

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS**

The County of Madison,	)	
State of Illinois, et al.	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No: 3:10-CV-00919-JPG-DGW
	)	
The Federal Emergency	)	
Management Agency, et al.	)	
	)	
Defendants.	)	

**DECLARATION OF LES STERMAN**

I, Les Sterman, declare as follows:

1. I am and have been since July, 2009, the Chief Supervisor of Construction and the Works for the Southwestern Illinois Flood Prevention District Council (“the District Council”). The District Council was created pursuant to the Illinois Flood Prevention District Act, 70 ILCS 750/1, and an intergovernmental agreement between Madison, Monroe and St. Clair Counties in Illinois. The affairs of the District Council are managed by a board of directors appointed by the Chairman of the County Boards of Madison, Monroe and St. Clair Counties. Those board members have engaged me as the chief employee. The District Council has numerous powers relating to the improvement of flood protection systems within Madison, Monroe and St. Clair Counties, including monitoring and engaging in dialogue with the State and Federal agencies regulating those levees, which include the Federal Emergency Management Agency (FEMA) and the US Army Corps of Engineers (USACE).

2. Before coming to the District Council, I was the Executive Director of the East-West Gateway Council of Governments-St. Louis, Missouri. That entity was and is designated by state and local governments as the metropolitan planning organization for the Bi-State area. Its board of directors is comprised of the chief elected officials of the above three Illinois counties and five counties in Missouri, all comprising the St. Louis metropolitan area.

3. My education and work experience over a forty year period is in civil engineering and urban planning. I graduated from Rensselaer Polytechnic Institute with a Bachelor of Science in Civil Engineering and a Masters in Urban and Environmental Studies in 1971.

4. Since August 2007 and until the present, I have served in a support and liaison role relating to levee issues for the elected and appointed officials of Madison, Monroe and St. Clair Counties, for the communities in those counties in the American Bottom Areas, and, as well, for the four levee districts in the area. Those districts, whose levees protect the American Bottoms area from flooding on the Mississippi River, are the Wood River Drainage and Levee District, the Metro East Sanitary District, the Prairie duPont Levee and Sanitary District and the Fish Lake Drainage and Levee District. Since August 2007, I have engaged in extensive meetings, correspondence, and dialogues relating to the Metro East Levee systems with community officials, with elected officials, with officials from USACE, and, on a limited basis, with officials from FEMA.

5. I have read the Declaration of David Bascom, a FEMA Program Specialist, that is attached as Exhibit 1 to FEMA's Consolidated Motion to Dismiss and Opposition to Plaintiff's motion for Preliminary Injunction (Document 26-1). Although I

have attended virtually every one of the meetings involving community officials and regarding the Metro East Levee systems and FEMA or involving FEMA's decision to de-accredit these levees since that was first announced in August 2007, I am unfamiliar with Mr. Bascom.

6. In his Declaration, Mr. Bascom makes the statement in paragraph 9 that: "In addition, though the statutorily prescribed appeal period concluded on October 20, 2009, FEMA is willing to accept from Plaintiff's any data and documentation pertaining to the adequacy of the American Bottoms Levee Systems. If any such information is submitted prior to the LFD that demonstrates to FEMA's satisfaction that the levee system(s) comply with the requirements of 44 CFR §6510, the preliminary DFIRMs will be accordingly modified."

7. This statement is misleading. Likewise, similar statements from FEMA contained in the September 20, 2010 appeal resolution letters to the Administrative Appeal Plaintiffs (see Exhs. 21-30 to the Complaint) are misleading. It is accurate that FEMA has stated on a number of occasions in a general fashion that it would accept information regarding the levees. However, when asked directly about accepting information seeking to challenge the de-accreditation decision, the agency's representatives have clearly stated that any new information would not change their decision. It has furthermore kept secret the information it says it has to support the decision. At two meetings that I attended between FEMA and local communities in the last two years, FEMA has rejected any further reconsideration of its stated intent to de-accredit the Metro-East Levee Systems, and the agency's representative would not even

entertain a discussion of the subject. And more recently, FEMA has totally refused to communicate with me about the levees because of the pendency of this lawsuit.

8. FEMA first announced its decision to de-accredit the Metro-East Levees at a “levee summit” meeting with local community leaders on August 15, 2007. The bases for this decision, according to FEMA, were “studies completed” by USACE. While I was not at this meeting, members of my staff were, and I have photographs as well as a PowerPoint referenced by FEMA. A copy of the relevant page of the PowerPoint referenced by FEMA is attached as Exhibit A. The same PowerPoint noted that: “[A]ll Illinois levees in the St. Louis District have an acceptable or minimally acceptable rating.” See Exhibit B hereto. As an engineer who has worked with levee issues for a number of years, I am familiar with the standards employed by USACE in its inspections under Public Law 84-99, and with the 44 C.F.R. 65.10 standards employed by FEMA. The USACE standards are more stringent and exacting.

9. This “levee summit” meeting was not initiated by FEMA. Rather, it was called at the request of U.S. Rep. Jerry Costello. FEMA had given no warning or notice of the de-accreditation issue to any local official prior to this meeting. Nor had FEMA consulted with local elected officials or community leaders prior to this meeting. Nor had FEMA given any notice of the conduct of “studies”; nor had it allowed the communities or interested persons the opportunity to bring relevant data on the question to FEMA’s attention.

10. Shortly after this “levee summit”, Congressman Costello and the county board chairmen asked the East-West Gateway Council of Government, which I headed at the time, to assume the liaison and support role that I reference above.

11. On October 5, 2007, FEMA sent a letter to local officials and elected officials notifying them that the Metro East Levee Systems, while currently accredited, would be de-accredited. An exemplar of this letter is Exhibit 7 to the Complaint. The basis for this decision was cited as the receipt of information from USACE. The result, according to the letter, was that the levees “will be de-accredited and therefore will not be shown on the future DFIRM as providing protection from the base flood.”

12. The physical result of the “studies completed” referenced in paragraph 8 above and the de-accreditation decision announced at the “levee summit” and in the Oct. 5, 2007 letters is a modification of the base flood elevations (BFEs) in the American Bottoms. The modification occurs because the current FIRMs show the landward side of the levees as largely Zone X (except for some minor ponding areas), meaning a BFE of 0, while the proposed FIRMs (or DFIRMs) show no Zone X but rather BFE lines bearing a BFE of in excess of 400 feet. This modification in the BFEs can be seen by comparing Exhibit 1 to the Complaint, the existing FIRM for downtown East St. Louis, with Exhibits 2 and 3, the proposed FIRMS for that area.

13. At no time prior to the Aug. 15, 2007 “levee summit” or the issuance of the Oct. 5, 2007 de-accreditation letters did FEMA notify local officials of the initiation or progress of any USACE studies or investigations relating to the FEMA flood insurance remapping, or the manner in which any such studies would be undertaken, or the general principles to be applied, or of the intended use of the data to be obtained. Nor did FEMA notify any local officials of the communities’ role in establishing the BFEs, or of the need for bringing relevant data forward.

14. FEMA officials did meet with local officials after Oct. 5, 2007, which meetings I attended. The FEMA officials did not discuss the de-accreditation studies, other than to say that they had definitive data in hand, and that, once the USACE had provided them with a statement that expressed doubt or uncertainty that area levee systems could meet the standard of 44CFR 65.10, they had no choice except to de-accredit the levees, no matter what information was received from any other party. FEMA officials left absolutely no doubt that the de-accreditation decision was final and not subject to further discussion or debate. Their entire focus was on assisting local officials with planning for the aftermath of de-accreditation, including preparation of a request for AR Zone status for the area landward of the levees, which entailed accepting FEMA's decision to de-accredit the levees on the up-coming FIRMs as a given. FEMA was unambiguous in all its communication with local officials that de-accreditation was a given.

15. As we became more knowledgeable about the subject matter, both local officials and I have asked FEMA on a number of occasions for the studies FEMA referenced on Aug. 15 and Oct. 5, 2007 that allegedly supported the de-accreditation decision. While FEMA has said that it has such studies, it has never given them to us. While FEMA has provided voluminous, mostly irrelevant materials in response to our requests, they have not produced any data, analysis or studies that supported the de-accreditation decision. Neither could the Corps of Engineers produce such information. I have never seen the studies that purport to support FEMA's de-accreditation decision and I know of no one in the Metro East area who has seen such studies either.

16. In December 2008, I wrote to FEMA to inquire why FEMA made formal requests to the levee districts on the Missouri side of the metropolitan area to provide information regarding compliance with FEMA's regulatory standard at 44 C.F.R. 65.10. while never asking the same of the Metro East Levee districts or communities. That letter went unanswered for three months, except for a completely unresponsive reply to Congressman Costello following his inquiry about the whereabouts of a response to me. At that point, Congressman Costello then arranged a meeting in the St. Louis area.

17. That meeting occurred on April 6, 2009 at the offices of East West Gateway. Attending from the communities were: Alan Dunstan, the Madison County Board Chair, Joe Parente, on his staff, Mark Kern, the St. Clair County Board Chair, Dan Maher, on his staff, Delbert Wittenauer, the Monroe County Board Chair, Alvin Parks, the Mayor of East St. Louis, myself and others on my staff. Attending for FEMA were Doug Bellomo from headquarters, Ken Hinterlong, Melissa Janssen, Bob Franke, Rick Nusz, two USACE employees, and perhaps others.

18. At that April 6, 2009 meeting, we made a direct request to the FEMA representatives to allow the Metro East levee districts to provide certification information. The FEMA representatives told us that they could not consider any additional information because they already had information in-hand from USACE that suggested that local levee systems might not meet FEMA standards, and with that foreknowledge by FEMA and the Corps the agency had no choice but to de-accredit the area levee system. Mr. Bellomo said at one point that we would have to agree to disagree on this question.

19. The next meeting we had with FEMA where the subject of submitting more information regarding accreditation came up was on December 15 and 16, 2009, when David Schein of FEMA came to the Metro East area with other FEMA personnel. There were two days of meetings with community leaders and officials, as well as developers, lenders and insurance agents. While FEMA at the outset limited any discussion at the meeting to flood insurance post de-accreditation, attendees expressed great frustration with FEMA's inability or unwillingness to discuss the basis for the de-accreditation decision. During one of those meetings, I had an exchange with Laurie Smith-Kuypers, FEMA outreach specialist, and specifically asked whether FEMA had the information to support de-accreditation. She assured me that they did indeed have such information and suggested that perhaps our request went to the wrong people in the organization and that she would make sure that we got it. That never happened.

20. My most recent communication with FEMA was a letter I sent on Sept. 23, 2010 to W. Craig Fugate, the FEMA Administrator and Norbert Schwartz with the agency's Region 5 office in Chicago. I pointed out that the agency was acting contrary to applicable law in issuing new preliminary FIRMS for neighboring Missouri counties. I noted that the Metro East communities had submitted data challenging the preliminary Illinois FIRMS, and I asked that FEMA issue new preliminary maps for the Illinois communities. A copy of my letter is attached as Exhibit C.

21. FEMA answered my letter three months later on December 29, 2010. The agency noted that this lawsuit had been filed, and stated: "[a]s a result, FEMA is unable to respond to your request outside of the referenced lawsuit." See Exhibit D attached.



22. In paragraph 6 of his affidavit, Mr. Bascom references an issue with a creek in Highland, Illinois. I am not familiar with this issue, except to say that Highland is 25 miles from the American Bottoms. Moreover, the appeals process here is over, in that FEMA resolved the appeals here on September 20, 2010.

23. In paragraph 7 of his affidavit, Mr. Bascom cites a report by Juneau Associates and others submitted by the Plaintiffs in their administrative appeals to FEMA. He states that the report did not contain information or analysis of the Metro East Levee Systems. While this statement is generally accurate, the 90-day appeal period did not allow for the kind of extensive and costly studies that would be needed to challenge the Mississippi River BFEs and the effectiveness of the levee systems. Indeed FEMA had previously informed us that their decision on that matter was effectively not subject to dispute (see 18 above). Rather, we chose to submit information relating to the BFE for tributary streams, information that clearly demonstrated that the preliminary maps were seriously defective. Those defects related to FEMA's use of outdated information (even when newer information was available) and unreliable analysis that was contradicted by empirical data and observation. In our view, the Juneau report cast very serious doubt on the overall quality and credibility of the preliminary maps. Moreover, Mr. Bascom fails to note that each of the appeals cited over 10 of the then current annual inspection reports and periodic inspection reports of the levees by USACE, every one of which concluded that the levee systems would "perform as intended" during the net design flood event (nominally a 500-year flood – far exceeding the FEMA standard). Not only were these reports directly cited for FEMA's consideration, but they are also commonly available. Each of the USACE reports,

prepared by engineers, contained a wealth of detailed scientific and technical data supporting their conclusions the Metro East Levee System are sound and meet USACE's standards, and express conclusions that are wholly inconsistent with the Corps' alleged statements or studies that led FEMA to decide to de-accredit the Metro East levees.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ February 18, 2011.



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Les Sterman