

**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.)	

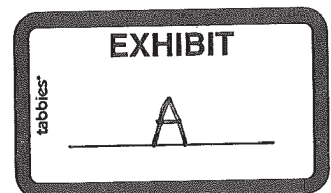
DECLARATION OF HARRY WILSON
RE ADMINISTRATIVE RECORD

HARRY B. WILSON makes the following declaration:

1. I am a member of the bar of this Court and am one of the counsel of record for the Plaintiffs in this case.

2. Defendants Federal Emergency Management Agency, D. Craig Fugate and The Department of Homeland Security (all hereafter "FEMA") filed the Administrative Record in this case on February 24, 2011. FEMA had provided a copy of the Record to Plaintiffs' counsel on the day before, namely, February 23, 2011.

3. The Record as filed by FEMA is in three sets of documents, with one set each for the three Plaintiff counties, namely, Madison, St. Clair and Monroe Counties. While FEMA provided an index for each set of records, the agency did not number the documents. Plaintiffs' counsel have numbered the documents in the Record.



4. I have personally reviewed all of the documents in each of the three sets of the Administrative Record. I provide this declaration to summarize portions of the voluminous Record relating to issues raised in pending motions.

5. The Record does include the October 5, 2007 letters from FEMA to the CEOs and other leaders of the communities in the American Bottoms notifying them of FEMA's intent to de-accredit the Metro East Levee Systems. (An exemplar of one of these identical letters is attached as Exhibit 7 to the Complaint.) These letters are the first writings in the Record discussing de-accreditation. Those letters all state: “[s]ince the levees and levees systems identified above [the five Metro East Levee Systems] do not meet the requirements set forth in 44 CFR 65.10, they will be de-accredited and therefore will not be shown on the future DFIRM as providing protection from the base flood.”

6. The October 5, 2007 letters also state that: “[r]ecently, FEMA was informed by the U.S. Army Corps of Engineers (USACE) that they have determined the levees identified above do not meet the requirements set forth in . . . 44 CFR 65.10”

7. There are no scientific or technical facts, or data of any kind, or studies, or investigations in the Record showing or suggesting that the Metro East Levee Systems do not meet the requirements of 44 CFR 65.10.

8. There are no USACE determinations or studies or findings in the Record stating, demonstrating or concluding that the Metro East Levee Systems do not meet the requirements of 44 CFR 65.10.

9. Neither FEMA nor the USACE have provided copies of the alleged 2007 study in response to numerous FOIA requests.

10. There is a PowerPoint program, apparently prepared by an unidentified USACE person, entitled “St. Louis District Illinois Urban Levees, FEMA Question – Is there any information that indicates that the levee can not pass the 100-year flood without flood fighting?” See, FEMA-AR-MAD0001904-20. The person who prepared this summary notes potential problems with seepage due to a design deficiency. As to the four levee systems owned by the Plaintiffs levee districts, the summary notes: “Calculated Factors of Safety (FS) indicate that seepage will be a problem and reduces confidence that the levee system can pass the 100-year flood without flood fighting.” The same summary also addresses the Chain of Rocks Canal East Levee (which is between the Wood River and MESD systems). This system is owned and operated by USACE. This page notes that: “No Anticipated Problems When Implementing COR Flood Operating Plan.”

11. The Record also contains a purported flood insurance study that contains a bald assertion that the levee systems do not comply with 44 C.F.R. § 65.10, but there is neither explanation nor evidence to support that assertion.

12. There are no documents in the Record showing that FEMA consulted about the de-accreditation issue with elected officials or any officials of

the communities in the American Bottoms at any time prior to the October 5, 2007 letters. Similarly, there are no documents – either prior to October 5, 2007 or ever -- showing that FEMA encouraged local officials to disseminate information about any studies concerning accreditation or de-accreditation of the levees, so that interested persons could bring forth relevant facts and technical data in the course of any such studies.

13. There are no documents in the Record showing that FEMA informed any local officials before August 15, 2007 of any USACE studies, investigations or findings concerning either the accreditation of the levees, or whether the levees could meet the requirements of 44 CFR 65.10.

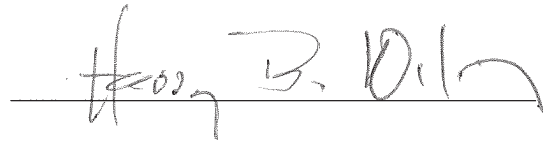
14. The Record includes the administrative appeals filed with FEMA in September and October 2009 by the 10 Administrative Appeal Plaintiffs. Seven of those appeals – from MESD, Alton, Caseyville, Dupo, East Carondelet, Sauget, Venice and Granite City – cite specifically to at least four recent USACE Periodic Inspection Reports and Annual Maintenance Inspection Reports. All of these reports found all of the Metro East Levees Systems either acceptable or minimally acceptable. None of these USACE reports are in the Record.

15. In an exchange of emails with counsel for FEMA, I asked if a document styled Frequently Asked Questions dated March 10, 2011, accurately stated the new FEMA policy to which counsel referred in the status conferences with the Court in June of this year. Counsel replied that it did. A copy of that FAQ is attached as Exhibit A.

16. Plaintiffs have not been permitted to engage in discovery. I have been told that Novartis proposed to build a distribution center in the American Bottoms but abandoned the project when it learned of FEMA's de-accreditation of the levee systems and the likely financial consequences thereof. If permitted to conduct discovery, plaintiffs will attempt to obtain admissible evidence of this fact.

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

Executed this 11th day of July, 2011.

A handwritten signature in black ink, appearing to read "Henry B. Dink", is written over a horizontal line.



FEMA



FEMA's Approach to Levees

Answers to Frequently Asked Questions

Q: Why is FEMA changing the way it maps levees?

A: The "without levee" approach is an effective tool to identify flood risk behind uncertified levees. FEMA recognizes, however, that advances can enable FEMA to use improved models and tools to provide more precise flood risk information, and we are committed to updating our mapping methodology. FEMA also is engaged in a systematic effort to reform the National Flood Insurance Program (NFIP), and we view a change in the manner in which we map levees that do not meet the criteria for accreditation as a step toward a long-term solution.

Q: What is FEMA doing to improve its analysis of levees?

A: FEMA is developing a series of targeted modeling approaches to replace the current "without levee" approach.

Q: Are FEMA and the U.S. Army Corps of Engineers (USACE) aligned in this effort?

A: FEMA and USACE have been and will continue to work as a team to develop the new approach.

Q: Will the public be involved?

A: Yes. FEMA will invite the public to review and comment on the new approach and subsequent guidance.

Q: What about maps already in effect?

A: The new approach will be applied to ongoing and future mapping projects. If a community has questions about existing Flood Insurance Rate Maps (FIRMs), it should coordinate with the appropriate FEMA Regional representative to discuss future map updates.

Levee Systems

Need more information on levee systems? Please visit the levee dedicated pages on the FEMA website at:

www.fema.gov/plan/prevent/fhm/ly_intro.shtm.

Here you will find an array of guidance and information resources to better answer any questions you might have on levee systems.

The NFIP

Looking for more information on the National Flood Insurance Program? Visit:

www.fema.gov/nfip.

You can also find information about your flood risk and how to find a flood insurance agent at: www.FloodSmart.gov.

FEMA Library

The FEMA Library is a database of publicly available FEMA resources. Many are available for download, including:

"NFIP and Levees: An Overview Fact Sheet"
<http://www.fema.gov/library/viewRecord.do?id=2609>

"Living with Levee Systems: Information for Property Owners"
<http://www.fema.gov/library/viewRecord.do?id=2741>

Requirements of 44 CFR Section 65.10: Mapping of Areas Protected by Levee Systems
<http://www.fema.gov/library/viewRecord.do?id=2741>

RiskMAP
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EXHIBIT

A

Q: Will the new approach result in smaller Special Flood Hazard Areas (SFHAs)?

A: Not always. SFHAs may decrease, increase or stay the same size as a result of the new approach. The current approach may have overestimated or underestimated flood hazards to some extent. In some scenarios, the anticipated flood risk may be greater than previously identified using our current approach.

Q: Will this new approach impact insurance rates?

A: The rate will be based on the flood hazard identified through the new approach and other factors involved with the particular structure being rated, but the method for rating is not changing.

Q: Will FEMA consider levees with less than a 100-year level of protection?

A: Yes. FEMA is analyzing more precise ways to model flood risk behind levees that are not currently accredited to provide protection against a 1-percent-annual-chance flood (100-year flood). As FEMA continues work on NFIP reform, we will investigate ways to more accurately rate policies in areas behind levees with less than 1-percent-annual-chance flood protection.

Q: Why can't FEMA rate these types of insurance policies today?

A: Rating policies in areas behind levees with less than 1-percent-annual-chance flood protection may require new or modified flood risk zones that do not exist today. This and other considerations may require regulatory and legislative changes.

Q: How soon will the new approaches be developed and in place?

A: A date is not yet set for implementation, but FEMA is working to implement a new approach as soon as possible.

Q: Is the new approach going to be applied to every new mapping activity with unaccredited levees, or do communities need to request it?

A: It will be applied to all new and ongoing mapping activities.

Q: Will my community and/or levee owner still be required to provide FEMA data?

A: Yes. The data requirements for levee accreditation in 44 C.F.R. Section 65.10 will not change, and more precise modeling likely will require more levee data. Communities and/or levee owners still will need to provide data on their levees to enable FEMA to accurately assess the flood risk.

Q: If a community does not agree with the FEMA analysis used in its flood risk study, can it provide FEMA with additional or more detailed information?

A: Yes. As with any study performed by FEMA, local communities can provide additional information for consideration.

Q: Can a community still appeal the findings on the FIRM?

A: Yes. The administrative process currently in effect for flood hazard maps will remain unchanged. There will be an administrative appeal period following issuance of the preliminary FIRM during which a community can provide additional scientific and technical data.

Q: How will the new approach impact the cost of FEMA's flood studies?

A: We are anticipating additional costs for a deeper level of analysis. FEMA will evaluate the cost of applying additional analyses against the value added for a particular study or community based on the risk present in that area. Where there are high levels of risk, additional analysis may be appropriate.

Q: Will FEMA help pay for certification of levees?

A: No. FEMA's authority and mission are in the identification of risk and not in the assessment of the design, construction and maintenance of levees.

Q: Will FEMA finalize maps for communities using the "without levee" analysis?

A: No. FEMA will delay finalizing maps for communities where a levee cannot be accredited until the new approach is finalized.

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