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ASSOCIATION OF STATE FLOODPLAIN MANAGERS, INC.

FUNDS TO RELIEVE REPETITIVE FLOOD LOSSES ARE ON THE WAY

The new Severe Repetitive Loss Program will soon be a reality. Through it, the Federal Emergency Management Agency will make available cost-shared funds to states for projects to mitigate the flood risk to those insured properties that have sustained the most extreme flood losses. The pilot program was authorized by the Flood Insurance Reform Act of 2004, which defined the new subset of repetitive loss properties insured under the National Flood Insurance Program (NFIP).

The regulations and program implementation guidance for the SRL Program are in the final review-and-approval stage. Once that is completed, the regulations will be published in the *Federal Register*, and the application period for the program funds will open about 30 days later.

State floodplain management and mitigation personnel are advised to review as soon as possible the SRL property information for accuracy (on the website noted below), and also identify communities with SRL properties as potential partners for the SRL grants. Doing this in anticipation of the release of the program regulations and guidance will enable states to apply for the funding more quickly, once the application period opens.

Funding Criteria

Approximately \$80 million will be made available during Fiscal Year 2007, and the President's budget for 2008 requests another \$80 million. Allocation of the funds will be based on a formula that considers the number of SRL properties in each state. Ten percent of the funds will be set aside for states that do not receive an allocation based on that formula. The SRL Program will offer up to a 90% federal cost share for approved projects when the state has a FEMA-approved Standard or Enhanced State Mitigation Plan that includes a strategy for mitigating existing and future repetitive loss properties, and those properties that meet the severe repetitive loss criteria. In those instances where the State Mitigation Plan does not have such a strategy, a federal cost share of up to 75% will be available. State Mitigation Plans (Standard or Enhanced) must be in place by the application deadline, and all communities must have an approved local or tribal mitigation plan by that date as well. Communities suspended or currently withdrawn from the NFIP are not eligible.

Property Data

Data on the SRL properties are available to state staff with floodplain management or mitigation responsibilities through the NFIP's NextGen website, <http://www.nfipnextgen.com>. The data are found on the site's Simple and Quick Access (SQANet) feature, a secure web portal that leads to data from the NFIP Bureau and Statistical Agent's flood insurance database, which is updated monthly.

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A Missive from Mississippi

So, what is my vision for the ASFPM for the next 12 months? What should I cover in my inaugural missive to the readers of *News and Views*? What an opportunity, a perfect cipher, a blank canvas on which to create and inform! As I ponder these and many other questions on a balmy evening on my veranda, swatting “skeeters” and “no-see-ums,” and sipping a cool and tasty beverage, my thoughts flow into a stream of reasoning that only a Southern summer evening can produce. How can we, as the major representative organization of the nation’s floodplain management community, properly influence our various levels of governments’ public policy making and our fellow citizens’ actions within our floodprone lands? Just as Hurricane Katrina must become the catalyst for a “paradigm shift” in the manner in which the United States deals with natural disasters, the next 12 months will surely see a provider of a *point vierge* or a point of mental conversion, to move us forward to our goal of attaining no adverse impact floodplain management policies and programs.



Let us first consider the mission statement of ASFPM: “Promote education, policies, and activities that mitigate current and future losses, costs, and human suffering caused by flooding, and to protect the natural and beneficial functions of floodplains, all without causing adverse impacts.” How do we prepare ourselves for this noble endeavor? (Perhaps we should focus on risk reduction and residual risk identification?) The education of people about risk reduction can be a simple process, beginning with the individual member, then moving into the collective thought of the state association/chapter, and finally reaching the ark of the ASFPM. Some say that “outreach” must be as much about the process of offering risk information as it is the possibility of increased knowledge for those who receive it. We can do this together!

Well Mr. Chair, what’s the plan? (It is a simple question, one that trumps my pending decision to move the oscillating fan closer.) We must shift the focus of managing flood risk to the state level, which will foster a greater state capability. After all, hasn’t the pyramid been upside down since the 1930s? (What about levees?) Flood hazard assessments must be made and residual risk areas behind levees must be mapped. A national inventory must be made, and an accompanying safety program created, focused at the state and local government levels.

We must promote the completion of the Map Modernization initiative AND a transition to a longer term “Flood Hazard and Risk Data Management” program. The original 5-year initiative will leave many communities unmapped and others with marginally updated digital products. A priority order of flood hazard data needs should be followed that properly addresses the risk of our population within the floodplain. All flood maps are living documents and not static tools, and as such they can quickly become outdated. (When I bought my jeep, Lola, I had the sense to plan for future maintenance costs and after-market upgrades.) Of course, there exists some virtue in eagerness, but the quality of our maps cannot be compromised by tying them to a quick process.

A national floodplain management policy must be pursued with all due diligence. I believe that our *National Flood Programs and Policies in Review—2007* provides the instrument with

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DIGITAL VISION

A NEW GENERATION OF FLOOD MAPS

Flood Map Modernization, FEMA's multi-year effort to update the nation's flood maps, has generated a series of new digital flood hazard products. The new digital maps, and their related products, are designed to be reliable, easier to use, and readily available.

Many users have already found the digital version of the maps useful. FEMA has distributed many of these products in a digital format over the past few years, resulting in a 50% reduction in orders for paper maps. Online product delivery quickly gives users the information they want, often at no cost, and bypasses the need for mail delivery of paper products. Users can still order a paper map from the Map Service Center (MSC) at <http://msc.fema.gov> or 1-800-358-9616. These digital products provide the following faster, more powerful options.

- A FIRMScan, full-size digital image, of any paper map can be ordered or downloaded from the MSC. Or, users can create a FIRMette, the simplest way to see flood hazard information for a specific location. A FIRMette shows a section of the official FIRM, can be printed on a standard office printer, and includes the map scale, north arrow, and map identification information needed for National Flood Insurance Program (NFIP) activities. A FIRMette can be used in all aspects of the NFIP, including floodplain management, flood insurance, and enforcement of mandatory flood insurance purchase requirements. Users can create a FIRMette free on the MSC website listed above.
- Geographic information system (GIS) users can use the Digital Flood Insurance Rate Map (DFIRM) database product. The DFIRM database is designed for use with specialized GIS software. Using the DFIRM database in a GIS provides a more flexible and powerful tool for mapping and analysis than do traditional map products. DFIRM databases can be downloaded or delivered on CD from the MSC. GIS users can also access GIS flood data as a web mapping service. See the "Tools and Links" page at <https://hazards.fema.gov> for information on the web mapping service.
- For users who want to do more than the basic FIRMette product allows, the DFIRM Map Viewer provides some of the capabilities of GIS online. Users have more control over the display of flood hazard information and other mapping information shown on the Map Viewer, including the ability to combine flood hazard information with maps of other hazards. FEMA updates the GIS version of the flood maps each time a Letter of Map Revision is issued. By the end of this year, this updated version of the data will be displayed on the Map Viewer. FEMA is working on plans for distribution of these data. The Map Viewer can be found online at <https://hazards.fema.gov> and can also be accessed from the MSC site.

Severe Repetitive Loss Program (cont.)

Via a letter to all State NFIP Coordinators and State Hazard Mitigation Officers, FEMA has provided information about accessing the SRL data through the SQANet, obtaining user names and passwords, requesting updates to the SRL data, and the applicability of the Privacy Act.

Outreach

Some SRL property owners have already been notified by FEMA that their loss history meets the definition of a Severe Repetitive Loss property and that, after their next renewal, their flood insurance policies will be handled by the FEMA Special Direct Facility. The letters also direct the property owners to their local floodplain administrator or the state floodplain management or mitigation offices for more information.

>>> Questions about the use of SQANet should be directed to Shabbar Saifee at (202) 646-3142, Shabbar.Saifee@dhs.gov. More information about the SRL program can be obtained through the FEMA website or the FEMA Regional Mitigation Division Director.

FEMA SEEKS COMMENTS NOW ON TECHNICAL BULLETINS

The Mitigation Directorate of the Federal Emergency Management Agency is preparing to update and expand its invaluable series of Technical Bulletins, which clarify and expand upon the building and design requirements of the National Flood Insurance Program (NFIP). Eleven such Technical Bulletins were published between 1993 and 2001 (see <http://www.fema.gov/fima/techbul.shtm>).

Based on an initial assessment of the existing bulletins and various investigations undertaken in the past several years, FEMA has developed a list of issues [see link below] it believes need to be incorporated into at least five bulletins:

- *Openings in Foundation Walls* (published in 1993),
- *Flood-Resistant Materials* (published in 1993),
- *Free-of-Obstruction Requirements* (published in 1993),
- *Corrosion Protection for Metal Connectors* (published in 1996), and
- *Design and Construction Guidance for Breakaway Walls* (published in 1999).

In addition, there appears to be a need for new bulletins addressing

- Coastal AE zones,
- Service equipment and utilities,
- Non-structural fill in V zones,
- V-zone foundations,
- Mid- and high-rise engineered structures, and
- Manufactured housing foundations.

Floodplain managers are invited to communicate *by August 17* their suggestions for new bulletin coverage, ideas for issues to be added to existing bulletin, and comments on FEMA's list of possible changes to the series.

>>> The tentative list of proposed changes has been posted on the ASFPM website at http://www.floods.org/PDF/FEMA_TB_Changes_Memo_071807.pdf. All comments on that list, or ideas for other changes or other new bulletins, should be send BY AUGUST 17 to John Ingargiola at john.ingargiola@dhs.gov.

Coastal States Organization Seeks Intern for Community Resilience

The Coastal States Organization (CSO) is seeking a qualified person for a full-time, one-year, paid internship to help states examine the application of and potential for community resilience in coastal areas. CSO is a small non-profit trade association representing states on coastal and ocean resource management policy and legislative issues in Washington, D.C.

Specifically, the intern will work to enhance the states' understanding of coastal resilience; explore how coastal resilience can be used as a measure of community health; increase states' knowledge of the opportunities to incorporate coastal resiliency into state and federal legislation; and serve as a liaison between CSO, the coastal states, and the Coastal Services Center of the National Oceanic and Atmospheric Administration on activities related to coastal resilience. Qualifications include the ability to analyze federal and state coastal policy, meet deadlines, plan meetings, and manage budgets. A master's degree in environmental or marine policy and experience with coastal hazards or resiliency issues is strongly preferred. Salary: \$45,000 plus health care, vacation, and sick leave.

>>> To apply, please email a resume and cover letter to jcarter@coastalstates.org. No phone calls please.

LEVEES REPORT CONFIRMS NEEDED CHANGES

The report of the Interagency Levee Policy Review Committee, completed in September 2006, has now been released by the Federal Emergency Management Agency. *The National Levee Challenge: Levees and the FEMA Map Modernization Initiative* is the product of an expert group convened by FEMA late in 2005, and chaired by Gerald E. Galloway, to examine and make recommendations on current levee policy and programs with an eye toward flood insurance rating, levee safety, public understanding of the risk, and modernized flood maps.

Among the Interagency Committee's recommendations are that

- FEMA should define a new flood insurance zone for areas behind levees and identify the level of risk faced by structures located in that zone.
- A risk classification system should be devised for levees, perhaps like that now being developed by the Corps of Engineers.
- Levees recognized by FEMA should be required to meet standards for inspection (annually), maintenance, operations, certification, and other factors, and documentation of adherence to those standards should be submitted to FEMA on a regular schedule.
- A spatially referenced inventory of levees nationwide should be completed, along the lines of the database currently being developed by FEMA and the Corps.
- With federal, state, and local partners, FEMA should develop a public awareness and outreach strategy to improve public understanding of the hazards and risks associated with levees.
- FEMA and the Corps should use existing authorities and funding—and seek approval from Congress and Office of Management and Budget if new sources are needed—to help communities perform certification analyses and remediate publicly owned levees.

The Interagency Committee further observed that the base data needed to support the hydraulic and hydrologic analyses that underlie determinations of levee protection must be upgraded (*Bulletin 17B*, precipitation frequency estimates, and streamgaging, among others); that consideration should be given to requiring a 500-year level of protection for levees in highly urbanized areas; that incentives and support mechanisms should be developed to ensure that state and local agencies can carry out their levee-related responsibilities effectively; and that owners of property behind levees should share in the mitigation of the risk, perhaps through required purchase of flood insurance.

It is notable that the thinking, conclusions, and recommendations of the Interagency Committee parallel to a large degree those presented in the ASFPM's *National Flood Programs and Policies in Review—2007* (http://www.floods.org/pdf/ASFPM_NFPPR_2007.pdf) and its white paper, *Levees: The Double-edged Sword* (http://www.floods.org/PDF/ASFPM_Levee_Policy_Challenges_White_Paper.pdf), as well as those of the *Joint Recommendations on Levee Policy* by the Association of State Floodplain Managers and the National Association of Flood and Stormwater Management Agencies (<http://www.nafsma.org/FinalASFPM-NAFSMAJoinSummittRecc.pdf>), and *Assessing the Adequacy of the National Flood Insurance Program's 1 Percent Flood Standard* (part of the Evaluation of the National Flood Insurance Program, available at <http://www.fema.gov/business/nfip/nfipeval.shtm>).

FEMA has indicated it is reviewing the recommendations of the Interagency Committee in preparation for taking appropriate action.

>>> Read about the Interagency Committee's report at http://www.fema.gov/plan/prevent/fhm/lv_report.shtm. Download it from <http://www.fema.gov/library/viewRecord.do?id=2677>.

RECOVERY AFTER HURRICANE KATRINA

FOR NOW, LITIGATION AND UNCERTAINTY FOR THE FUTURE, A BETTER WAY?

Edward A. Thomas
Michael Baker, Jr., Inc.

On many levels, the consequences of Hurricane Katrina have been unprecedented in U.S. history—significant loss of life, ongoing suffering and misery for thousands of people, widespread destruction of our built and natural environment, hundreds of billions of dollars in damage, and a thus-far unmet need for vast additional expenditures. The sheer number and types of lawsuits filed after Katrina and their size, in terms of dollar compensation requested, are also absolutely unprecedented. This article provides some background to those lawsuits and briefly discusses the reasons for and the policy implications of that litigation.

When Someone is Damaged, Who Pays?

A person whose property is damaged by a disaster such as Hurricane Katrina has three options for paying for the reconstruction the damaged property.

■ **Self Help.** Through self help, the injured parties rebuild on their own, using savings, borrowed money, assistance from national and local charities, as well as the help of friends and neighbors. This mechanism was once common in the United States, and survives in many parts of the country as communal efforts—such as when farmers or ranchers help a neighbor rebuild a barn destroyed by lightning.

■ **Insurance.** Casualty insurance can be an excellent and efficient mechanism for financing the cost of reconstructing damaged property, whether the insurance is purchased by the damaged party, or made available through some special legislatively created mechanism. Some examples of legislatively established insurance coverage include Workers Compensation Insurance, whereby states requires employers to pay premiums to make such insurance available to injured workers. State and federal disaster relief grants and loans for disaster victims are another form of special, legislatively established social insurance.

■ **Litigation.** Litigation is the only other alternative for recovery when a person suffers damage. Successful litigation requires demonstrating that a person, corporation, or agency caused, or somehow was legally culpable for, the damage that has taken place.

Sometimes these three mechanisms for covering reconstruction costs can be linked. For example, Small Business Disaster Loans are subsidized, thus being a combination of self-help (loans) and insurance (special legislation that both authorizes and subsidizes the loan).¹

Each of these three mechanisms has distinct advantages and disadvantages, and is characterized by varying degrees of efficiency and practical effectiveness, which in turn will vary depending on their application to a particular circumstance.

Self help worked well, and continues to work well, for serious but scattered losses, as in the case of a community barn-raising after a fire. This form of reconstruction assistance is highly efficient, but the community must be tightly knit and committed to helping each other in times of difficulty. It cannot work well if most of the self-helpers have suffered damage themselves. Further, as our building construction techniques become more complex, many governments require that licensed professionals perform an increasing portion of the work involved. This means that reconstruction by well-meaning amateurs is likely to be used less frequently than it was in the past.

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Litigation after Katrina (cont.)

Insurance can be an extremely efficient mechanism for distributing funds, provided the individuals damaged possess a sufficient amount of such insurance or have been provided such insurance by operation of law.

Litigation can be an important mechanism for the recovery of damages. It is inefficient, because it can take many years and has huge costs that do not go to the damaged party, but rather to attorneys, courts, expert witnesses, court recorders, and many others. Litigation is also uncertain, because the damaged party may not be able to find anyone who can be proved to be culpable for the damage, and because sometimes our system of justice is not quite perfect. A deserving, damaged plaintiff may not be able recover from the party that actually was responsible for the damage because of the ability of “deep pocket” defendants to hire cleverer expert witnesses and/or attorneys or to plaintiff’s bad luck. In addition, economically disadvantaged victims often have difficulty obtaining counsel for pursuing such litigation.

Hurricane Katrina

Hurricane Katrina was the most costly natural disaster to strike the United States, as well as the most devastating in terms of numbers of people displaced and otherwise affected. Although the Galveston hurricane of 1900 resulted in many more deaths, the sheer magnitude of the misery and suffering of Katrina’s victims, the dollar damage caused by the storm, and the ability of television to bring that misery and suffering into all our consciousnesses has made Katrina truly unique.

Yet, although Hurricane Katrina was devastating, insurance industry experts indicate that there is the potential for natural disasters that will be much worse, including a repeat of the 1906 San Francisco earthquake, with estimates of potential damage reaching \$400 billion; a repeat of the 1900 Galveston hurricane, with estimated damage of \$36 billion; a repeat of the 1938 hurricane that hit New England and Long Island, New York, with damage estimates exceeding \$300 billion; or a repeat of the series of earthquakes along the New Madrid fault in the central United States in 1811 and 1812, with potential economic damage of around \$300 billion. A White Paper from the National Association of Insurance Commissioners states that “[s]hould any one of (these catastrophes) occur, we are unprepared to deal with the aftermath of an event of this magnitude.”²

Insurance-related Litigation and Investigation

One of the unique aspects of the Katrina disaster has been the number and magnitude of lawsuits filed as a result of the storm. These lawsuits generally fall into three categories.

Lawsuits between Disaster Victims and Agencies, Companies, and Individuals involved in Construction and Maintenance of Levees

Lawsuits have been filed on behalf of some 250,000 people, seeking over \$277 billion in damages from the U.S. government alone.³ Numerous other organizations, corporations, public officials, levee boards, insurance companies, and others are being sued for many billions of dollars more.⁴

Under the doctrine of sovereign immunity, the United States may not be sued without its consent, *United States v. Mitchell*, 463 U.S. 206, 212, (1983); however, the Federal Tort Claims Act provides that “the United States shall be liable, respecting the provision of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances” 28 U.S.C. § 2674.

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Edward Thomas is a floodplain manager, disaster relief specialist, and an attorney. Michael Baker, Inc. provided the funding for the research and development of this article. The opinions expressed are the author’s and do not reflect approval by any organization. This is an opinion piece based on general principles of law.

Washington Report

FEMA ADVISORY COUNCIL FORMED

A final step toward forming a National Advisory Council to the Federal Emergency Management Agency was taken in July with the naming of members. The development of the Council was set into motion by the Post-Katrina Emergency Management Reform Act of 2006. Its purpose is to advise the Administrator of FEMA to “ensure effective and ongoing coordination of the federal preparedness, protection, response, recovery and mitigation for natural disasters, acts of terrorism, and other man-made disasters.” Members are to be appointed by the Administrator and represent a geographic and significant cross section of officials from emergency management and law enforcement, and include homeland security directors, emergency response providers from state, local, and tribal governments, private sector, and nongovernmental organizations. The Council intends to hold its first quarterly meeting this fall.

Thirty nominees to the council have been named, in 21 categories, heavily weighted toward emergency response and law enforcement. There are no planners; resource or land use managers; or physical, earth, or environmental scientists. In a letter to FEMA Administrator R. David Paulison, the ASFPM praised the establishment of the Council as a valuable means by which FEMA can obtain diverse input from the many pertinent fields and constituencies it must represent, but pointed out that there is no category or representation for mitigation, the acknowledged cornerstone of emergency management and the most effective way of coping with natural disasters. The letter urges Paulison to establish a mitigation category for the membership of the Council and to nominate one or more nationally recognized experts to provide input on that important aspect of FEMA’s mission.

>>> For more information, see <http://www.fema.gov/news/newsrelease.fema?id=37879>.

LEGISLATIVE REPORT

July has been a key month in moving flood insurance reform forward, but in a manner fraught with potential peril for the National Flood Insurance Program. Legislation that carries a section providing for new wind coverage as an option on a flood insurance policy has been reported out of the House Financial Services Committee and is now awaiting consideration on the House floor. During July, rumors flew about possible Senate Banking Committee action on flood insurance, but that has not materialized. Rhode Island Senator Jack Reed introduced an updated version of his flood map legislation.

Also in July, the House-Senate Conference Committee on the Water Resources Development Act (WRDA) finally reached agreement. The House accepted the Conference Report on August 1st, but the Senate adjourned for the August recess without having considered it. Presumably, it will be an early item on the Senate floor in September.

The Senate passed the FY 2008 appropriations bill for the Department of Homeland Security, leading to a House-Senate Conference Committee to resolve differences between the two versions. This is the first FY ‘08 appropriations bill to pass the Senate. The House, however, has passed 10 of the 12 regular appropriations bills and the Senate Appropriations Committee has reported out 11 of 12 bills. The Congress appears to be on a good path toward passage of a number of the FY ‘08 appropriations bills before the fiscal year actually commences on September 30th if Senate floor complications can be avoided.

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Washington Report (cont.)

As Congress was about to recess for the month of August, significant tensions developed on the House floor that appear to be derailing hopes for passage of the Farm Bill, with its many conservation programs for open space easements in watersheds, along with other pieces of legislation. The President has threatened to veto a number of bills currently moving through the Congress, which has complicated their progress. The Senate recessed on August 3rd and the House was expected to adjourn on the 4th. All of this points to a busy and potentially difficult September.

Flood Insurance Reform

The House Financial Services Committee favorably reported out H.R. 3121 on July 26th. Previously, Financial Services Committee Chair Barney Frank (D-MA) and Housing and Community Opportunity Chair Maxine Waters (D-CA) had introduced a flood insurance reform bill, H.R. 1682, revising the bill passed by the House during the last Congressional session. The ASFPM's Insurance Committee Co-Chair, Paul Osman, testified at the June 12 hearing on H.R. 1682 (his testimony is posted at http://www.floods.org/PDF/ASFPM_Testimony_HR1682_061207.pdf). Later this spring, Gene Taylor (D-MS) introduced H.R. 920, a bill to create a new, federally backed, optional wind and flood insurance policy. This is the Congressman's effort to address a significant problem with claims adjustment between wind and flood damage in the Gulf Coast states after Hurricanes Katrina and Rita. A scheduled mark-up of H.R. 1682 at the end of June was postponed because of interest in including H.R. 920 in flood insurance reform legislation. House Speaker Nancy Pelosi (D-CA), Frank, and Waters all strongly supported the Taylor bill. The Financial Services Committee's Subcommittee on Housing and Community Opportunity postponed its markup and scheduled a hearing on H.R. 920, the Multi-Peril Insurance bill on July 17th. After the hearing, H.R. 3121 was introduced as a new flood insurance reform bill including the texts of H.R. 1682, H.R. 920, and reauthorizing the NFIP for five years.

ASFPM Testimony—At the July 17th hearing, the Subcommittee heard from an array of interested parties, including the ASFPM. Pam Pogue, National Policy Liaison, testified. In general, she expressed appreciation for Taylor's efforts to correct a problem that affected many of his constituents affected by both storm surge and wind damage. However, she pointed out, there are too many unanswered questions to set up a new wind/flood policy without analysis of potential effects and impacts.

The ASFPM testimony said, in part, that "H.R. 920 would significantly affect the stability and functioning of the National Flood Insurance Program. The potential ramifications for over 5.4 million policyholders—and many millions more in the floodplain who should have flood insurance—are unknown, but can easily be assumed to be dramatic." It goes on to say that "the ASFPM understands that consumers in coastal areas are faced with a growing problem of private insurance availability and affordability. We suggest that this problem needs thoughtful analysis and development of recommendations, perhaps in the context of overall provision for catastrophic losses." Some of the questions raised include: How big is the potential market for federal wind and flood insurance? What is the potential new loss exposure? How high would premiums have to be to be "actuarial"? Would there be a separate fund to collect the premiums for this coverage, or would premiums collected from flood-only policies be tapped to pay wind-only damage? Would the private insurance industry be likely to develop a homeowners policy that covers fire and other liabilities, but excludes wind damage? How would the NFIP compliance responsibilities of lenders be affected if a mortgagee initially elects the new optional federal wind and flood coverage and subsequently drops it? The full text of the testimony is on the ASFPM website at http://www.floods.org/PDF/ASFPM_Testimony_HR920_071607.pdf.

Other Testimony—Three panels testified at the four-hour hearing. The first had four Members of Congress—all from Mississippi and Louisiana. Three of the four were solidly in support of H.R. 920. Richard Baker (R-LA) acknowledged the problem, but thought there were other ways of addressing it.

The second panel included David Maurstad, testifying for FEMA, and the Assistant Secretary for Economic Policy of the Department of the Treasury. Both opposed the bill.

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Washington Report (cont.)

The third panel was large. In addition to Pam Pogue for ASFPM, it included witnesses for the National Association of Insurance Commissioners, the Property Casualty Insurers Association (and also American Insurance Association and the National Association of Mutual Insurance Companies), the National Flood Determination Association, National Wildlife Federation, the Insurance Information Institute, and an insurance brokerage from New Orleans. All except the witness for the insurance brokerage opposed the bill to one degree or another and for various reasons. The NAIC offered ideas for other ways to address the problem and spoke of the need to address catastrophic losses. The testimony of all of the witnesses is posted at http://www.house.gov/apps/list/hearing/financialsvcs_dem/press0717072pm.shtml.

Markup on July 26th—During the markup, 23 amendments were offered, of which 13 were adopted. Major amendments offered by Committee Republicans were defeated on party-line votes. One amendment proposed to pass the original H.R. 1682 (i.e., without the addition of H.R. 920 and the reauthorization of the NFIP). The other major amendment would have removed the text of H.R. 920 and substituted language calling for a thorough study of the effects of establishing a wind and flood policy. An amendment offered by Scott Garrett (R-NJ) to move pre-FIRM properties toward actuarial rates at the time of property transfer was defeated, but Chairman Frank said he would be willing to accept a House floor amendment along these lines that applied only to properties above a specified value.

Accepted were amendments offered by Rubén Hinojosa (D-TX) that would provide for a study of economic effects of charging actuarially based premium rates on pre-FIRM structures (updating the 1999 Price-Waterhouse-Coopers study), add a real estate representative to the membership of the Technical Mapping Advisory Council, include multi-family structures as eligible to purchase business interruption coverage, and exempt rental property used as a primary residence from being subject to actuarial rates. Other amendments adopted included Randy Neugebauer's (R-TX) provision for a report on including building codes in floodplain management requirements, Al Green's (D-TX) and Emanuel Cleaver's (D-MO) amendment to clarify means by which tenants must be informed of contents insurance availability, Cleaver's amendment to provide that 500-year floodplain maps should not be released before 100-year maps, Dan Boren's (D-OK) amendment requiring FEMA to report on its efforts to inform those outside of the 100-year floodplain that they face a flood risk, Baker's amendment delaying the effective date of the new wind and flood policy program, Patrick McHenry's (R-NC) amendment stating that the new wind and flood policies may not be sold or renewed when the program is in a borrowing authority status, and technical amendments by Tom Price (R-GA) and Jeb Hensarling (R-TX).

Senate—Although the Senate does not have a flood insurance reform bill pending this session, it is widely expected that a flood insurance markup will be scheduled in September or October to proceed directly to markup of a bill based on a Committee draft. Rumors of a markup during the last week before recess did not materialize. Indications at this point are that the Senate is not likely to include a new wind and flood policy provision.

Water Resources Development Act, House-Senate Conference Report

The Conference Agreement on WRDA has been accepted by the House, but not yet by the Senate. The measure would spend some \$20 billion on water resources projects, which is more than the President has said he would support. The White House has threatened to veto the bill.

Importantly, the final section of the Conference Report includes language on levee safety along the lines of what the ASFPM had suggested. Rather than set up a new levee safety program modeled on the Dam Safety Program, as was provided for in the Senate bill, the Conference Report language establishes a levee safety committee that is instructed to report back to the Congress in six months on how an effective levee safety program would be structured, including incentives to states for providing leadership on levee safety.

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Washington Report (cont.)

The Conference Report also includes some, but not all, of the “Corps Reform” recommendations made by a number of groups engaged in opening up Corps procedures. It includes a provision for peer review of projects, but tasks the Chief of Engineers with determining which projects are sufficiently controversial to require peer review. It also includes a provision for review of the Corps’ *Principles and Guidelines*.

Appropriations

The Homeland Security Appropriations bill for FY 2008 is the first appropriations bill to pass both the House (in early June) and Senate (July 26th). Differences between the two versions remain to be resolved in September. Language in the House Committee Report addresses the designation on FEMA flood maps of areas behind levees and the associated warning of flood risk and recommendation that flood insurance be purchased.

The House has passed all but the Agriculture and Defense Appropriations bills. The Senate has reported out of the Appropriations Committee all but the Defense Appropriations bill. The White House has threatened to veto the Agriculture bill and has expressed opposition to the Commerce, Justice and Science bill. The bills and report numbers are Homeland Security—H.R. 2638 and H.Rept. 110-181, S. 1644, S.Rept. 110-84; Energy and Water—H.R. 2641, H.Rept. 110-185, S. 1751, S.Rept. 110-127; Interior—H.R. 2643, H.Rept. 110-187, S. 1696, S.Rept. 110-91; Agriculture—H.R. 3161, H.Rept. 110-258, S. 1859, S.Rept. 110-134; Commerce, Justice, Science—H.R. 3093, H.Rept. 110-240, S. 1745, S.Rept. 110-124.

Other Legislative Activity

Flood Maps—On August 2nd, Jack Reed (D-RI) introduced S. 1938, the latest version of his bill to extend and expand the FEMA flood map modernization effort. Last year, his bill was incorporated into the flood insurance reform bill that was not passed. It is likely that this will occur again when the Senate Banking Committee marks up a new version of its flood insurance reform bill. Many meetings and discussions were involved in development of the bill and the ASFPM was pleased to play a role in those.

Farm Bill—After a protracted period of marking up the massive Farm Bill (H.R. 2419) section by section, the House passed it on July 27th. The measure reauthorizes agriculture and related conservation programs for five years. Although it contains a number of controversial elements, particularly related to business, trade, and subsidy issues, it does increase funding for preservation of grasslands and wildlife habitat and other conservation programs, increasing conservation programs by an estimated 35% over the last (2002) Farm Bill. The White House has threatened a veto because of insufficient reform of the subsidies. The Senate version of the Farm Bill also will have substantial increases for conservation programs, but likely will include some conservation program reorganization. Markup of a Senate bill is expected to begin in September.

Catastrophe Commission—The Senate Banking Committee reported out a bill (number not available at press time) establishing a commission to study how the government can better plan for and fund the losses associated with catastrophic disasters. Other bills introduced to provide for catastrophic losses have included S. 927, S. 292, S. 926, S. 928, H.R. 1787, H.R. 537, H.R. 164, and H.R. 330.

Exemptions for Road Home/HMGP—The Senate Committee on Homeland Security and Governmental Affairs marked up a bill during the last week of the session to streamline mitigation assistance for the Louisiana Road Home project under the Hazard Mitigation Grant Program. It allows use of HMGP funds even when the mitigation assistance is tied to homeowner requirements to remain in their homes, and includes special consideration for senior citizens. At press time, the bill number was not available. Versions of the measure had been introduced by Mary Landrieu (D-LA) and David Vitter (R-LA).

Small Business Disaster Loans—Just before adjourning, the Senate passed S. 163, the Small Business Disaster Response and Loan Improvement Act.

Confirmation of Dennis Schrader—On the day of adjournment, the Senate voted to approve the nomination of Dennis Schrader of Maryland to be Deputy Administrator of FEMA for National Preparedness.

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Washington Report (cont.)

FEMA Preparedness—On July 31st, the House Committee on Oversight and Government Reform held a hearing entitled, “FEMA Preparedness in 2007 and Beyond.” The Committee heard from FEMA Administrator Paulison; the Director of the National Guard Bureau Joint Staff; the DHS Inspector General; NEMA President Albert Ashwood; a representative of the National Association of Counties and the International Association of Emergency Managers; a representative of the U.S. Government Accountability Office; and Kathleen Tierney, Director of the Natural Hazards Center.

Infrastructure—In late July, the House Committee on Transportation and Infrastructure reported out the Regional Economic and Infrastructure Development Act (H.R. 3246), the Dam Rehabilitation and Repair Act (H.R. 3224), and legislation (still unnumbered) to streamline mitigation assistance to those affected by Hurricanes Katrina and Rita. The Senate Environment and Public Works Committee reported out S. 775, the National Infrastructure Improvement Act. The measure would create a commission to consider the nation’s failing infrastructure. This specifically includes infrastructure for drinking water, wastewater, stormwater, and flood prevention. Its language encourages consideration of non-structural solutions.

Clean Water Restoration Act—The House Committee on Transportation and Infrastructure held two hearings on H.R. 2421, the Clean Water Restoration Act. The measure clarifies the intent of Congress under the Clean Water Act to protect all waters of the United States. This is an effort to resolve a confusing Supreme Court decision about the term “navigable waters.” A companion bill, S. 1870, has been introduced in the Senate by Russ Feingold (D-WI).

Ocean and Coastal Mapping—At the end of July the House passed the Ocean and Coastal Mapping Integration Act (H.R. 2400). According to the Coastal States Organization, the bill “would authorize nearly \$300 million to create an integrated federal program to map U.S. ocean and coastal waters.” The bill would also direct the National Oceanic and Atmospheric Administration to create a national registry of federally funded ocean and coastal mapping data and work to integrate onshore and offshore maps.

Coalitions

The ASFPM continues to participate in a number of coalitions of groups with common interests.

The **Streamgage Coalition** has worked on education about the importance of streamgage data. A letter has been prepared expressing support for the increases in the FY 2008 budget request and Interior Appropriations bills for both the National Streamflow Information Program and the Cooperative Program.

The **Hazards Caucus Alliance** held a Congressional briefing on drought. The group met July 30th to discuss briefings for the fall, possibly on HAZUS and on levee safety.

The **Stafford Coalition** last met on July 9th for discussions of FY 2008 budgets for Pre-Disaster Mitigation, the Repetitive Loss Pilot Program, Flood Map Modernization, and others. Merrie Inderfurth, ASFPM Washington Liaison, and Cheryl Small, National Flood Determination Association, led a discussion of the flood insurance reform legislation. Other matters discussed included the Homeland Security bill, the Katrina housing bill (HR 2775), concerns about using the Emergency Management Assistance Compact for recovery activities in addition to response, the status of FEMA within DHS, and the activities of the Senate Homeland Security and Governmental Affairs Subcommittee on Disaster Recovery. It was decided to invite a speaker from the National Association of Insurance Commissioners to the next meeting.

The **Mapping Coalition**’s July 11th meeting focused on the positive outlook for Map Mod funding in FY 2008 and on the draft concept paper developed by FEMA for moving forward with a mapping program after 2008, which is the final year of existing funding for the initiative. The Map Coalition decided to send a letter to both House and Senate Appropriations Committees expressing strong support for the full funding of Map Mod in both the House- and Senate-passed bills. The Coalition also decided to write to an appropriate official at the Department of Homeland Security explaining the need for an ongoing mapping program.

The **USGS Coalition** has had briefings and discussions with Congressional staff. The annual reception on Capitol Hill is planned for September 6th, to honor and highlight the work of the USGS.

—Meredith R. Inderfurth, Washington Liaison
Rebecca Quinn, CFM, Legislative Officer

✧ All referenced legislation and committee reports can be viewed at <http://thomas.loc.gov>. ✧

Litigation after Katrina (cont.)

Section 3 of the Flood Control Act of 1928 states that “[n]o liability of any kind shall attach to or rest upon the United States for any damage from or by floods or flood waters at any place.” 33 U.S.C. §702c. As such, the United States is normally immune from suit for damage from failed flood control works. However, many of the plaintiffs in the Katrina litigation have sued the United States, alleging that the Mississippi River Gulf Outlet navigation canal (MRGO) caused the catastrophic damage to the Lower Ninth Ward, New Orleans East, and St. Bernard Parish because of at least two defective conditions known to the U.S. Army Corps of Engineers for decades, namely the destruction of the marshlands surrounding the MRGO, which intensified an east-west storm surge, resulting in the flooding of much of New Orleans; and the funnel effect stemming from the MRGO’s faulty design, which accelerated the force and strength of that surge. In essence, the plaintiffs maintain that, had the MRGO not been in place, the devastating flooding that cause their damage would not have occurred.⁵

The MRGO canal had previously been the subject of a suit against the United States after Hurricane Betsy in 1965. At that time the courts ruled that the federal immunity from lawsuits due to “floods or flood waters at any place” referred to flood control projects only, not to navigation projects, and that MRGO was a navigation project.⁶

It is worth noting that Hurricane Betsy took place in 1965 and the final court ruling in *Graci* (that the United States was not immune to suit for damage allegedly caused by MRGO) was made eight years later. It may well take as many or more years of legal wrangling before a decision is made with respect to current litigation. Sustaining such a suit against the federal government is extremely difficult. However, the difficulty usually faced by a plaintiff in proving a causal link between the harm that took place and government action or inaction will be more easily overcome now because of the excellent research studies that demonstrate the reasons that the levees and floodwalls failed in Katrina.⁷

Lawsuits between Insureds and their Insurance Companies

Literally hundreds of lawsuits have been filed by homeowners and other insured parties against their insurance carriers in Louisiana and Mississippi. Efforts are being made by attorneys to have many additional persons throughout the Gulf Coast consider additional suits.⁸ [See article on page 17.]

Some of these cases have been settled at trial for huge sums of money. In one case a jury awarded \$223,292 in actual damages and \$2.5 million (later reduced by the judge to \$1 million) in punitive damages against one company.⁹

Lawsuits and Investigations by Regulatory Officials concerning Insurance Companies

It has been widely reported in both the trade and popular press¹⁰ that Mississippi Attorney General Jim Hood has sued five insurance companies: Allstate, State Farm, Nationwide, USAA, and Mississippi Farm Bureau, alleging that it is “an unfair or deceptive trade practice” not to pay for storm-surge damage related to Hurricane Katrina.

As floodplain managers know, homeowners’ policies typically cover damage from wind and wind-driven rain, while policies under the National Flood Insurance Program (NFIP) can be purchased to cover flood damage. The Mississippi Attorney General believes that hurricane-force wind-induced water damage from surge should be covered as wind-related damage. The insurance companies do not agree at all. Neither does the Mississippi State Insurance Commissioner, George Dale. Commissioner Dale is, however, on record as indicating that when it is unclear how the damage was caused, the decision should favor policyholders

Robert Hartwig of the Insurance Information Institute, an industry trade group, has indicated that if the insurance companies are forced to pay for wind damage, pre-hurricane surge, “it could quite possibly be destabilizing and lead to the insolvency of smaller insurers in the area.”¹¹

The insurance companies have indicated that if this case is decided in favor of the Mississippi Attorney General, then the ability of the insurance industry to meet current and future payment obligations will be undermined.¹²

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Litigation after Katrina (cont.)

Although a settlement was announced in this case in January 2007, the judge refused to approve the settlement agreement without clarifying details concerning exactly how much money would be paid to affected policyholders.¹³ Continued efforts to settle this case have been unsuccessful so far.

In a not-very-surprising development, State Farm, Mississippi's largest insurer, has indicated that it will no longer write new homeowners or commercial policies in the state.¹⁴

The Department of Homeland Security (DHS) Inspector General (IG) has oversight of the payment of claims by the NFIP. Those claims are usually settled on behalf of the government by the insurance carrier who writes flood insurance on behalf of the federal government. Often the claims for wind damage under a homeowners policy and for flood damage under the NFIP are adjusted by a single adjuster who is employed by or under contract to the private company that sold the homeowners policy. The DHS IG is investigating whether some of those adjusters improperly indicated that some of the insured's damage was due to flood (which would be reimbursed by the federal government) as opposed to wind damage (which would be paid by the private insurance company).¹⁵

Public Policy Implications of the Hurricane Katrina Disaster

Insurance companies are getting nervous and leaving the coastal markets in droves.¹⁶ In a disaster of the magnitude of Katrina—or some inevitable and even more damaging event—it is simply not possible for the thousands of affected persons to rely on their own resources, the help of neighbors, limited disaster assistance, or charity to rebuild their lives. Disaster survivors who, for whatever reason, do not have an insurance policy that clearly covers the full amount of their damage are confronted with a stark choice: litigate or continue to remain as they are in misery and suffering. Yet, litigation often takes years, is uncertain in outcome, and is incredibly inefficient.

Increasingly, organizations as disparate as ProtectingAmerica.org, the National Association of Realtors®, The National Association of Insurance Commissioners, and many others are agreeing that our nation needs legislation to set up some sort of national catastrophic insurance program to better prepare for the financial consequences of human occupancy of hazardous locations.¹⁷

Any such catastrophic insurance program must provide for proper building codes and land use planning to protect wetlands, floodplains, and other natural resources so that our floods and other hazards are not made worse than they already are due to poor planning, engineering, and land use.¹⁸ The NFIP, with its proven track record of efficiently paying claims and of using land use measures and building codes to reduce the awful misery of floods, can and should serve as a model for any such effort.

As a nation, we simply must do a better job of providing for the rebuilding of shattered lives after a catastrophe than we have done so far for the Katrina survivors. At the same time we must do a far better job of regulating land use and building decisions so that our existing problems of hazard management do not get worse.

Notes

1. For a more complete discussion of the complex process of funding post-disaster rebuilding, see E.A. Thomas, 2007. *Post Disaster Reconstruction—The “The Patchwork Quilt,” A Creative Strategy for Safe Post-Disaster Rebuilding*, at <http://www.floods.org>.
2. See National Association of Insurance Commissioners, 2006. “Natural Catastrophe Risk: Creating a Comprehensive National Plan.” Draft at http://www.naic.org/documents/committees_c_catastrophe_naic_plan.pdf.
3. See *The Washington Post*, May 13, 2007, p. 3.
4. See, for example, *In re Katrina Canal Breaches Consol. Litigation*. 2007 U.S. Dist. LEXIS 101180 (E.D. La., February 2, 2007). Just the list of attorneys in this litigation goes on for multiple pages.
5. See *In re Katrina Canal Breaches Consol. Litigation*, 2007 U.S. Dist. LEXIS 101180 (E.D. La., Feb. 2, 2007).
6. See *Graci v. United States*, 456 F.2d 20 (5th Cir. 1971). Cert. denied, *Graci v. United States*, 412 U.S. 928 (1973).

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7. See, for example, American Society of Civil Engineers, 2007. "The New Orleans Flood Protection System: What went Wrong and Why," at <http://www.acec.org/files/pdf/ERPReport.pdf>.
8. For example, see the website of the Levee Litigation Group at <http://www.leveelaw.com/category/legal-news-updates/>.
9. See, for example, *Broussard v. State Farm*, Civil Action No.1:06cv6-LTS-RHW, Southern District of Mississippi, January 31, 2007.
10. See, for example, *USA Today*, September 15, 2005.
11. See Kathy Chu, September 15, 2005. "Insurers Sued to Force them to Pay Storm-surge Coverage," *USA Today*. http://www.usatoday.com/money/industries/insurance/2005-09-15-katrina-insurance-lawsuit_x.htm.
12. See A. Scales, September 19, 2005. "How Will Homeowners Insurance Litigation after Hurricane Katrina Play Out?" at http://writ.news.findlaw.com/commentary/20050919_scales.html.
13. See Joseph Treaster, January 27, 2007. "Judge Puts Katrina Settlement in Question," *New York Times* at <http://www.nytimes.com/2007/01/24/business/24insure.html?ex=1185422400&en=87b9f8b851669b92&ei=5070>.
14. See National Public Radio, June 22, 2007. "News Summary," at <http://www.npr.org/templates/story/story.php?storyId=7416262>.
15. See Matt Jadacki, Deputy Inspector General for Disaster Assistance Oversight, U.S. Department of Homeland Security, June 12, 2007. "Statement for the Record," before the Committee on Financial Services' Subcommittee on Oversight and Investigations and the Committee on Homeland Security's Subcommittee on Management, Investigations, and Oversight, U.S. House of Representatives.
16. Liam Plevin, June 7, 2007. "As Insurers Flee Coast States Face New Threat." *Wall Street Journal*, p. A.1.
17. See, for example, the website of ProtectingAmerica.org at <http://www.protectingamerica.org/>.
18. See Thomas, E.A., 2007. "No Adverse Impact: Working Together to Prevent Harm." *The National Wetlands Newsletter* 29(1) January-February.

from the Chair (cont.)

which to rescue our floodplains from the wreckage of past policies. (I need another shot of bug spray, those West Nile skeeters are lurking about.) This will be facilitated by the Association's participation in the pending reform of the National Flood Insurance Program. We are actively engaged in this process on the Hill, so members should be on standby for reports and calls for assistance. And when that call goes out, pick up the banner and lead the charge. Write to your state delegations and inform them of our concerns and point them in the right direction. (After all, don't we as the nation's floodplain experts know what's best?)

Additionally, we must support the evaluation of the effectiveness of both state and local hazard mitigation programs, especially mitigation outreach efforts. The increased emphasis during the past few years on mitigation planning can assist in this goal. And finally, we must find ways to expand the buy-in by all stakeholders of the seven building blocks of no adverse impact floodplain management. Our release this spring of *No Adverse Impact in the Coastal Zone Handbook* provided much needed information for our population that lives adjacent to a beach. (If the preceding two years didn't shine the spotlight on the consequences of short-sighted coast development, I don't know what could.) We must convince the local community leaders that their coastal zone and floodplain management programs must meet their needs first, in addition to any requirements of state and federal agencies. (Remember the inverted pyramid?)

So what can an individual member do? I know, recruit your ASFPM Regional Director and Chapter Director to assist in achieving your local goals and objectives, and get them involved in the process. Become active in your state association and/or chapter. Volunteer for service on an ASFPM Policy Committee; check the ASFPM website for more information. Become an active voice in your own local community. Run for office. Encourage your own community to adopt higher regulatory standards. (History has proven that a small group of determined people can change the world.) What are we waiting for, the establishment of an undefined litmus test, or should we become part of a process that will pay dividends for us all? I submit to y'all that the time is now to become actively engaged. (Oh, it's time for a refill.)

By the way . . . welcome aboard the ark. ■

State & Local Report

OKLAHOMA SHARES SECRETS FOR ENFORCING SUBSTANTIAL DAMAGE PROVISIONS

In early July, Oklahoma and Texas were absolutely hammered by floods. One of the worst-hit areas was the City of Miami in Ottawa County, Oklahoma. Some 700 homes were damaged in this small county, many substantially—several were hit by over seven feet of floodwater.

Unfortunately, some of the structures had been flooded as many as 21 times over the past 50 years and, historically, local officials in Miami and Ottawa County have allowed devastated flood victims to rebuild as soon as possible, disregarding all locally adopted National Flood Insurance Program requirements for safe and proper rebuilding of substantially damaged buildings.

This time, however, a new slate of officials had a different idea about rebuilding after a flood. Before doing anything, they wanted to make sure that they were on solid ground to take strong action and break the cycle once and for all. The primary power was City Attorney Erik Johnson. He was very concerned about inverse condemnation and the “taking” issue if the City prevented people from rebuilding and going back into their flooded homes. General Counsel for the Oklahoma Water Resources Board, Dean Couch, consulted with the Association of State Floodplain Managers’ legal experts and contacted Johnson early on in this process, explaining the proper role of the local floodplain administrator and the justification for performing substantial damage determinations.

The State NFIP Coordinator’s Office sent Oklahoma Water Resources Board employees Gavin Brady, State Coordinator, and long-time floodplain manager Ken Morris to provide technical support and guidance to local officials. Brady and Morris immediately called FEMA Region 6 for support and help in obtaining trailers to house the disaster survivors while a safe rebuilding process takes place. Brady and Morris also appealed to the ASFPM Executive Office in Madison to provide legal and technical support to bolster the state’s efforts to ensure proper and safe rebuilding. The ASFPM asked Ed Thomas, an attorney and floodplain manager currently employed by Michael Baker, Inc., to help develop some quick talking points for state officials to use.

Thomas provided the following suggestions:

- Give people a simplified summary of the situation, explaining how the municipality will be at risk both of being the target of lawsuits and of losing eligibility to participate in the National Flood Insurance Program if it does not fully enforce its regulations so that proper and safe rebuilding takes place.
- Instead of helping their fellow citizens, local officials and staff who ignore regulations and allow people to rebuild in the same old flood-prone way are helping to build a time bomb of flood damage misery for those residents and future generations.
- Any municipality or individual who fails to enforce regulations risks individual and even personal liability if flood damage occurs in the future.
- Failure to enforce floodplain regulations jeopardizes the entire community’s participation in the NFIP. The community can be put on probation and/or be suspended from the NFIP, thus endangering the recovery process and making flood insurance unavailable.
- A “patchwork quilt” approach to funding would be an appropriate and beneficial way to rebuild the flooded area safely and properly without undue hardship on the residents. (Information on the patchwork quilt approach is available on the ASFPM website at http://www.floods.org/PDF/Post_Disaster_Reconstruction_Patchwork_Quilt_ET.pdf.

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State & Local Report (cont.)

Morris and Brady presented these arguments and materials to the City at a large public meeting, and the City was convinced to continue to enforce its existing floodplain regulations. Morris summed up this ongoing story by indicating that the success was due to the leadership of local officials with the help of the OWRB. “I also believe the Patchwork Quilt document and Ed’s words were overwhelmingly convincing,” said Morris. ■

TEXAS FLOODPLAIN MANAGEMENT PROGRAM GETS MORE SUPPORT

Texas Governor Rick Perry has signed into law measures that should substantially improve the state’s floodplain management initiatives. S.B.1426 will put Texas into position to enter into a financial partnership with FEMA for flood mapping and also provide significant support to communities in the state. Specifically, the new law

- Formally recognizes Texas’ flood problems, the extensive losses the state faces from flooding, and the benefits of the National Flood Insurance Program not only in insuring and mitigating losses but also in generating flood maps;
- Transfers the state’s floodplain management program to the Texas Water Development Board, a water-based agency with existing mapping and flood-related programs;
- Puts \$3.05 million per year into a new floodplain fund, which will be controlled by the TWDB. About half that amount will be spent each year on flood mapping while the rest will go to staff and overhead; and
- Adds six staff members to the existing three.

The law is the culmination of years of effort by the Texas Floodplain Managers Association and others, and represents a huge step forward in the state’s efforts to address its flood hazard. ■

COURT RULES AGAINST LOUISIANA HOMEOWNERS

In early August a three-judge panel of the 5th U.S. Circuit Court of Appeals ruled that homeowners insurance policies did not cover flood damage caused by breaches in the levees that occurred shortly after Hurricane Katrina. The case was brought by a group of about 40 Louisiana property owners against more than a dozen insurance companies. They won a judgement in the U.S. District Court last year, where they argued that the term “flood” was ambiguous when considered in the context of third-party negligence that released water. Therefore, they said, the various flood exclusions in the homeowners policies should not apply—in effect that a human-made flood is not a real “flood.” The Fifth Circuit did not buy this argument, however, and unanimously overturned the lower court’s decision. “We conclude,” wrote Judge Carolyn King, “. . . that even if the plaintiffs can prove that the levees were negligently designed, constructed, or maintained and that the breaches were due to this negligence, the flood exclusions in the plaintiffs’ policies unambiguously preclude their recovery.”

The decision reinforces the fairly universally held understanding among insurance and floodplain management professionals that separate flood insurance is needed for floodprone properties, because that peril is not covered in standard homeowners policies.

>>> The decision, *In Re Katrina Canal Breaches Consolidated Litigation* (5th Cir., Aug. 2, 2007), can be read at <http://www.ca5.uscourts.gov/opinions/pub/07/07-30119-CV0.wpd.pdf>.

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State & Local Report (cont.)

MISSOURI SHOWS CREATIVE WAY TO PROTECT FLOODPLAINS

Missouri Governor Matt Blunt has signed the Hunting Heritage Protection Areas Act, which is intended to preserve some of the state's floodplains from taxpayer subsidized development. The law creates Hunting Heritage Protection Areas, defined as the 100-year floodplains of the Missouri and Mississippi rivers, which cover much of the trail blazed by Lewis and Clark in their 1804–1806 exploration. The bill makes it unlawful to prohibit hunting in these areas, to ensure that the “historic hunting traditions of Missouri will be preserved for generations to come.” Of more interest to floodplain managers, however, is the provision that prohibits the authorization of new tax increment financing projects in those areas, which amount to hundreds of thousands of acres of diverse fish and wildlife habitat. Tax increment financing (TIF) is a technique by which future real property taxes and other taxes generated by new development are used to pay for necessary public infrastructure and other improvements. Although it is not the only way to finance development, TIF does make it much easier, so the fact that it will not be available in the designated areas in Missouri should inhibit their development. The bill makes some exceptions to the prohibition, such as for already urbanized areas, ports, interstate highways, and flood protection and drainage projects.

>>> The act can be found by searching for SB 225 at <http://www.mo.gov/>.

Publications, Software, AV & the Web

■ “Floodplain Management: Principles and Current Practices” is a set of course materials recently completed for the FEMA Higher Education Project. The course materials, including reading, graphics, and homework assignments, are designed to be taught in 20 classroom sessions, each of 2½ hours. The audience is graduate students in civil engineering and planning, although it can be modified for geography majors. The course provides the student with an understanding of the principles and current practices for managing floodplains, and other flood hazard areas, to bring about flood loss reduction and natural resource protection, emphasizing multi-disciplinary approaches to management. It complements the Higher Education introductory course on floodplain management. James W. Wright. 2007. 300 pp. Available at <http://training.fema.gov>. Click on “Higher Education,” then on “Free College Courses” from the box on the left, then on the “Course Treatments” bullet.

■ *Emergency Management: The American Experience, 1900–2005*, brings a historical perspective to the ongoing examination of public emergency management functions in the United States, which sharpened visibly after Hurricane Katrina. For 80 of the past 105 years, the federal government's role in emergency management has been expanding. With virtually every new presidential administration, the organizational forms and functions of emergency management have evolved. Changes have occurred not only within public management systems and services, but also within the expectations of state and local government officials and the general public. Taking note of the major U.S. disasters that have occurred over the past century and their policy outcomes, including earthquakes, hurricanes, droughts, floods, a pandemic, and an explosion, the book shows

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how the federal government first became involved in emergency management and why and how that role has changed. Claire B. Rubin, editor. 2007. \$35 (including shipping and handling) from the Public Entity Risk Institute online bookstore at <http://www.riskinstitute.org>. PERI offers a \$5.00 discount to students who purchase the book as a textbook for a college course. View the full table of contents at [http://www.riskinstitute.org/PERI/PTR/Emergency+Management+ The+ American+Experience+1900-2005.htm](http://www.riskinstitute.org/PERI/PTR/Emergency+Management+The+American+Experience+1900-2005.htm).

■ *Climate Change, Insurability of Large-scale Disasters and the Liability Challenge* focuses on the interaction between uncertainty and insurability, with an eye toward the future challenges that will result from increasing development of hazard-prone areas and from global warming. The author discusses the capability of the insurance industry to handle large-scale events, liability associated with worldwide climate changes, and the implications of these potential future scenarios for insurance risk capital. One step toward avoiding and alleviating the possible problems would be for insurers to play a stronger role in mitigating risk, by providing premium reductions and rate credits to policyholders that invest in risk-reducing measures. Howard C. Kunreuther and Erwann O. Michel-Kerjan. 2007. 45 pp. National Bureau of Economic Research. Available free online at <http://papers.nber.org/papers/w12821.pdf>.

Calendar

See more flood-related meetings, conferences, and training at
<http://www.floods.org/Conferences,%20Calendar/calendar.asp>.

August 13–16, 2007: ADVANCED HAZUS-MH FOR FLOOD (E172), Emergency Management Institute, Emmitsburg, Maryland. Call EMI at (800) 238-3358 or see <http://www.training.fema.gov/EMIweb/>.

August 22–23, 2007: OHIO STATEWIDE FLOODPLAIN MANAGEMENT CONFERENCE, Dublin, Ohio. See <http://www.ofma.org/ofma/>.

August 20-23, 2007: STORMCON '07: THE NORTH AMERICAN SURFACE WATER QUALITY CONFERENCE AND EXPOSITION, Phoenix, Arizona. See <http://www.stormcon.com/sc.html>.

August 27–29, 2007: WETLANDS 2007: WATERSHED STRATEGIES TO PROTECT AND RESTORE WETLAND ECOLOGICAL AND SOCIAL SERVICES, Williamsburg, Virginia. Sponsored by the Association of State Wetland Managers. Contact Laura Birchill at (207) 892-3399, laura@aswm.org or see <http://www.aswm.org/>.

August 27–30, 2007: MANAGING FLOODPLAIN DEVELOPMENT THROUGH THE NATIONAL FLOOD INSURANCE PROGRAM (E273), Emergency Management Institute, Emmitsburg, Maryland. Contact EMI at (800) 238-3358 or see <http://www.training.fema.gov/EMIweb/>.

August 27–31, 2007: GIS TERRAIN ANALYSIS FOR HYDRO-GEOMORPHIC APPLICATIONS, New York City. Sponsored by the Department of Earth and Environmental Engineering, Columbia University. For information see <http://www.unitus.it/agraria/interna.asp?idPag=3031>. To register, contact Salvatore Grimaldi at salvatore.grimaldi@unitus.it.

- August 28–31, 2007:** GULF COAST RECONSTRUCTION AND INVESTMENT SUMMIT, New Orleans. Sponsored by Equity International, Inc., and others. See <http://katrinareconstruction.org/>.
- September 4–7, 2007:** ANNUAL CONFERENCE OF THE FLOODPLAIN MANAGEMENT ASSOCIATION, South Lake Tahoe, Nevada. See <http://www.floodplain.org/>.
- September 9–13, 2007:** DAM SAFETY 2007, Austin, Texas. Sponsored by the Association of State Dam Safety Officials. Contact ASDSO at (859) 257-5140 or info@damsafety.org, or see <http://www.damsafety.org>.
- September 11-14, 2007:** ARID REGIONS CONFERENCE, Breckenridge, Colorado. Sponsored by the Colorado Association of Stormwater and Floodplain Managers and the Association of State Floodplain Managers. Contact Kevin Houck at (303) 866-4805 or see <http://www.casfm.org/> or <http://www.floods.org>.
- September 12-14, 2007:** ANNUAL CONFERENCE OF THE INDIANA ASSOCIATION FOR FLOODPLAIN AND STORMWATER MANAGEMENT, Angola, Indiana. See <http://www.inafsm.net/conferences/2007/conference07.htm>.
- September 16-19, 2007:** ANNUAL CONFERENCE OF THE OKLAHOMA FLOODPLAIN MANAGERS ASSOCIATION, Tulsa, Oklahoma. See <http://www.okflood.org/>.
- September 24–27, 2007:** NATIONAL FLOOD INSURANCE PROGRAM COMMUNITY RATING SYSTEM (E278), Emergency Management Institute, Emmitsburg, Maryland. Contact (800) 238-3358 or see <http://www.training.fema.gov/EMIweb/>.
- September 24–26, 2007:** FALL CONFERENCE OF THE ARKANSAS FLOODPLAIN MANAGEMENT ASSOCIATION, Eureka Springs, Arkansas. Contact Conrad Battreal at cjb@ftn-assoc.com or see <http://www.arkansasflood.com/>.
- September 28—October 2, 2007:** ANNUAL CONFERENCE OF THE NATIONAL EMERGENCY MANAGEMENT ASSOCIATION, Oklahoma City, Oklahoma. See <http://www.nemaweb.org>.
- October 9–12, 2007:** 34TH ANNUAL NATURAL AREAS CONFERENCE, Cleveland, Ohio. Sponsored by the Natural Areas Association and the Cleveland Museum of Natural History. Contact the Natural Areas Association, P.O. Box 1504, Bend, Oregon 97709, (541) 317-0199 or see <http://www.naturalarea.org/conference.asp>.
- October 18–19, 2007:** BUILDING SUCCESSFUL PARTNERSHIPS: THIRD ANNUAL CONFERENCE OF THE NEW JERSEY ASSOCIATION FOR FLOODPLAIN MANAGEMENT, Somerset, New Jersey. See <http://www.njafm.org/>.
- October 21–24, 2007:** FALL CONFERENCE OF THE TEXAS FLOODPLAIN MANAGEMENT ASSOCIATION, Lubbock, Texas. See <http://www.tfma.org/displayconvention.cfm>.
- October 22–24, 2007:** FALL CONFERENCE OF THE AMERICAN SHORE & BEACH PRESERVATION ASSOCIATION, Galveston, Texas. See <http://www.asbpa.org/conferences/conferences.htm>.
- October 24–25, 2007:** FLOODPLAIN AND STORMWATER MANAGEMENT IN MARYLAND: THE LOCAL PERSPECTIVE, Linthicum, Maryland. Sponsored by the Maryland Association of Floodplain and Stormwater Managers. See <http://www.mafsm.org>.

- October 24–26, 2007:** H2O CONFERENCE, Long Beach, California. Sponsored by the California Shore and Beach Preservation Association, California Coastal Coalition, Southern California Wetlands Recovery Project, and others. See http://www.websurfer.us/coastal/h20_2007/call_presentations.htm.
- November 1–2, 2007:** ECOSYSTEMS RESTORATION & CREATION, Plant City, Florida. Sponsored by Hillsborough Community College. Abstracts are due July 2, 2007. See <http://www.hccfl.edu/depts/detp/ecoconf.htm>.
- November 6–8, 2007:** FOURTH ANNUAL CANADIAN RISK AND HAZARDS NETWORK SYMPOSIUM Richmond, British Columbia. Sponsored by Justice Institute of British Columbia, Simon Fraser University, and University of British Columbia. Contact Stephanie Chang at stephanie.chang@ucb.ca or see <http://www.jibc.ca/crhnet/papers/papers.htm>.
- November 8–9, 2007:** STRONGER TOGETHER: ANNUAL CONFERENCE ON PROPERTY LOSS REDUCTION, Orlando, Florida. Sponsored by the Institute for Business and Home Safety. See <http://www.ibhs.org/congress/>.
- November 11–14, 2007:** PARTNERS IN EMERGENCY MANAGEMENT: WORKING TOGETHER—IAEM 55TH ANNUAL CONFERENCE & EMEX. Reno, Nevada. Sponsored by the International Association of Emergency Managers. See <http://www.iaem.com>.
- November 14–15, 2007:** ANNUAL CONFERENCE OF THE MINNESOTA ASSOCIATION OF FLOODPLAIN MANAGERS, St. Cloud, Minnesota. Information will be posted at <http://www.mnafpm.org/default.htm>.
- November 27–29, 2007:** SECOND INTERNATIONAL CONFERENCE ON URBAN DISASTER REDUCTION, Taipei, Taiwan. See <http://www.ncdr.nat.gov.tw/2ICUDR/>.
- November 27–30, 2007:** TRAIN-THE-TRAINER: MANAGING FLOODPLAIN DEVELOPMENT THROUGH THE NFIP (E270), Emergency Management Institute, Emmitsburg, Maryland. Contact EMI at (800) 238-3358 or see <http://www.training.fema.gov/EMIweb/>.
- February 26–29, 2008:** 48TH ANNUAL FLOODPLAIN MANAGEMENT CONFERENCE, Wollongong, New South Wales, Australia. Sponsored by the Floodplains Management Authority and others. See <http://www.iceaustralia.com/fmawollongong/>.
- March 31—April 2, 2008:** URBAN WATER MANAGEMENT, Louisville, Kentucky. Sponsored by PennWell, WaterWorld, and others. See <http://www.urbanwatermgt.com>.
- April 13–16, 2008:** SOLUTIONS TO COASTAL DISASTERS, Oahu, Hawaii. Sponsored by the Coasts, Oceans, Ports, and Rivers Institute, American Society of Civil Engineers. See <http://content.asce.org/conferences/cd2008/>.
- April 27—May 1, 2008:** SPRING CONFERENCE OF THE TEXAS FLOODPLAIN MANAGEMENT ASSOCIATION, League City, Texas. See <http://www.tfma.org/displayconvention.cfm>.
- May 18–23, 2008:** A LIVING RIVER APPROACH TO FLOODPLAIN MANAGEMENT: 31ST ANNUAL CONFERENCE OF THE ASSOCIATION OF STATE FLOODPLAIN MANAGERS, Reno, Nevada. See <http://www.floods.org>.



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