

# HUSCH BLACKWELL

Harry B. Wilson  
Attorney

190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105  
Direct: 314.480.1843  
Fax: 314.480.1505  
harry.wilson@huschblackwell.com

June 23, 2011

## VIA EMAIL AND FACSIMILE

Vikas K. Desai  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Ave., NW, Rm. 7206  
Washington, DC 20530

Re: County of Madison, State of Illinois et al. v. Federal Emergency Management Agency et al., Case No. 3:10-cv-00919-JPG-DGW, in the United States District Court for the Southern District of Illinois

Dear Mr. Desai:

On the conference call with Judge Gilbert Wednesday morning, the Judge suggested that we seek a way to resolve this case by an agreement that "rewinds the clock." This followed your statement to the effect that the preliminary DFIRMS are going to be redone following new procedures, making the preliminary DFIRMS moot and leaving the existing and operative FIRMS in place for now. The latter obviously show the Metro East Levee Systems as accredited. The Judge also stated that we should report back to him at a new status conference set for June 30, 2011.

This letter sets forth our clients' requirements for a resolution of the above case. We note that this is a proposal to settle this case only, which we believe to be unique for a number of reasons, some summarized further below.

We propose that:

1. FEMA formally withdraws (a) the August 15, 2007 announcement made at the "Illinois Levee Summit" on the MV Mississippi that the five Mississippi River levee systems in Madison, St. Clair and Monroe Counties will be de-accredited, and (b) the announcements to the same effect made in October 5, 2007 letters to community leaders in the Metro East/American Bottoms area (see Exhibit 7 to the Complaint), (c) and the preliminary DFIRMS and Base Flood Elevations based thereon and published in July 2009.

# HUSCH BLACKWELL

Vikas K. Desai  
June 23, 2011  
Page 2

2. FEMA acknowledges that, as of the date of the settlement, it has no scientific, technical or factual basis for believing that the five Metro East Levee Systems are anything less than at least minimally acceptable under either 44 CFR §65.10 or USACE standards.

3. FEMA agrees that, in any future investigation or studies of the soundness of the levees:

A. It will base its evaluation on scientific and technical information.

B. It will include standard flood-fighting techniques outlined in the operation plans of the five Metro East Levee Systems in its evaluation of the soundness of the levees.

C. It will consult with Metro East community leaders before making any decisions about the soundness of the levees and accept and consider such scientific and technical information as the communities may wish to submit, as provided in 42 USC § 4107, 44 CFR § 66, and Procedure Memorandum 34.

4. The Court retains continuing jurisdiction over the case for purposes of enforcing the agreement.

We make this proposal in light a number of considerations (which do not need to be part of any agreement).

First, as we attempted to make clear to Judge Gilbert, the serious and irreparable harm that plaintiffs are sustaining is the product of FEMA's announcement in 2007 that it intended to de-accredit the Metro East Levee Systems. The precise details of the flood lines on the proposed new FIRMS are not the key problem, and withdrawing them will not rectify our continuing injury. Turning the clock back requires reinstatement of the accreditation of the levees.

The impact of FEMA's announcements in 2007 that it would de-accredit the Levees has been an economic disaster for the American Bottoms communities. As is revealed in the Sauget and Langa declarations, economic development ceased entirely in the area in the Fall of 2007 just after the de-accreditation announcements. This was before the current recession, and the economic disaster continues now even as other areas are recovering.

Second, the Administrative Records that your client has filed for the three counties contain no scientific or technical data or studies to support the de-accreditation decision. The "studies" that have been repeatedly referenced are not to be found in the records, and, for that matter, cannot be found in the Freedom of Information Act responses made earlier by FEMA and USACE. The Flood Insurance Studies themselves provide no scientific or technical data to

# HUSCH BLACKWELL


Vikas K. Desai  
June 23, 2011  
Page 3

support de-accreditation, and reference the decision to do so only in a conclusory statement about unidentified "findings."

And third, it is clear that de-accreditation of the Metro East Levee Systems entails a modification of base flood elevations. Case law has so held, and you have conceded as much in briefing papers. And yet the Administrative Records show no attempt at all to consult with community officials prior to this decision, or to allow them to bring relevant data to the attention of the agency, all as required by 42 USC § 4107, 44 CFR § 66, and Procedure Memorandum 34.

We await your response. Please copy all counsel of record. Thank you.

Very truly yours,

  
Harry B. Wilson

cc (via e-mail)  
Thomas Gibbons, Esq.  
John P. McGuire, Esq.  
Brendan Kelly, Esq.  
Kris F. Reitz, Esq.  
Robert J. Sprague, Esq.

# HUSCH BLACKWELL

Vikas K. Desai  
June 23, 2011  
Page 4

bc (via e-mail)

Alan Dunstan (ajdunstan@co.madison.il.us)  
Bassett Law Office (mbassett@bassettlawoffice.com)  
Bob Shipley (bshipley@mesdonline.org)  
Brendan Kelly (Brendan.kelly@co.st-clair.il.us)  
Dan Maher (dmaher@co.st-clair.il.us)  
Delbert W. Wittenauer (dwitt@norcom2000.com)  
Donald A. Divers (ddiv9999@htc.net)  
Felix V. Floyd (ffloyd@roxana-il.org)  
Jim Pennekamp (jpenne2000@charter.net)  
Joe Juneau (jjuneau@JAIPC.com)  
John P. McGuire (jpmcguire@co.madison.il.us)  
John W. Hamm III (jhamm3@charter.net)  
Joseph D. Parente (jdparente@co.madison.il.us)  
Kevin Riggs (kriggs2001@yahoo.com)  
Kris F. Reitz (kreitz@htc.net)  
La Mar D. Gentry (lamardgent@aol.com)  
Les Serman; Mark Kern (countyboard@co.st-clair.il.us)  
Matthew Asselmeier (masselmeier@alton-il.com)  
Michael Sullivan (pdpwaterdistrict@htc.net)  
Patrick McKeehan (pmckeehan@siue.edu)  
Paul M. McNamara (McNamara@Caseyville.org)  
Robert J. Sprague (rsprague@spragueurban.com)  
Rodney Lewis (fireengine424@sbcglobal.net)  
Ronald S. Motil (motil@beattymotil.com)  
Scott Penny (sepenny@aol.com)  
Terry I. Bruckert (tib@belsheim.com)  
Thomas Gibbons (tdgibbons@co.madison.il.us)  
Tom Hoechst (thoechst@alton-il.com)  
Walter "Shang" Greathouse (wgreathouse@mesdonline.org)