

Flood News for Michigan Floodplain Managers

A Newsletter of the
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MSFA 2013 Conference

The Michigan Stormwater-Floodplain Association (MSFA) held its 26th annual conference at the MaCamly Plaza Hotel in Battle Creek March 5-8, 2013. The facility was well suited for the cause and holding the conference in Battle Creek facilitated the MSFA effort of having the conference at various regional locations around the state. It is hoped that this makes it easier to attend the conference for the community officials within that regional area.

The conference followed the association's established multi-day pattern of workshops, CFM exam, breakout sessions, plenary sessions, vendor/consultant networking sessions, and membership business luncheon meeting and awards recognition. It was another well attended conference, with upwards of 150 attendees made up of local community and county officials and a mix of vendors and consultants having products related to and expertise in the many aspects of floodplain management. Staff and representatives from the MDEQ, U.S. Army Corps of Engineers, Michigan State University, National Weather Service, Calhoun County, U.S. Geological Survey, Michigan Association of County Drain Commissioners, the Association of State Floodplain Managers (ASFPM), Smart Vent, Spicer Group, CoreLogic Flood Services, Mona Lake Watershed Council City of Battle Creek, Kieser & Associates, Applied Polymer Systems, Inc., URS Corporation, AMEC, and Cardno JFNew, participated in conference presentations, workshops, and other various sessions of the conference. Without the participation, commitment, and support of these entities and others, the conference would not have been the success that it was. *Planning is underway for the 2014 conference at the same facility and is scheduled for March 4-7, 2014.*

The MSFA gives a special thanks to all of the following 2013 conference supporters:

2013 MSFA Sponsors

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Applied Science, Inc.	Michigan Department of Environmental Quality
Driesenga & Associates, Inc.	Spicer Group
The Federal Emergency Management Agency	

2013 Conference Exhibitors

Advanced Drainage Systems, Inc.
Applied Polymer Systems, Inc.
Applied Science, Inc.
AMEC Environment and Infrastructure, Inc.
Cardno JFNew
CSI Geoturf
Driesenga & Associates, Inc.
Etna Supply Co.
Fluid Process Equipment
Hubbell, Roth & Clark, Inc.
Michigan Department of Environmental Quality
Northern Concrete Pipe, Inc.
Smart Vent Flood Vents
Snap-Tite / Isco Industries
Spicer Group
Stantec
US Geological Survey
US Army Corps of Engineers

2013 MSFA Conference Awards Recognition

During the annual general membership MSFA business luncheon, several award achievements were acknowledged and presented. They included announcement of the two 2011/2012 college scholarship selections, the new 2012 CFM recipients and the 2013 MSFA Outstanding Service Award selection. Those recognitions were as follows:

Scholarships Award Selections

Two college students were selected by the MSFA officers and board members to each receive a \$1,500 scholarship. The two individuals were as follows

Jonathan Wagenknecht

University of Michigan - Jonathan is a senior working on a Bachelors Degree in Civil and Environmental Engineering, and expects to graduate in April of 2013. He has completed internships with Giffels-Webster Engineering and the Michigan Department of Environmental Quality.

Whitney Briggs

Western Michigan University - Whitney is a junior working on a Bachelors Degree in Civil Engineering, and expects to graduate in December of 2015. She has an Associates degree from Kirtland Community College.

To be eligible for consideration a student must be full time, Michigan University Junior, Senior, or Masters level in Biosystems, Civil, or Environmental Engineering, or related Natural Resources Planning program with a specialization related to the mission and goals of the MSFA. They must have a cumulative GPA of 3.0 or above at the end of spring semester.

The scholarship monies are funded by the sales of the Floodplain Watershed model marketed by the Wards Scientific Supply Company. The model was a concept and design effort by Mr. Mark Walton a MSFA member and employee of the National Weather Service and Mr. Dave Chapman of MI Earth Science Teachers Association and a high school science teacher in the Okemos High School. MSFA provided funding for construction of the initial proto type of the model and then a contract was entered into with Wards to build and market the model on a commercial scale. The contract provides the MSFA with a portion of the sales which is used to fund the scholarship program.

The 2013/2014 scholarship application must be submitted to MSFA and post marked by Friday, November 1, 2013. Mail to MSFA, PO Box 14265, Lansing, MI 48901-4265.

CFM Recognition

Recognition was provided to several MSFA members for their successful accomplishment of taking and passing the Association of State Floodplain Managers' (ASFPM) "Certified Floodplain Manager" (CFM) exam during 2012.

Those new Michigan CFMs receiving recognition plaques were:

Tim Bradshaw, PE, CFM
David W. Mostrom, PS, CFM
Donald L. Seal, CFM
Joseph M. Smith, CFM
Glenn Soerens, PE, CFM
Karen Stickel, P.E., CFM
Rod G. Williams, CFM

The ASFPM now recognizes Michigan as having 75 CFMs. Congratulations to all.



2013 MSFA Outstanding Service Award

During the awards portion of the annual MSFA membership business luncheon the *MSFA Outstanding Service Award* was awarded to Ms. Ronda Oberlin who has been involved in floodplain management for 20 years and is an employee of the City of Lansing. Ronda works in the Lansing Office of Emergency Management as an Emergency Management Specialist and Floodplain Manager. Her great passion and commitment to the cause of the office with particular emphasis on floodplain management to make positive differences in the lives of Lansing citizens especially those with the greatest exposure to flood impacts is unequalled. One of her major accomplishments has been the successful acquisition of Federal grants to facilitate the ownership and removal of structures from 42 high risk floodplain properties. Another valuable accomplishment has been taking the lead in an effort to develop and obtain an enhanced flood warning system for the Lansing community through a cooperative effort between the community and a number of state and federal agencies.

The award by the MSFA represents its recognition of a fellow floodplain manager whose actions have demonstrated going above and beyond normal expectations. Ronda's efforts to promote good floodplain management and the MSFA goals through outstanding local programs or activities for comprehensive floodplain and stormwater management and the encouragement of flood impact awareness and reduction are commendable and duly recognized.



MSFA 2014 27th Annual Conference Date and Place is set for March 4-7, 2014 at the MaCamly Plaza Hotel in Battle Creek, Michigan



Flood Mapping for the Nation

**A Cost Analysis for the Nation's Flood Map Inventory
The Association of State Floodplain Managers (ASFPM) Report (reprinted in part)
March 1, 2013**

Executive Summary

The Association of State Floodplain Managers has developed an estimate, based on a careful analysis, of the total cost to provide floodplain mapping for all communities in the nation based on the parameters specified in the Biggert-Waters Flood Insurance Reform Act of 2012. The Nation has invested \$4.3 billion in flood mapping to date, and has enjoyed multiple benefits from that investment, including providing the basis for guiding development that saves over \$1 billion/year in flood damages. ASFPM has identified criteria of what constitutes adequate flood mapping for the country, and has produced an estimate showing the initial cost to provide flood mapping for the nation ranging from \$4.5 billion to \$7.5 billion. The steady-state cost to then maintain accurate and up-to-date flood maps ranges from \$116 million to \$275 million annually.* This national investment in a comprehensive, updated flood map inventory for every community in the nation will drive down costs and suffering of flooding on our nation and its citizens, as well as providing the best tool for managing flood risk and building sustainable communities.

Objective of Study

The Association of State Floodplain Managers (ASFPM) conducted a study to develop an overall estimate of the cost to adequately complete the mapping of flood hazards and communicate flood risk for all communities in the United States. The study has multiple objectives including:

- 1) Identifying the cost to complete the flood mapping effort in the nation consistent with the new congressionally established National Flood Mapping Program;
- 2) Identifying the annual, steady-state maintenance cost of the mapping program after the flood mapping has been completed for all parts of the nation;
- 3) Comparing these estimated costs with the Congressional authorization, of \$400 million annually for the National Flood Mapping Program, to help decision makers determine if we are on track in moving toward getting the 22,000 flood prone communities in the nation mapped, and to keep the maps updated,
- 4) Identifying issues, cost savings and other considerations that the Federal Emergency Management Agency (FEMA) and the Technical Mapping Advisory Council (TMAC) should consider as they work to lay out the plan for mapping the flood risk areas of the nation.

Cost Savings

The cost model developed by ASFPM includes estimates based on available information from states and FEMA, and is also based on today's technology and methods of providing flood map data, as well as the assumptions stated earlier. ASFPM believes that there are ways to achieve cost savings by leveraging funding, advances in technology and other approaches. A few of these are presented below.

- 1) *Efficiencies in mapping using better technology.* Throughout the FEMA Map Modernization program and in Risk MAP, FEMA has been successful in driving program efficiencies. This is also a result of changing and improving technologies.
- 2) *Leveraging state and locally collected elevation data.* Some states do routinely collect and maintain statewide, high quality LIDAR data that can be used for flood mapping. This may reduce the initial cost to collect and maintain the necessary topographic information needed for flood mapping. ASFPM has also identified potential cost savings related to conducting flood studies by having a nationwide LIDAR dataset due to economies of scale.
- 3) *Incenting better cost sharing overall.* Currently there is no required cost share for flood mapping. Whether through incentives or requirements, cost-sharing can drive down the Federal outlays for flood mapping and may be especially appropriate in rapidly developing areas.
- 4) *Streamlining the geospatial processes and management of data for flood mapping.* To be clear, there are still some communities in the country that continue to rely on paper flood maps. This issue can be addressed by developing means to provide paper maps, when a community indicates a need--at a much lower cost than the added processing steps that are now necessary in order to always produce a paper map for every community.
- 5) *Increasing the flood insurance policy fee to provide additional funds for flood mapping.* In addition to direct appropriations, FEMA is authorized to use some of the fees collected from policyholders for mapping activities. Congress could direct FEMA to increase these offsetting fees. For example, a \$15 increase in the fee (on average, this would only increase the cost of a policy by 1-2%) would eventually generate about \$75 million per year. An alternative to the whole dollar amount charged would be to convert the fee to a percentage of the premium such that additional funding would be generated.

Conclusion

Flooding is a predictable risk in the sense that we can identify where in the nation flooding will occur. It is a manageable risk – there are established actions that individuals, businesses and communities can take to

reduce potential damage – provided the flood risk areas are identified. Flooding continues to be the nation’s costliest hazard, with average annual losses now averaging over \$10 billion. Yet losses continue to climb – our nation has a flooding problem.

Investments in the nation’s flood mapping program over the past 40 years have been impressive. Over one million miles of streams, rivers, and shorelines have been mapped at a total cost of over \$4 billion. Yet we still have areas that have no flood maps, areas that have outdated flood maps that haven’t been updated, and areas with older engineering studies that need to be updated. And there are other flood hazards that need to be identified. Based on the data presented in this report, over half of the needed investment has been made. Why continue?

A recent report on the NFIP identified that the lack of understanding of the national flood risk, the inadequate communication of that risk, and diminished capabilities in flood risk management due to inaccurate or out-of-date flood hazard maps is a current major weakness in the program. However, it also concluded that reliable flood risk data, including updated flood maps, and educating residents about flood risk, contribute to mitigating future flood losses (Congressional Research Service, 2011). A comprehensive, updated national flood map inventory can drive down the costs – and impacts – of flooding on our nation and its citizens.

* These estimates do not include revenue from the Federal policy fee which is primarily used to support administrative cost including the issuance of letter of map change, program management, and data dissemination.

The full version of the report including details can be accessed at the ASFPM website of <http://www.floods.org/index.asp?menuID=651>

**For National Flood Insurance Program
Training, (Adjusters, Agents, Lenders)
Workshops, and Conferences, go to the
following website for current schedule and
registering on line:**

<http://www.fema.gov/national-flood-insurance-program-training-workshops-and-conferences>



Policy Matters!

From the ASFPM’s newsletter; News & Views February 2013

{Editor’s note: Many readers may have over the last couple years heard reference to community “resilience” and maybe even “sustainability” as related to “Resiliency Meetings” which FEMA has sponsored within certain communities in

Michigan and around the country. Achieving a clear picture of what these terms mean in community existence and operations is not necessarily a simple effort. This article by Larry Larson provides some incite as to what might be of value for community officials and citizens to consider.}

Larry Larson, P.E., CFM
Director Emeritus – Senior Policy Advisor, ASFPM
The Evolving Definitions of *Resilience* and *Sustainability*

Is community resilience different from community sustainability? Both *resilience* and *sustainability* are relatively new terms within the vocabulary of our profession – and it is with increasing frequency that I encounter discussions in which some see resilience as short term and sustainability as long term. Many terms continue to evolve as our knowledge and understanding grows, just as flood control is now evolving to flood risk management. As such, resilience and sustainability have come to describe how we want communities to either recover from a disaster, or how we want them to grow. Resilience and sustainability are the next steps beyond just hazard mitigation. It has taken decades to shift the approach from limiting assistance and funding for community recovery, where communities were being rebuilt to the same standards as before the disaster event, to suggesting and offering some funding assistance if these communities will mitigate when rebuilding. Now we are close to being able to mandate mitigation as a condition of receiving federal taxpayer money for rebuilding buildings and infrastructure.

Recognizing the importance of not only including mitigation in recovery, but of also ensuring that mitigation will take into account any changing future conditions, moves any such mitigation action into the realm of resilience or sustainability. In this regard, a clear example of flood hazard mitigation is to not only rebuild to the flood elevations from the currently adopted flood maps, but to also use the Advisory Base Flood Elevations (ABFEs) that the Federal Emergency Management Agency (FEMA) calculated after Katrina and Sandy. It is commonly agreed that use of ABFEs will make the structure and community more resilient. That said, there are those who will argue that unless the full range of hazards, environmental, social, and economic conditions of the community are taken into account, the community may still not be sustainable. Is rebuilding, even to ABFEs, a truly sustainable option in a known high hazard area that is repeatedly flooded and subject to increased flood elevations in the future? Probably not.

Let's examine another flood hazard mitigation measure—a levee. Building a levee to protect a highly urbanized area will likely make that community more resilient. But if the levee fails or is breached, causing catastrophic damage in the community, can the community afford to rebuild it? Even if the levee has not yet failed, can the community afford the annual costs of operation and maintenance (O&M), necessary to keeping the levee up to its design level of protection? In other words, is this approach a sustainable option? I recall a California community that rejected a U.S. Army Corps of Engineers levee, because it was clear to this community that they could not afford the annual O&M costs. I am also reminded of Soldiers Grove, Wisconsin. The people of Soldiers Grove rejected the levee option because, in their words, the levee would only, “change us from a dying run-down community subject to flooding into a dying run-down community not subject to flooding.” That is to say, the community had many, many challenges to remaining a viable community – and flooding was only one of them. In their situation, the levee was not a sustainable solution; they needed a more holistic solution and approach, with the potential to address more of their challenges, as opposed to a solution that would only address one of them. Napa, California, reached a similar conclusion and worked to not only incorporate a set-back levee, but to simultaneously address their challenges as opportunity for developing a more viable and sustainable community. If you are not familiar with the Napa success story, (<http://www.countyofnapa.org/FloodDistrict/>).

Some of you may be thinking, “Don't tell me we need to do more. Many of us are still trying to get basic hazard mitigation included in recovery.” However, let me suggest that it is our profession which is most suited for leading the charge to establishing communities that are not just more resilient, but also more sustainable. While it is true that progress often comes one small step at a time - we, as leaders, must acknowledge the opportunity inherent to our role as long-term planners and strategic thinkers, such that we can maintain awareness of what lies ahead and more effectively guide the process and progress over the long-term.



Presidential Disaster Declaration for Michigan Flooding

4121-DR-MI--July 24,2013

Joint Mitigation Strategy

(Michigan State Police, FEMA and Michigan Department of Environmental Quality)

DECLARATION

On June 18, 2013, President Barack Obama issued a Major Presidential Disaster Declaration (4121-DR-MI) for the State of Michigan resulting in federal disaster assistance to eligible applicants in sixteen counties designated for FEMA Public Assistance (PA) for flood damage that occurred between April 16 and May 14, 2013, and for Hazard Mitigation (HM) assistance throughout the state. The designated counties are Allegan, Baraga, Barry, Gogebic, Houghton, Ionia, Kent, Keweenaw, Marquette, Midland, Muskegon, Newaygo, Ontonagon, Osceola, Ottawa, and Saginaw Counties. Hazard Mitigation Grant Program (HMGP) assistance was declared state wide. On June 29, 2013, a FEMA/Michigan Joint Field Office (JFO) was established in Kentwood (Kent County), and declared operational as of July 1, 2013.

BACKGROUND OF EVENT

Beginning on April 16, 2013, a low pressure system moved eastward across the Great Lakes, bringing showers, thunderstorms, and three to five inches of rain to various parts of Michigan. On April 18, 2013 at 10:30pm, approximately 26,858 customers in Michigan were without power, reaching a 24-hour peak of 76,519 customers without power. The rain continued into Friday April 19, 2013, with a two-day precipitation total of five inches. Substantial rises in river levels across Michigan resulted from this rainfall and rapidly melting snow, particularly in western portions of the Upper Peninsula, where the frozen ground prevented precipitation and melting snowpack from being absorbed, exacerbating the event.

Numerous flood warnings were issued in the State of Michigan, specifically in the west and central portions of the state. Six counties and several cities issued Emergency Declarations. No mandatory evacuations were implemented, but numerous voluntary evacuations did occur across the State.

Some rivers continued to rise above record flood levels causing the counties to take emergency actions. The Grand River in the Grand Rapids area surged to historic levels and sandbagging operations were required for protection. The Grand River crested in the evening of April 21, 2013, in downtown Grand Rapids and Comstock Park. Around 10:00 pm it peaked at 21.85 feet in downtown Grand Rapids, breaking the record of 19.64 feet set in 1985. In Comstock Park, the river crested at 17.8 feet around the same time, surpassing the 65-year-old record of 17.75 feet set in 1948. Businesses and building owners along the river shored up their properties as much as possible and local officials had to close the Fulton Street Bridge because of a high-voltage power line threatened by the rising river. Although most rivers began to recede during the following week, there were some lingering floodwaters that continued to affect various areas of the state.

The event was determined to be beyond the capabilities of the State and the affected local governments. Governor Rick Snyder submitted a request to the President on June 7, 2013, to declare a major disaster for the State of Michigan. This request was responded to with the disaster declaration described above.

Mitigation staffing for this disaster will be composed of limited JFO staff and Regional/State support staff who have been working virtually out of the FEMA Region V Chicago office and the Michigan State Police Emergency Management and Homeland Security Division (MSP/EMHSD) in Lansing. A satellite JFO has opened in Negaunee.

STRATEGIC GOALS

HM goals and objectives have been established for this disaster and are based on the current Michigan Hazard Mitigation Plan and the priorities of the State Coordinating Officer (SCO) and Federal Coordinating Officer (FCO), as follows:

GOAL 1: Support efforts to update state and local (HM) plans where these plans have expired or are nearing expiration, and support efforts to complete plans in local communities that do not yet have them

GOAL 2: Assist the State and local communities in promoting and successfully implementing hazard mitigation projects

GOAL 3: Promote effective Floodplain Management through community education, outreach and training, and the provision of technical assistance to the State

GOAL 4: Provide support and advocacy to Public Assistance (PA) to ensure the implementation of Section 406 HM measures on all appropriate PA projects.

Community officials within the declared disaster counties should be aware of the FEMA efforts to provide public assistance to impacted community entities and pursue the mitigation assistance opportunity under this declaration.



Question and Answers

Q: What is the requirement for purchasing flood insurance after receiving disaster assistance?

A: The National Flood Insurance Reform Act of 1994 requires individual in SFHAs who receive disaster assistance after September 23, 1994, for flood disaster losses to real or personal property to purchase and maintain flood insurance coverage for as long as they live in the dwelling.

Q: Under the National Flood Insurance Program what flood insurance coverage is available for basements and enclosed areas beneath the lowest elevated floor of an elevated building located in a special flood hazard area (1% chance annual flood area).

A: Coverage is provided for foundation elements, including posts, pilings, piers, or other support systems for elevated buildings. Coverage also is available for basement and enclosure utility connections, as well as for certain mechanical equipment necessary for the habitability of a building, such as furnaces, water heaters, clothes washers and dryers, food freezers and the food in them, air conditioners, heat pumps, electrical junctions, and circuit breaker boxes. **Finished structural elements such as paneling and linoleum, and content items such as rugs and furniture are NOT covered.** The standard flood insurance policy (SFIP) has a complete list of covered elements and equipment.

Unless there is a general condition of area flooding and the flood is the proximate cause of sewer or drain backup, sump pump discharge or overflow, or seepage of water, the NFIP does not insure for direct physical loss caused directly or indirectly by any of the following:

- Backups through sewer or drains;
- Discharges or overflows from a sump, a sump pump, or related equipment; or
- Seepage or leaks on or through the cover property

Complete coverage details can be found in any of the SFIP forms, Section III, Property Covered, Part A. Building Property-8.a.(1) through (17) and b., for building items covered. For Personal property, refer to Section III. Property Covered, Part B. Personal Property-4.a. b. and c. More information on and access to the SFIP forms and the above referenced details can be found at the web site of: <http://www.fema.gov/national-flood-insurance-program/standard-flood-insurance-policy-forms>



SCOTUS Decision in Arkansas Game and Fish Commission

v. United States

Sam Medlock, JD, CFM, Policy & Partnerships Manager, ASFPM
From the ASFPM's newsletter: News & Views December 2012

On December 4, 2012, the U.S. Supreme Court issued its opinion in an important floodwaters takings case, *Arkansas Game & Fish Commission v. United States*, concluding that temporary flooding can give rise to a takings claim. However, the Court's decision may have important implications for states and local governments working to manage flood risk and potential liabilities.

Background

The 5th Amendment to the U.S. Constitution guarantees owners of private property that, if the government takes over the property for its own public purposes, it must pay the owner a dollar amount that represents its current market value if the property were to be sold. One of several ways that government action may effect a taking is when the government physically occupies private property.

Here, the Arkansas Game and Fish Commission filed a physical takings claim against the United States in the Court of Federal Claims, alleging that the government had taken its property without just compensation. The Commission claimed that temporary deviations by the U.S. Army Corps of Engineers (USACE) from an operating plan for Clearwater Dam during the years 1993 to 2000 caused increased flooding in the Commission's Dave Donaldson Black River Wildlife Management Area.ⁱ This flooding, in turn, damaged or destroyed timber stands in the Management Area. The federal government argued that any increased flooding was only temporary and constituted, if anything, a tort rather than a taking. They also argued that the damage was not substantial enough to constitute a taking and that the effects in any event were not predictable, again defeating a takings claim.

The Claims Court concluded that the deviations from the 1953 Water Control Manual were "interim deviations" that were "approved at various times from 1993 to 2000."ⁱⁱ The court also found that: "Certainly no *permanent* flowage easement in the Management Area was taken by the flooding attributable to the Corps' deviations from the operating Plan for Clearwater Dam. . . . [A] *temporary* flowage easement is a necessary foundation for the Commission's takings claim, as has always been evident from the Commission's pleadings and proofs."ⁱⁱⁱ The Claims Court concluded that the government had taken a temporary flowage easement over the Commission's property and awarded a total of \$5.8 million in damages. The federal government appealed.

The appeals court reversed, ruling that the damage caused by the USACE could not be considered a taking because the floodwater releases were temporary deviations. The majority cited *Sanguinetti v. United States*, 264 U.S. 146 (1924), which held that to be considered a taking, flooding must "constitute an actual, permanent invasion of the land, amounting to an appropriation of and not merely an injury to the property." The dissenting judge wrote that extended and repeated flooding of property does constitute a taking and that the majority had misconstrued the precedent it cited.

The Supreme Court decided to take up the case in April, but in the meantime, the federal government attempted to resolve the dispute by offering the commission \$13 million. The commission rejected the offer.

Oral Arguments

Arguing for the state agency was a commission lawyer, James F. Goodhart, of Little Rock. Arguing for the federal government was Deputy U.S. Solicitor General Edwin S. Kneedler. The case was heard by an eight-member Court, since Justice Elena Kagan has taken herself out of the case, presumably because of a prior involvement with it when she was U.S. Solicitor General before joining the Court.

During oral arguments, most of the questions and comments from the Court seemed to demonstrate sympathy to the Commission's arguments that temporary flooding can effect a taking. Justices appeared more hostile to the government's position that downstream landowners are not due compensation because they should have been aware of the inherent risks of operating an enterprise on flood-prone lands. Justice Kennedy and Chief Justice Roberts, in particular, seemed to take issue with Kneedler's

ⁱ The Clearwater Lake Manual allowed for deviations from the "normal regulation" releases for (1) emergencies, (2) "unplanned minor deviations," such as for construction or maintenance, and (3) "planned deviations" requested for agricultural, recreational, and other purposes. The deviations in question here fell into the latter category.

ⁱⁱⁱ *Id.* at 617 (emphasis in original); see also *id.* at 619–20 (finding appropriation was "temporary rather than permanent"). argument that landowners downstream could never make a claim even though a property owner upstream of the dam could potentially seek compensation if the water regularly floods his property. They seemed inclined to try to find a taking based on the facts of this case, but struggled with how to distinguish the flood damage at issue from every other flood that follows dam gate and other flood control operations. Justice

Kennedy repeatedly requested an “operational baseline” of “expected protections for property.” If one flood is not enough, but eight is too many, where is the Court to draw the line?

Opinion

Justice Ruth Bader Ginsburg wrote the opinion for the Court that “recurrent floodings, even if of finite duration, are not categorically exempt from Takings Clause liability.”^{iv} The Opinion emphasized that the Court had issued a number of decisions allowing compensation for temporary invasions of private property, so it was not deciding anything new this time in finding that the government had no flat exemption to that obligation. However, the Court did not go so far as to rule that the Game Commission is now entitled to be paid the \$5.7 million it had been awarded earlier. The case is now headed back to lower courts, where the federal government may try legal arguments to avoid having to make payment.

So, what *did* the Court hold, and what does the decision mean to floodplain managers? When the government makes a decision to release water from a retaining dam, it can be sued even if the downstream flooding is temporary in duration, provided it causes sufficient damage that is traceable to the decision to release. What matters, Ginsburg wrote, is not the duration, but a case-by-case analysis of all of the factors that help resolve whether damage was done and whether it was severe enough to constitute a seizure of the property for government purposes.

What did appear to be somewhat novel about the opinion was Justice Ginsburg’s admonition to the government lawyer’s “slippery slope argument,” that a ruling against the government in this case would lead to a lawsuit any time the government released any water from any river project and flooding resulted. “To reject a categorical bar to temporary-flooding takings claims,” Ginsburg wrote, “is scarcely to credit all, or even many, such claims... Today’s modest decision augurs no deluge of takings liability.”^v

Time will tell.

The decision of the Court reinforces what smart floodplain managers already know: floodwaters can result in a takings claim, even if the inundation at issue is temporary in nature. “We rule today, simply and only, that government-induced flooding temporary in duration gains no automatic exemption from Takings Clause inspection.”^{vi} For this reason, river and floodplain managers should continue their diligent efforts to avoid actions that may result in adverse impacts to downstream and adjacent property interests. Moreover, where those impacts may be unavoidable, flood easements and other tools are already available to mitigate potential liabilities.

ASFPM will continue to monitor developments as this case makes its way back to the lower courts on remand. What do you think of the Court’s opinion? How might this potential expansion of liability change how your organization works to mitigate its liability exposure? We invite you to share your views on your ASFPM’s LinkedIn Group Page.

i The Clearwater Lake Manual allowed for deviations from the “normal regulation” releases for (1) emergencies, (2) “unplanned minor deviations,” such as for construction or maintenance, and (3) “planned deviations” requested for agricultural, recreational, and other purposes. The deviations in question here fell into the latter category.

ii 87 Fed. Cl. 594, at 603.

iii *Id.* at 617 (emphasis in original); see also *id.* at 619–20 (finding appropriation was “temporary rather than permanent”).

iv *Arkansas Game & Fish Comm’n v. United States*, 133 S. Ct. 511 (U.S. 2012)

v *Id.*

vi *Id.*





Michigan Stormwater-Floodplain Association Outstanding Service Award Guidelines

The Michigan Stormwater-Floodplain Management Association (MSFA) was formed in 1987 in response to a need expressed by floodplain professionals for a common forum, and a network that supports and improves their management of Michigan's storm water and floodplains. The MSFA recognizes professionals contributing to better storm water and floodplain management through the annual presentation of the *MSFA Outstanding Service Award*. In addition, MSFA will nominate the award winner for consideration at the national level through the Association of State Floodplain Managers (ASFPM) award program.

Please help the MSFA in recognizing outstanding local, regional and state programs and professionals, by nominating one of Michigan's floodplain management leaders!

MSFA Outstanding Service Award Criteria

The *MSFA Outstanding Floodplain & Stormwater Management Service Award* will be awarded to a floodplain manager, local official, consultant, or other individuals who has gone above and beyond normal expectations and duties to promote MSFA's goals. This award is designed to honor an individual whose contributions have resulted in an outstanding local program or activity for comprehensive floodplain & storm water management, or unique programs that encourage flood impact awareness and reduction. The recipient of this award will serve as a role model and inspiration to other floodplain and storm water management professionals.

- ✓ The recipient will be selected based upon his/her outstanding accomplishments in, or contribution to the field of storm water and floodplain management in Michigan.
- ✓ The recipient will be selected based upon his/her leadership and demonstration of both personal and professional character of the highest quality.
- ✓ The activities and work undertaken by the recipient shall demonstrate a direct impact on improving the quality of life through better water resource management in accordance with the MSFA purpose and objectives (on-line at mi.floods.org).

MSFA Outstanding Service Award Application and Instructions

- ✓ Complete the MSFA Outstanding Service Award application.
- ✓ Attach a one-page summary of the nominee's qualifications and activities.
- ✓ Publications, photographs, videos, letters of recommendation and project descriptions may be submitted to support your nomination (all submitted materials will become the property of MSFA).
- ✓ Submit application, description and supporting materials to:

Michigan Stormwater & Floodplain Management Association
P.O. Box 14265
Lansing, Michigan 48901-4265

You may direct any questions to Awards Coordinator, Thomas Smith at 616-364-8491

The deadline for submittal of annual nominations is November 1, 2013





Michigan Stormwater-Floodplain Association

Outstanding Service Award Application

Name of Nominee _____

Address _____

Phone No. _____ Employer _____

Employer Contact/Phone _____

On a separate page, please describe the qualifications and activities of the nominee. Please address the award criteria and provide specific information, including any substantiating materials, which support your nomination.

Nominated by _____

Address _____

Phone _____ E-mail _____

Fax _____ Date Submitted _____

Submit nominations to:
Michigan Stormwater & Floodplain Management Association
P.O. Box 14265
Lansing, Michigan 48901-4265

DEADLINE: November 1, 2013



Michigan Stormwater-Floodplain Association 2013/2014 Scholarship Application

The Michigan Stormwater-Floodplain Association (MSFA) is the Michigan Chapter of the Association of State Floodplain Managers (ASFPM). MSFA began in 1987 to promote the common interest in floodplain and stormwater management, enhance cooperation among various local, state and federal governmental agencies, and to encourage effective and innovative approaches to managing the State's floodplain and stormwater management systems. The Association's mission is to mitigate the losses, costs and human suffering caused by flooding and to promote wise use of the natural and beneficial functions of floodplains. MSFA supports comprehensive nonstructural and structural management of Michigan's floodplains and related water resources and the concept of "No Adverse Impact". MSFA members represent local, state and federal government agencies, citizen groups, private consulting firms, academia, the insurance industry, and lenders. MSFA's goals are to help the public and private sectors:

1. Reduce the loss of human life and property damage resulting from flooding.
2. Preserve the natural and cultural values of floodplains.
3. Promote flood mitigation to prevent the loss and encourage wise use of floodplains.
4. Avoid actions that exacerbate flooding and or stream degradation.
5. Promote a watershed approach to stormwater management.
6. Promote the use of best management practices to minimize accelerated erosion and control sedimentation.

Applicant Criteria:

1. Full time Junior, Senior or Masters Student in Biosystems, Civil, or Environmental Engineering, or related Natural Resources Planning program with a specialization related to the mission and goals of the MSFA at a Michigan University.
2. Have a cumulative grade point average of 3.0 or above at the end of Spring Semester 2013.

Along with this completed form you **MUST** also attach:

1. A copy of your program of study showing courses remaining and a photocopy of your transcript.
2. A current resume that includes a statement of your career objectives and your graduation date.
3. A one-page typed essay highlighting your academic achievements, extracurricular activities, past and present work experiences, the occupation you propose to pursue upon graduation and your level of commitment to the mission and goals of the MSFA.
4. Letter of recommendation from a faculty of your department.

The academic year 2012/2013 award amount is \$1500. Applicants can expect a response in January 2014.

Questions may be directed to any MSFA Board Member listed under Contacts at <http://mi.floods.org>.

Scholarship recipients will be recognized at the 2014 MSFA Annual Conference, March 4 – 7, 2014, McCamly Plaza Hotel, Battle Creek, MI. Awardees are required to participate in the conference as an MSFA guest (conference fee and lodging will be covered by MSFA). MSFA board members will assist you in meeting other conference attendees, including vendors and prospective employers.

Name (last, first, middle): _____

Local Address: _____

Permanent Address: _____

Local Phone: _____ E-mail: _____ University Attending: _____

Are you currently on any type of financial aid? (Please circle) Yes No

Have you received any other scholarships awards for academic year 2013/2014? Yes No

If yes to either, describe financial aid package and/or scholarship award received on a separate page and attach it to your application.

Applicant's Signature: _____ Date: _____

APPLICATIONS MUST BE POSTMAKED BY: Friday, November 1, 2013

Mail to: MSFA, PO Box 14265, Lansing, MI 48901-4265



Flood News for Michigan Floodplain Managers

**A Newsletter of the
Water Resources Division
Michigan Department of Environmental Quality**