

December 13, 2012

Honorable Harold Rogers
Chairman
Committee on Appropriations
U.S. House of Representatives
Washington D.C. 20515

Honorable Norm Dicks
Ranking Minority Member
House Committee on Appropriations
1016 Longworth House Office Building
Washington D.C. 20515

Dear Chairman Rogers and Ranking Member Dicks,

Section 5606 of the Fiscal Year 2013 Disaster Assistance Supplemental Appropriations text released by the Senate Appropriations Committee on December 12 raises great concern among members of our organizations. This provision would allow construction of levees on land previously purchased with federal dollars for the purpose of remaining as deed-restricted open space.

When originally passed by the Senate (under Unanimous Consent on the same day it was introduced) a bill containing similar provisions applied only to such land in North Dakota. We noted at the time that it would likely lead to proposals to expand its application to other states and probably nationwide. When the measure (S. 2039) was considered on the House floor in July under Suspension of the Rules, it was defeated by a vote of 126-254. Now we are seeing an expanded version in the Supplemental Appropriations bill which would apply to all states in the Midwest that received Presidential Disaster Declarations in 2011.

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. 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.

There are a number of aspects we hope you will consider as you evaluate this provision and our concerns.

- **Taxpayers will be paying twice for less mitigation than currently exists.** They 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. 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.
- **Use of deed-restricted land would establish unfortunate precedent.** 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.
- **Taxpayers would make significant contributions to the cost to states, localities and tribes of levee construction in a backdoor manner.** 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).
- **Levees on deed-restricted taxpayer buy-out land would often lead to poor floodplain management.** 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, the deepest part of the floodplain. The pinched-in river would increase flood heights and velocity, leading to erosion of the levee and to increased flood risk both downstream and upstream of the levee area. Natural and beneficial functions of the floodplain provided by the buyout land, such as flood water conveyance, water storage, habitat, would be lost.
- **Development of less costly solutions involving less long-term operation and maintenance costs would be less likely.** 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. Federal technical assistance programs (FEMA and USACE) and state officials who administer FEMA programs can work with

communities, provide technical assistance and assist in identifying options for their flooding issues.

We hope these comments are useful in explaining our concerns about Section 5606 and construction of permanent levees on deed-restricted land bought by FEMA's flood hazard mitigation programs.

Very sincerely,

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cc: Hon. Robert Aderholt, Chairman, Subcommittee on Homeland Security
Hon. David Price, Ranking Minority Member, Subcommittee on Homeland Security

