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June 22, 2011

The Honorable W. Craig Fugate
Administrator
Federal Emergency Management Agency
500 C Street Southwest
Washington, D.C. 20024

Dear Administrator Fugate:

I would like to ask you once again about the Federal Emergency Management Agency's (FEMA) decision that the June 1 release of floodwaters from the Garrison Dam in North Dakota indicated a flood-in-progress throughout the entire Missouri River Basin. With that declaration, and the usual 30-day waiting period under the National Flood Insurance Program (NFIP), FEMA determined that the Standard Flood Insurance Policy (SFIP) would not cover claims originating after May 1.

Section V (B) of the SFIP excludes already-flooding areas from flood policy coverage. In a memorandum to the NFIP service agents dated May 17, FEMA's Acting Federal Insurance and Mitigation Administrator, Edward L. Connor, stated that "FEMA considers that Section V (B) is triggered by the earlier of the following situations: A. The community where the insured building is located first experiences a flood as defined in the SFIP or B. The date and time of an event initiating a flood that causes damage, including but not limited to: i) a spillway is opened, ii) a levee is breached, iii) water is released from a dam, or iv) water escapes from the banks of a waterway (stream, river, creek, etc). These situations are provided for illustrative purposes only, and do not encompass all instances in which the Section V(B) exclusion is triggered."

FEMA subsequently decided that the flooding along the entire Missouri River basin started June 1, when the US Army Corps of Engineers began releases at Garrison Dam in South Dakota. However, the question I and my constituents want answered is: why did FEMA decide that June 1 was the appropriate date? Why couldn't it be triggered by the extraordinary snowmelts this summer? How did FEMA decide on the Garrison Dam releases?

In a hearing of the Senate Banking Committee on June 9, I asked you precisely that – how FEMA makes a determination about when a flood starts. You promised me an answer back in writing, as you said, "because there are some very specific things that we had to go through to determine when does a flood occur [*sic*] by the legal definition and when is that incident period."

I agreed to wait. When my staff contacted FEMA last week to ask about the response, they were told that a response was being prepared. However, this week, your staff suggested that a letter might not be necessary because of our briefing today. Since you have not yet told us

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Administrator Fugate
June 22, 2011
Page 2

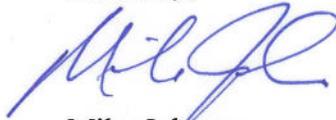
specifically how FEMA decided on the June 1 date, I am forced to ask you again. Please provide me a detailed description of how FEMA decided that the Garrison Dam release would be the date from which policies would no longer be valid. Why also did FEMA decide on a single date for flooding along the Missouri River Basin, rather than multiple flood dates? Most communities were far downstream when the flooding events began, whether caused by snowmelt, rainfall, or releases from the levees.

In addition, you did not mention at the June 9 hearing that FEMA had already determined that the cutoff date would be June 1 – under that determination, people would have had to have insurance before May 1. However, FEMA had circulated a memo on June 6 stating exactly that. Why didn't you mention that decision at the Banking Committee hearing three days later on June 9?

I have also heard that there is still confusion about how to interpret FEMA's June 6 memo and the determination date of June 1. Some flood insurance agents are reportedly still selling policies to cover the current flooding. I ask you to make especially clear to all Nebraskans exactly what FEMA has determined regarding flooding along the Missouri River basin and how it will affect policies purchased since May 1 or in the future.

The unprecedented scope of these floods has caused widespread hardship and misery in Nebraska. According to the National Geospatial-Intelligence Agency, about 110,000 acres of land have been affected by the flood waters in Nebraska. The water has hit all parts of people's lives: homes and livelihoods, cropland and settled areas alike. We must do everything possible to make sure that those who have suffered the most are not unjustly affected.

Sincerely,



Mike Johanns
United States Senator