without statutory authority.

Attachments: Memorandum of July 11, 1990, to Jerry Jennings;
Executive Summary of FEMA Emergency Management Capability
Project ("Powers Report") - Unclassified

!cc: GC/Watson, Cumming, Hirsch, McPheters, FLYNN
! GC: FLYNN:hjf: 10/4/90
! Document # 0384D

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