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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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May 6, 2015

President Barack Obama
The White House
1600 Pennsylvania Ave., N.W.
Washington, D.C. 20500

Re: Executive Order 13690, "Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input," Docket ID FEMA-2015-0006

Dear President Obama,

On January 30, 2015, you issued Executive Order 13690, "Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input," amending Executive Order 11988 on flood plain management. Without public notice and comment, with this order you unilaterally and dramatically impacted hundreds of millions of Americans.

This action flies in the face of the "Memorandum on Transparency and Open Government" that you signed upon taking office in 2009. In that memorandum you stated:

My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration.

Ignoring your principles of transparency, public participation, and collaboration, the new flood risk management standard was developed behind closed doors, with the participation of an unidentified select few, and without state and local government collaboration.

Defending the process used to develop the standard, your agencies claim it was based on the recommendations of the Hurricane Sandy Rebuilding Task Force. However, that assertion does not withstand scrutiny.

First, the applicability of the recommendations of that Task Force was known. They applied only to Sandy-related rebuilding projects. In contrast, it is not clear what the new federal flood risk management standard applies to. It amends Executive Order 11988, which applies to any Federal activity including: "(1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including

but not limited to, water and related land use resource planning, regulating, and licensing activities.” However, in the listening sessions around the country FEMA has asserted that the new flood risk management standard will not apply to private investments.

Second, unlike the development of the new federal flood risk management standard, the Sandy Task Force had public participation. In fact, Executive Order 13632, establishing the Hurricane Sandy Rebuilding Task Force, expressly required your agencies to:

engage local stakeholders, communities, the public, Members of Congress, and other officials throughout the areas affected by Hurricane Sandy to ensure that all parties have an opportunity to share their needs and viewpoints to inform the work of the Task Force, including the development of the Strategy.

In contrast, your agencies did not engage the public in the development of the new flood risk management standard. In fact, your staff denied knowledge of its existence as recently as two days before you signed it. Specifically, during a January 28, 2015, Senate briefing on the Principles, Requirements, and Guidelines (PR&G), by representatives from CEQ, EPA, DOI and the Army – Civil Works, my staff asked whether the PR&G represented a moving target because it incorporates Executive Order 11988 (on floodplain management) by reference and there were rumors about changes to that Executive Order. The CEQ representative responded first by saying he did not know, and then by saying he was not “in the loop.” If he was ignorant of the new flood risk management standard, he had good company. Congress, states, local governments, and the American people were similarly left “out of the loop.”

Third, the new federal flood risk management standard is not consistent with the Hurricane Sandy Rebuilding Strategy. The minimum flood risk standard for projects relying on Sandy-related federal funding applied only to the vertical elevation of projects and was established as one foot of freeboard above an “advisory” base (one hundred year) flood. In stark contrast, the new standard greatly expands the lateral application of flood plain management requirements, not just the vertical requirements. In many parts of the country, the alternative standards of (1) the 500-year flood plain, (2) two feet above the base flood, or (3) three feet above the base flood for critical actions, will apply many miles inland, capturing communities that have never before been subject to flood plain management requirements and that will not be aware of the new standard until they need a federal permit or federal assistance. And, of course, no one knows the geographic reach of the fourth alternative flood risk management standard: whatever a federal agency says it is based on climate modeling.

Finally, the entity responsible for implementation of the federal flood risk management standard is a mystery. According to Executive Order 13690, the Water Resources Council is to issue amended guidelines on implementation of the new standard. The Water Resources Council was authorized by the 1965 Water Resources Planning Act. However, that Council was *terminated* on October 31, 1982. See <http://www.archives.gov/research/guide-fed-records/groups/315.html#315.3> The Water Resources Council no longer exists.

To adhere to the principles articulated in your 2009 “Memorandum on Transparency and Open Government” we request that the Federal Emergency Management Agency (FEMA) and the Council on Environmental Quality (CEQ) respond to the following:

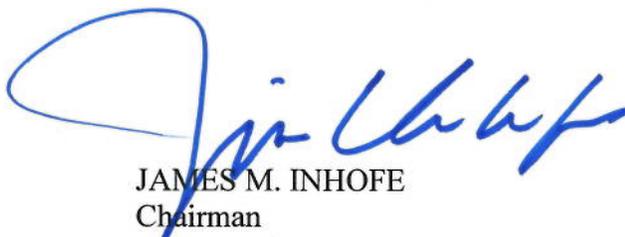
- (1) Please *list the agencies, grant and loan programs (including federally backed loans), insurance programs, accreditations, mapping, and permitting programs* that will be subject to a new federal flood risk management standard or that will utilize the definition of “flood plain” established in that standard.
- (2) Please require FEMA to *notify communities* that lie within any of the new alternative definitions of flood plain that they may be subject to new flood plain management requirements.
- (3) Please identify what, if any, projects relating to a publicly owned building that would not meet the definition of a “critical action” (i.e. “*any activity for which even a slight chance of flooding would be too great.*”).
- (4) In the context of flood risk reduction, please explain how the new standard would apply to *new or existing infrastructure in an existing community*.
- (5) In the context of rebuilding after a flood such as Super Storm Sandy, please explain how the new standard would *apply to replacing damaged infrastructure*.
- (6) Please identify the *Sandy projects that do not meet* the new flood risk management standard had it applied.
- (7) How are projects that are *already in the planning or construction stage* affected by the new standard?
- (8) If a project is subject to approvals or funding by *multiple agencies*, and they do not adopt the same flood risk management standards, what standard controls?
- (9) Do you intend for agencies to *reduce flood protection for existing communities* that lie within the new definition of flood plain, by withholding federal assistance, to avoid encouraging investment in flood plains?
- (10) Please provide the analysis of the *costs and benefits* of the new flood risk management standard that your agencies developed to justify its adoption.
- (11) Please identify the persons with whom your agencies consulted in the development of the new federal flood risk management standard.
- (12) Please identify what entities have undertaken in the past three years, and are anticipated to undertake in the future, the functions of the *Water Resources Council* and the source of appropriated funds to carry out those functions.

- (13) If those functions are carried out using appropriations made to agencies other than the Water Resources Council, please explain how the Water Resources Council plans to comply with 42 U.S.C. § 1962d-3, which requires *reimbursement to other agencies for use of their resources*, including employee time, by the Water Resources Council.
- (14) If the Water Resources Council has no means to reimburse other agencies for using their resources to carry out the functions of the Council, please explain to me how this use of resources comports with the *Anti-Deficiency Act*?
- (15) If the Water Resources Council has convened to consider the federal flood risk management standard, please provide me with all transcripts, recordings or minutes of its meetings, which must be kept under *the Federal Records Act and the Government in the Sunshine Act*.
- (16) Please clarify the applicability of the new federal flood risk management standard to flood insurance premiums or the requirements for participation in *the National Flood Insurance Program*. If it is not applicable, please state that expressly.

This information is necessary to provide transparency. I request that FEMA and CEQ provide a response to me within 30 days and make that response publicly available.

Once that information is provided, I request you to adhere to your principles of public participation and collaboration by withdrawing Executive Order 13690 and seeking comment on the development of a new flood risk management standard.

Sincerely,



JAMES M. INHOFE
Chairman

cc: Craig Fugate, Administrator, FEMA
Roy Wright, Deputy Associate Administrator for Mitigation, FEMA
Aaron Davis, Director of Congressional Affairs, FEMA
Trent Bauserman, Associate Director for Legislative Affairs, CEQ