



Association of State Floodplain Managers, Inc.

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February 7, 2012

Honorable John L. Mica
Chairman
House Committee on Transportation and Infrastructure
2165 Rayburn House Office Building
Washington D.C. 20515

Honorable Nick J. Rahall, II
Ranking Minority Member
House Committee on Transportation and Infrastructure
2163 Rayburn House Office Building
Washington D.C. 2015

Dear Mr. Chairman and Ranking Member Rahall,

On January 27th, the Senate passed a bill, S. 2039, to allow construction of levees on land purchased with federal dollars and then deed restricted as open space. The bill has now been referred to your committee for consideration. The Association of State Floodplain Managers would like to explain our great concern about this legislation for your consideration.

At present, the bill applies only to such land in North Dakota. It is highly likely that, if passed, there will be proposals to expand its application to other states and probably nationwide. It is our understanding that the proposal developed because temporary levees are often constructed during floods and then are removed because the levees have not gone through a permitting and analysis for impacts on other properties or on environmental, social or cultural concerns. While we can appreciate this situation, we would point out that there are many solutions to flood threats other than levee construction on the federally bought-out land that have been used for decades, including in North Dakota. It is also our understanding that the Federal Emergency Management Agency (FEMA) and the U.S. Army Corps of Engineers (USACE) have a Memorandum of Understanding which provides for limited exemptions on buyout land with appropriate considerations and in certain circumstances. As such, the problem this legislation seems designed to address already has a solution.

Dedicated to reducing flood risk and losses in the nation.

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There are a number of aspects we hope you will consider as you evaluate S. 2039.

- Taxpayers nationwide have already paid once to mitigate flood losses on this land and the open space requirement ensures the taxpayers will never have to pay disaster costs associated with this land again. The levee will not provide that “never again” assurance. Because of frequent pressures to relax the deed restriction for various purposes, it is important to remain firm on the maintenance as open space provision.
- The presence of permanent levees on buy-out land will inevitably encourage more development behind that land. That would increase the consequences of a future failure or overtopping and would increase the costs (again) to the federal taxpayer. Regardless of how well a levee is constructed, there will always be residual risk on developed land behind the levee, as noted in the report of the National Committee on Levee Safety.
- This would create a backdoor way for the federal government to contribute more costs for a locally or state-built levee, because the land acquisition costs are usually a substantial part of project costs and in these cases, the federal taxpayer has already paid for land acquisition. Once complete, such levees could be enrolled in the USACE Rehabilitation and Inspection Program and receive Federal payment of 80% of future rehabilitation and repair costs. At present, there are no maintenance costs to the federal government in future years for land bought out under the Hazard Mitigation Grant Program (HMGP).
- FEMA buy-outs occur mainly in deep floodplains right next to rivers because these are areas of heaviest damage to structures. Levees built on such land would be built right next to the river, creating more costs to the community and long-term issues such as sustainability. The highest and most costly levees would be necessitated because there would be no room for conveyance of the design flood and these are the deepest part of the floodplain. The pinched-in river would increase flood heights and lead to erosion of the levee because of proximity to the river and high velocity water during high water events. Natural and beneficial functions of the floodplain, such as flood water conveyance, water storage, habitat, would be lost.
- The ease and lower cost of building on land already paid for by taxpayers would discourage development of better solutions such as locally financed buy-outs to facilitate construction of set-back levees which would make room for the river’s natural floodplain and necessitate a smaller, less costly levee.
- Many state officials who administer the FEMA programs can work with communities, provide technical assistance and assist in identifying options for their flooding issues. The USACE also has several programs which can provide technical assistance.

The Association of State Floodplain Managers (ASFPM) and its 32 State Chapters represent over 14,000 state and local officials and other professionals who are engaged in all aspects of watershed management and flood loss reduction. Our state and local officials are the federal government’s partners in implementing programs and working to achieve effectiveness in meeting our shared objectives.

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We hope these comments are useful in explaining our concerns about construction of permanent levees on deed restricted land bought by FEMA's flood hazard mitigation programs.

Very sincerely,



Sally McConkey, Chair



Larry Larson, Executive Director

Cc: Hon. Jeff Denham, Chairman, Subcommittee on Economic Development,
Public Buildings and Emergency Management
Hon. Eleanor Holmes Norton, Ranking Minority Member