

Local Governments, Businesses and Citizens File Suit Against the Federal Emergency Management Agency to Block Faulty Flood Insurance Maps

COLLINSVILLE, IL November 15, 2010 -- The state's attorneys of Madison, St. Clair and Monroe Counties, along with a group of municipalities and individuals, filed suit today in federal court against the Federal Emergency Management Agency and its director Craig Fugate. The purpose of the suit is to invalidate new flood insurance rate maps that FEMA is planning to issue next year.

In August 2007 FEMA announced that the levee system protecting a large area in Madison, St. Clair and Monroe counties no longer provided protection from a 100-year flood, and those levees would effectively be removed from flood insurance maps. This means that most homeowners and businesses in the 174 square mile area known as the American Bottom would be required to purchase costly flood insurance. The total cost of flood insurance has been estimated at \$50 million annually. Also, any new building would need to be raised to a level higher than the projected flood elevation, which might be as much as 15-20 feet higher than surrounding ground.

Alan Dunstan, County Board Chair of Madison County, noted that "FEMA has a massive deficit in their flood insurance fund, and their decision to de-accredit our levees seems like a hasty and unjustified attempt to extract insurance premiums from our area to help restore the solvency of the fund."

The affected levee systems were designed and built in the 1940's and 1950's by the Corps of Engineers, and the Corps has acknowledged that most of the problems alleged by FEMA are a result of a deficiency in the original design. Since the levees were originally constructed, there has never been a structural failure resulting in flooding from the Mississippi River.

Since the announcement of the FEMA decision, county leaders have repeatedly requested data, analysis, and studies from FEMA and from the U.S. Army Corps of Engineers to determine whether the decision was justified. To-date, these agencies have not been able to produce the information to justify FEMA's action.

"We are taking this action very reluctantly, but FEMA has left us with little choice but to file this lawsuit to protect the rights of citizens and businesses of the area behind the levees and to protect the economy of the region," said Mark Kern, County Board Chair of St. Clair County.

The principal claims of the lawsuit are:

1. FEMA did not produce the information to justify the agency's decision to de-accredit the area's levee systems.
2. FEMA denied lawfully submitted appeals of their decision, despite information contained in those appeals demonstrating that the agency used archaic data and faulty analysis.
3. FEMA has acted to de-accredit area levee systems despite thorough annual and periodic inspections by the Corps of Engineers indicating that the levee systems are in acceptable condition and will "perform as expected," an action that is unprecedented.
4. FEMA did not follow the requirements of the law and their own regulations to consult with local officials about the alleged "studies" that were used to justify their decision, nor did FEMA provide local officials with sufficient notice to prepare and submit information about the condition of the levee system that might have affected the agency's decision.

The FEMA decision to de-accredit the area's levee systems and label a large part of the region as a flood hazard area on new flood insurance rate maps will have a devastating economic impact on the region. The plaintiffs in the lawsuit believe that FEMA's action is arbitrary and that the agency did not provide local communities with the opportunity to participate in the decision-making process as the law requires.

After the FEMA decision in 2007, local officials acted with great urgency to improve flood protection. A new tax was authorized by the Illinois General Assembly and passed by each of the three affected counties. The Southwestern Illinois Flood Prevention District Council was created to improve the levee systems to reduce flood risk and assure that all applicable standards will be met. The Council is now inspecting the levee system and collecting data to determine the extent of any needed improvements. "Our region has acted responsibly to protect public safety by continuing to improve our levee systems. If FEMA believes that their objective is to reduce risk they should be supporting our efforts, rather than penalizing us," said Delbert Wittenauer, Chair of the Monroe County Board.

Local officials have repeatedly appealed to federal agencies to recognize the area's good-faith efforts to reduce flood risk and to acknowledge the shortcomings of the preliminary flood insurance maps by delaying the issuance of final maps.