



**FEMA**

July 8, 2011

The Honorable Mike Johanns  
United States Senate  
Washington, D.C. 20510

Dear Senator Johanns:

This is in response to your letter of June 22, 2011, in which you asked for information regarding FEMA's June 1, 2011, flood-in-progress trigger date for the Missouri River and how FEMA determined that date.

FEMA's National Flood Insurance Program (NFIP) deployed a General Adjuster to Bismarck, North Dakota on May 28, 2011, to survey the area below the Garrison Dam, on both sides of the Missouri River. This survey was a fact-finding assignment to determine whether there was a flood-in-progress.

From the General Adjuster's report and supporting photographs, it was evident that the water released from the Garrison Dam resulted in a flood as defined in the Standard Flood Insurance Policy (SFIP).

This SFIP definition of flood, as it relates to the Missouri River flood-in-progress, reads in pertinent part:

***Flood, as used in this flood insurance policy, means:***

***1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or two or more properties at least one of which is your [the insured's] property) from:***

- a. Overflow of inland or tidal waters;***
- b. Unusual and rapid accumulation or runoff of surface waters from any source.***

The SFIP, at Section V(B), also excludes losses caused by a flood-in-progress at the time an individual's policy becomes effective:

***B. We do not insure a loss directly or indirectly caused by a flood that is already in progress at the time and date:***

- 1. The policy term begins; or***
- 2. Coverage is added at your request.***

When evaluating whether a flood claim is a covered loss, the NFIP must determine whether the event that caused the loss is a flood, as defined by the SFIP. The NFIP then determines whether coverage was effective prior to the date that the flood-in-progress that caused the loss began.

FEMA used June 1, 2011, as the flood-in-progress trigger date because on that date the United States Army Corps of Engineers (USACE) increased the scheduled water released from the Garrison Dam to 105,000 cubic feet per second (cfs) – well above the record release for that dam – resulting in flooding as defined by the SFIP.

Once the releases increased at Garrison Dam, North Dakota resulting in a flood, as defined in the SFIP, FEMA determined that there was a flood-in-progress over the series of coordinated dams the last of which was Gavins Point Dam, South Dakota and the entire Missouri River beyond.

The SFIP's V(B) flood-in-progress exclusion affects only those individuals who wait until flooding is imminent to purchase flood insurance. Indeed, Congress mandated the thirty-day waiting period in Section 579 of the National Flood Insurance Reform Act of 1994 (which was part of the Riegle Community Development Act (Title V of Public Law 103-325)), 42 U.S.C. §4013(c). Before the 1994 amendments, there was a five-day statutory waiting period after presentment of premium and application before coverage became effective. The Conference Report accompanying Section 579 notes, “[t]he Committee is concerned by information that arose from the 1993 Midwest flooding that suggested that some homeowners bought flood insurance only when the flooding was imminent.” House Report 103-652 (Aug. 2, 1994).

Notwithstanding the establishment of a generally-applicable date for a flood in progress, ***each NFIP flood insurance loss is evaluated on an individual basis.*** This is because the applicability of the SFIP's V(B) flood-in-progress exclusion can only be determined after a loss has occurred. NFIP policyholders affected by current flooding activity along the Missouri River whose policies were in effect prior to June 1, 2011, will have their claims adjusted subject to the provisions of the SFIP. Policyholders affected by current flooding activity along the Missouri River whose policies were effective after June 1, 2011, will have flood insurance available for any subsequent flood event that occurs after their policy is effective and is not directly or indirectly associated with the Missouri River flood in progress. This may be of particular relevance to individuals living on or near tributaries of the Missouri River that might sustain flood damage caused by the waters of the tributary, not associated with the waters or the backup of waters linked to the Missouri River flood-in-progress. This is also why we evaluate ***each NFIP flood insurance loss on an individual basis***—to ensure we attribute the cause of the loss correctly based on facts on the ground. Even with a flood in progress for a particular flood event, an intervening event that had not started at the time the

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policy became effective could cause a separate and independent flood event for which coverage could be afforded.

With regard to groundwater that rises above ground or water that might seep through walls of a basement caused by hydrostatic pressure, subject to the provisions of the SFIP, such losses are covered if there is a definitional flood in the area and that flood causes the damage. However, if the SFIP is effective after the trigger date of the flood-in-progress on the Missouri River, June 1, 2011, the SFIP's V(B) exclusion will not allow payment of such claims if directly or indirectly caused by the Missouri River flood-in-progress. The loss may be paid subject to the provisions of the SFIP if the damage is caused by a definitional flood of a tributary occurring after the policy is effective, but not associated directly or indirectly with the Missouri River flood-in-progress.

We appreciate your work on behalf of the residents of Nebraska, and look forward to working with you and your staff in the future to help promote the importance of purchasing a flood insurance policy prior to any flooding event.

If you have any further questions, please feel free to contact FEMA's Legislative Affairs Division by telephone at 202-646-4500.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Craig Fugate', with a stylized flourish extending to the right.

W. Craig Fugate  
Administrator