

California's Emergency Preparedness

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Thank you for the invitation to provide my perspectives to the Commission on this important topic.

My comments draw upon my twenty years experience in various public safety related positions at the state level, first as Executive Director of the Seismic Safety Commission, then in various executive assignments with the Office of Emergency Services, including serving as Director from 1991 through 1998 and, most recently, from late 2004 through January 2005, as Interim Director of the Office of Homeland Security.

In addition to these experiences in California I have, since 2002 been a member of the Homeland Security Advisory Council that provides policy guidance to the Secretary of Homeland Security; I serve as Chair of the Council's Senior Advisory Committee on Law Enforcement, Emergency Services, Public Health and Hospitals.

My testimony is organized around the questions addressed to me in your staff's letter of December 16, 2005.

1. Based on your experience directing the Governor's Office of Emergency Services during more than a dozen federally declared disasters, what did those events reveal about the adequacy of the State's organization and authorities? What did they reveal about the State's capacity in the event of a disaster on the scale of Hurricane Katrina?

The disasters California experienced during the 1990s were unprecedented in frequency and severity – the most damaging urban fire since the 1906 San Francisco earthquake, the most severe civil unrest since the Civil War, the most costly urban earthquake in the nation's history, the first time that all 58 California counties were included in a disaster declaration, and widespread wildfires in southern California that were exceeded only by the 2003 conflagration, to cite but a few. From 1991 through 1994 the state averaged one major disaster declaration every three months.

These events tested public safety agencies at the local and state level. On balance both local and state agencies and personnel responded with great effectiveness. There were, of course, numerous challenges and lessons learned. For example, problems with integrating resources from many fire agencies during the Oakland-East Bay Hills fires of October 1991 resulted in the legislatively mandated development of the Standardized Emergency Management System (SEMS) currently used by state and local agencies. In many respects SEMS is the foundation of the National Incident Management System (NIMS) developed by the federal Department of Homeland Security.

When problems were encountered in deploying National Guard troops during the 1992 Los Angeles riots Governor Pete Wilson used his authority as Commander of the National Guard to take the still-controversial step of federalizing the Guard, placing them under the command of a regular army officer who led a Joint Task Force that responded to the crisis in Los Angeles. Working together, OES, local law enforcement and the Task Force leadership developed the operational plans, rules of engagement, and strategies used in this unprecedented circumstance.

The 1994 Northridge earthquake caused the collapse of several critical freeways. Governor Wilson used his authority under the State's Emergency Services Act to suspend normal procurement processes and institute contracts that included significant financial incentives, thereby stimulating the reconstruction of the freeways in record time.

Having been intimately involved in each of these events, and the decisions that were made, I am unable to identify a single instance in which statutory authorities were an impediment to an effective emergency response. The California Emergency Services Act gives broad authority to the Governor and, by extension, the Director of the Office of Emergency Services, to take decisive action at the time of an emergency. In turn, the Director of OES has broad authorities to coordinate the resources of all state agencies to support local governments.

A favorite question often asked about how a response to a multi-jurisdictional emergency is structured is "Who's in charge?" In many respects this isn't all that meaningful. If pressed, the answer to this question is clear – the Governor is in charge.

The Governor, having declared a state of emergency, may suspend any statute or regulation that is deemed to be an impediment to coping with the emergency and may exercise police powers in any jurisdiction in the state. The Governor may, if it is determined that local authorities are "inadequate" to cope with the emergency, declare a state of emergency without having received a request from local authorities and the state may assume "control" of the emergency response.

I believe the authorities outlined in the Emergency Services Act are adequate and appropriate; in my experience there were no circumstances in which the lack of authority – either on the part of the Governor or the Director of OES -- inhibited responses to emergencies. And I emphasize that this conclusion is based on involvement with emergencies – especially the Los Angeles riots – that were of a historic scale. Nor do I think that it is necessary to be more specific regarding the circumstances under which a

governor might invoke these powers. The fundamental issue is leadership, not statutory authority.

California's mutual aid system, created in the early 1950s as part of the civil defense initiatives of that era, remains the model for the nation. The system for mobilizing fire services' resources is historically the most robust for the simple reason that it is used most frequently. The law enforcement mutual aid system, built on the same principles as that of the fire services, is also very effective, though there are fewer instances in which large mobilizations of law enforcement mutual aid is required. Other systems – for coroners, emergency management personnel, and public works resources – are, to my knowledge, less well developed and even more infrequently utilized.

There clearly is a direct relationship between the frequency of use of the mutual aid systems and their effectiveness, and, in the absence of major events that test the systems, periodic exercises and review of operational procedures should be used to assess effectiveness. I would recommend that some attention be given to reviewing the geographic boundaries of the mutual aid regions, which have remained substantially unchanged for decades. Also, over the years there has been little change in the designation of the mutual aid coordinators for each of the regions. Periodic rotation of these responsibilities might enhance the overall effectiveness of this bedrock feature of California's emergency management system.

The question of how California's "capacity" would function in response to a Katrina-like disaster is somewhat more difficult to answer. California -- unlike Louisiana, Mississippi or Alabama -- has a long history of responding to large-scale emergencies. We have proven adept in mobilizing and managing a large quantity of resources, both personnel and materiel. California emergency officials provided much of the ICS institutional skill in attempting to organize the emergency operations in the Gulf Coast following Hurricane Katrina. Nevertheless, we have not, in recent times, been faced with a situation in which large numbers of people had to be evacuated, where the

infrastructure, especially communications, has been completely destroyed, or where whole populations have been displaced for extended periods of time.

First, some comments on evacuation. Large-scale evacuation is not, in my view, a tactic necessary for most of the disasters that threaten California. Two obvious exceptions would be for the areas surrounding the state's two operational nuclear power plants (and here federally mandated warning and evacuation plans are regularly tested and evaluated) and the risk of flooding and compromised levees in the Sacramento valley.

Current authorities place the responsibility for ordering evacuations at the local level, which I think is appropriate. I would not recommend that this authority be transferred to the state level. Rather I would look to the mutual aid system, especially that for law enforcement, to be tasked to develop the operational procedures and resource requirements for carrying out the evacuations. There is a lot to be learned from our colleagues in the hurricane-prone states – both positive and negative – about how to conduct evacuations. But it's important to understand that large-scale evacuations are inherently difficult, messy operations, beginning with the initial decision to order the evacuation and conveying instructions to the public that can be reasonably followed and clearly understood. Not easy to do effectively; a great opportunity for second guessing.

Second, some comments on the issue of conducting emergency operations should there be a complete breakdown in the communications network. Again, not an easy task. But, as in so much related to emergency management, one key is to assume that the situation is worse than is being first reported, and take aggressive action to mobilize and deploy resources. It's much better to overreact than under react, for in a major emergency once you get behind the response curve, it's extremely difficult to catch up; once the drum-beat of public and media criticism begins, reversing that perception is very hard. Restoration of the communications infrastructure inevitably involves close coordination with the private sector and, as in other regions, much more effort needs to be expended to build these relationships.

Aggressive action and massive response is fundamental to having any chance of success following a Katrina-scale disaster. The public may be understanding of mistakes that are made during an emergency; what they will not, and should not, be tolerant of is indecision and partisan divisiveness instead of action.

Finally, some comments on the problem of massive dislocation of populations like we saw with Katrina. This is inherently a very difficult challenge. Is California prepared to manage a situation in which thousands of people are displaced for extended periods of time? Probably not. Should we try and devise strategies in advance of being confronted with such a scenario? Yes. Do we need to change the structure and authorities of our emergency systems to do so? I don't think so.

- 2. State organization and authorities. State statute envisions an emergency scenario that would require state control of responses. Please comment on the adequacy of existing criteria for the State to take over response to an emergency and identify who would be charged with triggering state control. Please identify the specific conditions that must be met for the State to assume control of an emergency and comment on the political and practical challenges to a declaration of State control. Please comment on the adequacy of the existing authorities of the Director of Homeland Security and the Director of Emergency services in preparing for and responding to a disaster that would overwhelm local authorities.**

As referenced above, I believe that current authorities adequately address a situation in which the state would take control of an emergency response. As I understand the Emergency Services Act, the authorities are clear. The Governor may order that the State is assuming control of a response if it is determined that “. . . local authority is inadequate to cope with the emergency.” In addition, the Governor may temporarily set aside any state or local law or regulation that would inhibit the timely delivery of resources necessary to address the impact of the emergency. I would be hesitant to recommend any change; current provisions appear to me to be sufficient. I don't feel that

enumerating “specific conditions” to be met for the state to assume control would be a beneficial exercise.

Clearly there are significant “political and practical challenges” to any declaration of state control. Short of a situation in which local leadership was physically incapacitated by an emergency, i.e. local leadership were victims of the disaster, I think it unlikely that any Governor would formally declare that local authority was “inadequate”. Such a decision would be immediately suspect for partisan or political motives. Were I in the position of Director of Emergency Services during such a situation I would recommend to the Governor that even if the state de facto assumed operational control of the disaster response, that there be no formal finding that local authorities are “inadequate.” I see no useful purpose to be served by such a declaration – though the privately conveyed hint of such action might have a salutary effect, making it important that the current broadly worded authority not be altered.

Under current state organizational arrangements, the responsibility for developing plans for both natural and man-made emergencies rests with the Director of the Office of Emergency Services acting on behalf of the Governor. While various organizational structures exist across the nation regarding emergency services – in many states the function is part of the military department, in others it is a division of state police, in one state it is part of a community affairs department – I strongly support the structure that exists in California where emergency services is part of the Governor’s office. This provides the Director with access to the state’s chief executive, participation in Cabinet meetings and enhances the authority necessary to achieve coordination with other state agencies.

Having served both as Director of OES and Director of the Office of Homeland Security I see no inherent conflict or reason for confusion regarding the relative roles and responsibilities of the two departments. The OES Director has operational responsibility for preparing for, managing the response and recovering from emergencies and disasters (including administering the federal mitigation grant program); the Director of Homeland

Security is responsible for developing and coordinating the overall state homeland security strategy, including developing mechanisms for detection and prevention of possible terrorist attacks, identifying vulnerabilities and administering the various federal grant programs – the State Homeland Security Grant Program, the Urban Area Security Initiative, the Law Enforcement Terrorism Prevention Program, the Buffer Zone Protection Program, etc.

3. State-federal relationship. Please comment on the strengths and weaknesses of the National Incident Management System (NIMS), and what difficulties you would expect California to encounter in establishing a coordinated federal and state response to a large-scale event.

As several witnesses to appear before the Commission have noted, the National Incident Management System (NIMS), is based substantially on the Incident Command System (ICS), the Multi-Agency Coordination System (MACS) and the Standardized Emergency Management System (SEMS), each of which originated in California. It is, therefore, a relatively short step for state and local agencies in California to become compliant with NIMS.

It is important to recognize that NIMS is not simply ICS applied on a national scale. NIMS incorporates the precepts and structures of the MACS, which has been used for decades to manage large mobilizations of local, state and federal fire fighting resources in California and throughout the west. Properly understood and applied NIMS should be able to accommodate the requirements of a large-scale emergency. The challenge comes in developing the institutional knowledge in the many agencies at the federal, state and local level that would be called upon to respond to a large-scale emergency.

Progress is being made. Virtually every state uses some form of ICS, and with federal requirements that public agencies adopt NIMS, steady progress should be made in developing the institutional expertise to properly apply NIMS. There is a particular

challenge in bringing federal agencies into compliance with NIMS; outside the U.S. Forest Service and the Coast Guard, the basic principles of ICS are inconsistently utilized. Training, exercises, and use in every response, are key to institutionalizing the use of NIMS. This will be an on-going process. Even in the fire services here in California, use of some of the most effective features of ICS/MACS (the concept of Area Command for example) was, in the 1993 fires in southern California problematic, since it was essentially the first time that the then generation of fire commanders had been required to use the structure. So on-going training is essential.

California recently took an important step to enhance its ability to utilize resources from across the nation when it became the 49th state to join the Emergency Management Assistance Compact (EMAC). EMAC allows for the formal interstate exchange of resources during major emergencies. California's membership in EMAC is especially important should we need to call on other states for assistance in the aftermath of a large-scale emergency. I would urge the Legislature to make California's membership in EMAC permanent.

I anticipate that the greatest challenge that California would encounter in establishing a coordinated response to a large-scale disaster would involve the operation of a unified command. Except for the fire services, we have little experience with utilizing a local-state-federal unified command. The basic principles of unified command – all agencies/jurisdictions that have legal authority and responsibility should be involved in developing the action plans and operational priorities – are, in my view, sound.

It may be tempting to jump to the question, "Well who's in charge?" Formally I would maintain, again, that it is the Governor. For the system to work effectively, however, the on-the-ground decisions will – in my experience – be the result of an inherently complex consensus decision process. There are, of course, many ways in which this can go awry. Political cross currents are inevitable and there will always be opportunities for mischief. To the organizational purist -- or an academician -- this answer may seem unacceptably messy. I would counter that, much like democracy itself,

the system isn't perfect, but it's far better than any other alternative. It is illusory, I think, to believe that a tidy "command and control" structure is going to be established in an inherently complex intergovernmental environment.

Conclusion

California has every reason to be enormously proud of its record of preparing for and responding to disasters. At the same time, we shouldn't be lulled into complacency. Despite the scale of the emergencies that we have managed with considerable effectiveness, there are plausible scenarios that portend problems beyond what we have yet experienced – a large-magnitude earthquake directly underneath one of our metropolitan areas during daytime with widespread structural collapse; rapid onset flooding in the central valley; a biological terrorist attack. A preparedness issue that we need to pay particular attention to is the potential for pandemic flu – the challenges in this scenario would be very difficult to manage on a number of fronts -- the medical response, maintaining public confidence, very difficult judgments relating to quarantines, and the economic impact, to highlight a few considerations.

In all this there are two elements that I believe are fundamental – leadership from key elected and appointed officials – and use of basic systems – mutual aid, incident command, and proactive, timely public information.

In many respects effective emergency management is counter punching – the actual emergencies we confront are very often not those we identify in advance. Planning and exercises – especially exercises – are of course important, but we should be mindful of General Eisenhower's statement that plans go out the window as soon as the first shot is fired. The planning processes and the response systems are fundamental; in the real world, few people consult the plans once the disaster has occurred.

While we need to learn from events like Katrina, we also need to be careful of not being the generals planning for the last war. We should build on what we have spent

decades developing, enhance capabilities where gaps exist – in communications, medical surge capacity, preparation for pandemic flu, for example – build new partnerships – like with the private sector– and not argue over what I believe are largely irrelevant issues like the circumstances under which the state might assume command from local authorities.