

**Statement of Mark C. Merritt, Sr. VP and Partner,
James Lee Witt Associates, a part of Global Options Group Inc.**

**Before the Ad Hoc Subcommittee on Disaster Recovery of the
U.S. Senate Committee on Homeland Security and Government Affairs**

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FEMA's Project Worksheets: Addressing a Prominent Obstacle to the Gulf Coast Rebuilding

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Madam Chair and distinguished members of the committee, thank you for inviting me to participate in today's hearing. I appreciate the opportunity to come before you to discuss the impact of Project Worksheets (PWs) on local recovery efforts and on the overall allocation of public assistance dollars. My testimony has been shaped by my perspective of working on these issues in both the public and the private sector and at all levels of government – Federal, State, and local.

I had the honor and privilege to work for the Federal Emergency Management Agency (FEMA) from 1993-2001 on hundreds of disaster responses from the Great Midwest Flood of 1993 to the catastrophic Northridge Earthquake experienced by the Los Angeles area in 1994, to the bombing of the Murrah Federal Building in 1995. Before leaving FEMA, Director James Lee Witt made it a priority to closeout the open projects associated with the large number of disasters that occurred on his watch as well as those disaster recovery operations that he had inherited including Hurricane Iniki in Hawaii, the Loma Prieta Earthquake impacting the San Francisco Bay Area, and Hurricanes Hugo and Andrew that struck the Carolinas and Florida.

During my time at FEMA, I developed a great respect for the career civil service employees who had been with the Agency since its inception in 1979, struggled to help political leadership to define the mission of FEMA in the 1980s, and then excelled in the 1990's as the Agency became recognized as the shining example of government re-invention and innovation. The folks I worked with at FEMA throughout the 1990's were some of the most dedicated and creative problem-solvers with whom I have ever worked. To me, this is high praise for these great public servants since I am a graduate of West Point who also served with some of the finest in the first Gulf War. My experience, and the experience of state and local emergency management professionals during the 1990s, was that when you dealt with FEMA, you were working with best of the best. These were people who knew how to get things done. They were people who knew how to quickly identify and meet the needs of individuals and communities struggling to recover from a disaster. Most of all, emergency managers and disaster victims experienced people who cared about making a difference and helping their fellow citizens in need. This approach reflected Director Witt's mantra during his two terms as FEMA Director that we should be an agency of "People helping People".

Sadly, that has not always been the experience that I or other emergency managers have had when working with FEMA on disaster recovery issues over the past few years. FEMA and DHS have not empowered the field staff to become problem-solvers capable of making decisions and creatively addressing the unique issues that arise during every disaster. And the Agency no longer utilizes all of the talent that it has, nor possesses staff and support personnel with sufficient qualifications to deal with catastrophic disasters. For example, when FEMA was faced with not having enough qualified staff and contractors after Katrina and Rita, to their credit, they established FEMA University near Dulles Airport. However, the impact of them not having enough qualified staff was that more than 80% of the people they sent to Louisiana had only 9 days of training and no real-world experience. FEMA no longer relies on or allows the Regional Office staff to be involved with disaster response and recovery efforts. These Regional personnel are the experienced staff with in-depth knowledge of the programs and long-standing relationships with state and local emergency managers. Yet often their knowledge and expertise is not utilized, and they are not empowered to make decisions and instead are being micro-managed from both FEMA and DHS back in Washington, DC.

My experience leading the special disaster closeout teams required that I become intimately familiar with the Stafford Act, 44 CFR, and the body of knowledge and experience codified throughout the years through various FEMA policies and precedent. I know how flexible the laws, regulations, and policies governing FEMA disaster recovery programs can be. They are written broadly enough to be adapted to a variety of situations since no two disasters are alike and there are unique needs and new lessons that are learned on each disaster – particularly those that are considered to be catastrophic.

What it comes down to is this: The Stafford Act, 44 CFR, and the 9500 Series, which is the compendium of policies for FEMA's Public Assistance (PA) Program, outline **all** of what cannot be funded by the PA Program and **some** of what can be funded by the Program. The idea was to place boundaries on what is possible, yet provide maximum flexibility within the law to meet critical disaster needs. However, FEMA's current leadership has been working under the philosophy that unless something is specifically mentioned in the law, regulations, or policy then it cannot be done.

To speed recovery, there should be a two-part test for administering the PA Program. The first question that FEMA staff should be asking is whether a certain course of action is prohibited. If the issue in question is not prohibited explicitly by law, regulation, or policy then the next question asked should be, does it make sense? If it passes both tests, every effort should be made to allow the course of action to proceed. Unfortunately, this is not how the Public Assistance program – or any authority under the Stafford Act, for that matter – is currently being managed.

Similarly, FEMA has adopted a very narrow stance regarding the use of mitigation funding available under Section 406 of the Public Assistance Program. 406 Mitigation funding can be approved to mitigate the impact of future disaster losses at the time a facility is being repaired or rebuilt, as long as those actions are found to be cost-beneficial. Unfortunately, only 2% of PWs written in this disaster for permanent restorative work include 406 Mitigation funding to help Louisiana communities become more disaster-resistant. The most common reason given for not implementing this important tool in our disaster recovery toolkit is that doing so would have taken too much time when writing up PWs. In fact, a conscious decision was

made to NOT write 406 mitigation into the PWs for this reason. This extremely short-sighted approach has all too often been the governing philosophy when writing PWs and in the administration of this program. After many protests by the State, FEMA has begun to remedy this situation by going back and adding mitigation measures to previously written PWs; however going back after the initial PWs were approved and the applicant's design and construction has begun can cause delays, increase costs, and result in missed opportunities.

Another issue related to 406 Mitigation funding in PWs is that it is not being considered in a holistic and systemic manner designed to avoid future losses and maximize the effectiveness of Federal money spent on reconstruction. For example, if a facility like a hospital had 100 windows, 40 of which were broken allowing water and wind to destroy millions of dollars of contents, FEMA will only allow funding for hurricane shutters to be installed on the 40 windows that were damaged in the disaster. By denying funding to install shutters on the other 60 windows, we will continued to have a structure with the majority of its windows left unprotected and the entire structure – including the contents that the Federal government just paid to replace – will remain vulnerable to the same risk of loss in the next event.

The FEMA I knew, under Director Witt, was an agency that looked for any way possible, within the existing laws and regulations, to help individuals and communities to fully recover from a disaster and to mitigate the impact of future disasters. If we found that the laws or regulations were such that they no longer served the citizens or our state and local partners well, then we would work with Congress to explore legislative fixes that might be appropriate. Generally, I believe FEMA has been given the authority and discretion by Congress to be flexible when addressing the unique situations created by most disasters.

While the Public Assistance process is well suited to appropriately balance the need to quickly distribute recovery funding with the need to be good stewards of the taxpayer dollars, I also believe that we need to examine whether this process is suitable for addressing the needs created by catastrophic disasters or whether the typical rules and assumptions are so different in a catastrophic event that we look to further streamline the normal processes.

Colonel Smith's testimony today does a very good job of illustrating the difficulties the State of Louisiana has experienced with the PW process as applied to Hurricanes Katrina and Rita. His examples highlight the fact that the PWs written in this disaster are chronically underfunded and/or poorly scoped. Colonel Smith's testimony also does a very good job of summarizing the primary reasons for these problems including FEMA's priority for meeting arbitrarily established management goals over demonstrated progress in the rebuilding process, FEMA's failure to take into account local factors impacting the increased cost of construction, and the lack of experienced staff working for FEMA on this disaster.

I do not fault FEMA and DHS for establishing management goals to measure the progress in the recovery effort; however, measuring progress by the number of PWs that have been entered into the system creates a situation where incomplete or inaccurate PWs are entered into the system on a regular basis. The measure of our progress should be outcomes-based and should emphasize completeness, accuracy, **and** speed of recovery. For instance, we should be counting the number of schools reopened, the number of sewer and water plants back online, and the percentage of the infrastructure repaired that would allow people to return to their homes, rather than the number of PWs entered into FEMA's financial

management system. To do this, we must have well written PWs that include a complete scope of work and accurate cost estimates that will ensure we are making real progress in the recovery effort.

The problem of inaccurate construction cost estimates is having a significant impact on the ability of Louisiana communities to move forward. There have been far too many examples where the cost estimates have been found to be significantly lower than the actual costs. This trend not only places additional financial stress on the parishes, but it undermines confidence in the entire PW process. Communities do not want to move forward with their rebuilding efforts when there are significant discrepancies in cost estimates.

The lack of experienced staff with true authority in the field not only bogs down the recovery progress, but it represents a real missed opportunity for FEMA. Following the Northridge Earthquake, the Associate Director for Response and Recovery - along with his key staff - spent significant amounts of time on the ground working in Pasadena. Not only did the Agency recognize that they needed to have their first team on the ground to make sure that the recovery efforts were being handled correctly, but I think we all came to recognize that the Northridge Earthquake was a living laboratory for our programs. The unique situations resulting from a huge catastrophic event will fully stress the system, laws, regulations, and policies. So much of what came out of that Northridge experience became the point of reference for modifications to our policies and procedures in the intervening years. While we needed the A Team fully engaged with Northridge and spending time in California during the first years, I later realized, while leading the disaster closeout teams, how it was even more important to have the key decision-makers out in the field many years after the fact when progress on certain projects had stalled. The complex policy issues - that rise to the surface several years into a disaster recovery - again required direct involvement of Agency officials at the highest levels for resolution.

While leading the disaster closeout teams, I made sure to get the key players for the Inspector General, the Office of General Counsel, and the FEMA Director's Office out to meet with state and local officials so they could understand the difficult issues at the level where they existed. There is a sense of urgency and an appreciation for a difficulty of a situation that can only be understood when those who are empowered to make programmatic fixes and to engage in creative problem-solving have rolled up their sleeves onsite at a disaster instead of sitting at their desks in Washington, DC or a Regional Office. Unfortunately, I do not see many of the same high-level people, who are empowered to make programmatic fixes, sitting with us in Baton Rouge these days. The absence of the Agency's senior leadership in the field is hurting the recovery effort in Louisiana and it is not allowing FEMA to seize the opportunity for improving the responsiveness of our assistance programs in preparation for the next catastrophic disaster.

Madam Chair, I applaud your efforts with this hearing today and suspect that this dialogue that you, and the Committee, have opened with FEMA and DHS may give us insight into whether legislative fixes are in order or whether the existing laws, regulations, and policies allow the flexibility and discretion necessary to provide for a quick and complete recovery in the State of Louisiana.

Thank you and I would be glad to answer any of your questions.