



Federal Emergency Management Agency Acknowledges that 2007 Decision to De-Accredit Area Levees “is no longer operative.” Judge Dismisses Levee Lawsuit

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COLLINSVILLE, IL August 2, 2011 -- A Federal Judge has dismissed the lawsuit filed by Metro East communities challenging levee de-accreditation after the defendant, the Federal Emergency Management Agency, announced in open court that it had abandoned its proposal to de-accredit the Metro East levee systems.

As a result, Judge J. Phil Gilbert held that the lawsuit, which challenged FEMA’s deaccreditation

decision, was moot. The judge’s August 1, 2011 order noted in bolded type that “the Court wishes to make clear – to anyone with any interest whatsoever in the American Bottoms area, especially current prospective and formerly prospective residents and businesses of the region – that the levees of the American Bottoms are accredited and have been accredited at all times relevant to this lawsuit.”

The Metro East communities, including, Madison, St. Clair and Monroe counties, filed suit in last year seeking to set aside FEMA’s proposed flood maps showing the Metro East levee systems as de-accredited. FEMA first announced its intention to de-accredit the levees in October 2007 letters to community leaders in the Metro East. Those letters cited “studies” performed by the Army Corps of Engineers. However, the FEMA attorney could not identify any basis for the decision, even after repeated questioning by Judge Gilbert. The agency did file a record of its proceedings with the court, but the record did not reveal any studies supporting the proposed de-accreditation of the levees.

FEMA specifically acknowledged in open court that the announcement made by FEMA in August 2007, subsequent communications with local governments, and preliminary flood insurance rate maps asserting that the levees are or will be de-accredited “are no longer operative.” Based on FEMA’s recent decisions and statements made in oral argument, the Court concluded that the lawsuit is moot. Should FEMA issue new preliminary flood insurance rate maps, those maps would be subject to a new administrative appeal process before any final determination could be made. Should that determination once again result in a finding de-accrediting the levee system the lawsuit can be re-filed.

This decision affects most property owners in the American Bottom, who now will not be subject to mandatory flood insurance requirements and will be assured that flood insurance will remain widely available and affordable since the area is now shown as protected from flooding. It will also mean that local governments will not have to impose severe restrictions on new building in the area.

In August 2007 FEMA announced that the levee system protecting a large area in Madison, St. Clair and Monroe counties no longer provided protection from a 100-year flood, and those levees would effectively be removed from flood insurance maps. This would have meant that most homeowners and businesses in the 174 square mile area known as the American Bottom would have been required to purchase costly flood insurance. The total cost of flood insurance has been estimated at \$50 million annually. Also, any new building would need to be raised to a level higher than the projected flood elevation, which might be as much as 15-20 feet higher than surrounding ground.

Alan Dunstan, County Board Chair of Madison County, said that, “while we are disappointed that we will not get to hold FEMA fully accountable at this time for their reckless decision made in 2007, the decision made by Judge Gilbert effectively affirms one of the central arguments of the suit -- that FEMA made a decision to de-accredit the levee system that was not supported by any evidence. We took the step of filing this lawsuit reluctantly, but we continue to believe that we must do whatever is necessary to protect the rights of citizens and businesses of the area behind the levees.”

Mark Kern, County Board Chair of St. Clair County added that “it’s clear that we are not alone in having major problems with flood insurance maps. The fact that FEMA is voluntarily going back to the drawing board with the mapping process is an acknowledgement that that the preliminary maps were faulty. Unfortunately, it has taken several years for the agency to come to that conclusion, inflicting great economic harm on areas like ours. Our job now is to remind property owners and businesses that it is indeed safe to invest in the American Bottom.”

Although FEMA now acknowledges that area levees are now accredited as providing adequate flood protection, the Southwestern Illinois Flood Prevention District Council is moving ahead quickly with plans to invest in the area’s levee systems so that there will be no doubt that they meet all applicable regulatory and engineering standards. “We want to do everything humanly possible to assure the residents and businesses of the area that our levee systems are safe and that we can answer any future challenge from FEMA. The doubts created by FEMA’s announcement in August, 2007 created economic hardship that we never want repeated,” said Les Sterman, Chief Supervisor of the Council.