

Representative Thad Balkman's talk at OFMA Spring Conference, 2002

Intro:

Politician and a Lawyer

When I think of floods . . .

Growing up in So. Cal - lack of rain, flood control, LA River a classic example of past floodplain management policies.

A song I used to sing as a kid at Church . . .

"The Wise Man and the Foolish Man"

The wise man built his house upon the *rock*, The wise man built his house upon the *rock*,
The wise man built his house upon the *rock*, And the *rains* came tumbling down.

The *rains* came down and the *floods* came up, The *rains* came down and the *floods* came
up, The *rains* came down and the *floods* came up, And the house on the *rock* stood still.

The foolish man built his house upon the *sand*, The foolish man built his house upon the
sand, The foolish man built his house upon the *sand*, And the *rains* came tumbling down.

The *rains* came down and the *floods* came up, The *rains* came down and the *floods* came
up, The *rains* came down and the *floods* came up, And the house on the *sand* *washed away*.

I believe that this song's simple message says it all.

In addition to the symbolic meaning pertaining to Jesus, the Rock, this song has an
application useful to us here today.

Wise man builds his house on the rock (out of the floodplain)

Foolish man builds his house upon the sand (in the floodplain)

When the rains come, and we know they will, whatever is in the sand gets washed away!

So what can we do about it? Let's stop being foolish and get out of the sand. First, allow me
to define the problem.

Flood damages in the United States continue to escalate. From the early 1900's to the year
2000, flood damages in the United States have increased six fold, approaching \$6 billion
annually. This occurred despite 75 years of federal flood control, 30 years of the National Flood
Insurance Program, and billions of dollars for structural flood control, and other structural and
non-structural measures. We continue to intensify development within floodplains, and do it in a
manner where flood prone or marginally protected structures are suddenly prone to damages
because of the actions of others in the floodplain.

Your tax dollars pay for the recovery from this damage. Though floods are the single most
predictable natural hazard, the cost of flood damages per capita has doubled over the past
century. The general trend is for flood losses to increase every decade.

Most current management approaches for reducing flood losses allow for construction to
occur without considering the adverse impacts on other properties within the watershed or on
future flooding potential. This has contributed to steadily rising flood losses and is increasing the
potential for future flood damage.

This trend is unnecessary. It is primarily due to federal policies that have encouraged at-risk development, justified flood control projects that intensify land use within the floodplain, and encouraged state and local governments to rely on federal resources for both flood control and disaster recovery. While current flood control and NFIP practices have made progress in reducing flood damages, the damages continue to rise. Recent focus on mitigation and enhanced funding for mitigation is helping to alleviate some of the more obvious problems with existing structures being flooded, but the nation has yet to come to grips with how to stop creating future flood problems caused by new development. The nation's extensive current efforts at flood control and modern floodplain regulation were intended to control flood losses, but flood losses continue to rise. Like the LA River that I grew up next to.

Current floodplain management standards allow for:

floodwater to be diverted onto others;

channel and overbank conveyance areas to be reduced;

essential valley storage to be filled;

or velocities changed with little or no regard as to how these changes impact others in the floodplain and watershed.

The net result is that through our actions we are intensifying damage potentials in the our floodplains. This current course is one that is not equitable to those whose property is impacted, and is a course that may not be economically sustainable. Over the past 50 years a system has been established that in many locations has substituted local and individual accountability with the programs of flood control and disaster assistance of the federal government.

While funding for the Corps of Engineers, NRCS and other agencies of the federal government will fluctuate, the pattern of the federal government responding to disasters has become firmly entrenched and will not likely change in the foreseeable future.

However, what has changed is how disaster relief impacts other domestic programs. Ten years ago, when Congress was faced with a large disaster, they would fund the disaster with deficit spending. Today, each time Congress passes a bill to provide disaster supplemental funding for disasters, offsetting cuts in domestic programs must be made. Despite investment theories regarding benefits and costs, our problem has become one of **cash flow**. Each needless incremental increase in flood damage represents a lost opportunity for support of essential domestic programs of the United States.

Considering the recent attack on the United States and the pending programs of relief, domestic security and military buildup, the cash flow problem is only going to get worse. At its broadest policy level, no adverse impact floodplain management is about local government taking steps

to reduce the drain on national resources, as well as local and state resources. These resources can then be applied to domestic programs enhancing the economy, environment, education and defense. In essence, current policy is only sustainable at the expense of other important programs.

More directly for local governments, no adverse impact floodplain management represents a way to prevent worse flooding in your community---right now! While some state and local governments may have abdicated their responsibility, most local governments have simply assumed that the federal standards are an acceptable standard of care, perhaps not realizing these very standards could induce additional flooding and damage within their community.

Instead, no adverse impact offers communities an opportunity to promote *responsible* floodplain development through community-based decision making. Communities will be able to determine better use of federal and state programs to enhance their proactive initiatives and utilize those programs to their advantage as a community.

The no adverse floodplain management initiative empowers the local community (and its citizens) to build stakeholders at the local level. No adverse impact floodplain management is a step towards individual accountability by not increasing flood damages to other properties. No adverse impact floodplain management is about local communities being proactive in understanding potential impacts and implementing programs of mitigation before the impacts occur.

One of the “Ten Commandments of Modern Politics” is: “All Politics is Local” Tip O’Neil, former Democratic Speaker of the House from Mass., was famous for saying, “All politics is local”. This quote describes the notion that campaigns are decided at the lowest, grassroots level - in your communities and neighborhoods.

Last fall, the OFMA passed a Resolution in support of No Adverse Impact (show resolution)

No Adverse Impact Floodplain Management Defined

“No Adverse Impact Floodplain Management” is a managing principle that is easy to communicate and from a policy perspective tough to challenge. *In essence, **no adverse impact floodplain management is where the action of one property owner does not adversely impact the rights of other property owners, as measured by increased flood peaks, flood stage, flood velocity, and erosion and sedimentation.*** No impact floodplains would become the default management criteria, unless a community has developed and adopted a comprehensive river plan that identifies acceptable levels of impact, appropriate measures to mitigate those adverse impacts and a plan for implementation. No Adverse Impact could be extended to entire watersheds as a means to promote the use of retention and detention technologies to mitigate increased runoff from urban areas.

While the No Adverse Impact approach will result in reduced damages for the 1% chance flood event, its true strength is that it virtually ensures that future development actions which impact the floodplain must be part of a **locally** adopted plan. This removes the mentality that floodplain management standards are something imposed by FEMA, and promotes local accountability for developing and implementing a comprehensive strategy and plan for the floodplain. Giving locals the flexibility to adopt comprehensive local management plans, which would be recognized by FEMA and other federal programs as the acceptable standard in that community, will provide those communities with control and support for innovative approaches.

Again, remember Tip O’Neil’s quote . . . All Politics is local. Effective Floodplain management is local.

I believe that effective floodplain management is much like politics, the most successful management is done at the local level.

No Adverse Impact is an approach that makes sense and is the right thing to do. Too often our discussions on development approaches turn into arguments over the range of application and the impact these approaches might have on those who are choosing to encroach into the floodplain. It is time to change and begin managing from the perspective of not inducing additional flood impacts on other properties, giving local communities the ability to manage flood losses through comprehensive local plans.

No Adverse Impact: A Do No Harm Policy

The No Adverse Impact approach strives to ensure that the actions of one property owner do not increase the flood risk of other property owners. This approach will especially benefit those property owners that are not currently in regulated flood areas, but who would be in the future.

In law school, law students learn that a basic principle of real property rights law is do no harm to your neighbor. The No Adverse impact implements this legal principle. This new approach would require those who alter flooding conditions to mitigate the impact of their actions on property owners and adjacent communities. The No Adverse Impact approach focuses on planning for and lessening flood impacts resulting from land use changes. It is essentially a “do no harm” policy that will significantly decrease the creation of new flood damages. A citizen would never allow a neighbor to use her yard as a dumping ground for garbage. No Adverse Impact suggests that we hold our neighbors to the same standard when flooding is concerned. In essence, No Adverse Impact means that your neighbor should build in such a way that does not increase the risk of flooding to your property or others. Examples of this “wise use” or the “most beneficial use” would be using the floodplain as dedicated open space for flood storage and low impact uses such as recreation.

The No Adverse Impact approach promotes fairness, responsibility, community involvement, pre-flood planning, sustainable development, and local land use management. It gives local governments the responsibility to manage floodplain risks. Individual communities will determine the specific details appropriate for land use in that community. It also supports private property rights because property owners will have input on management strategies that impact their property. NAI protects the property rights of those that would be adversely impacted by the actions of others.

This approach must become the default management criterion throughout Oklahoma and the United States. When local comprehensive watershed management plans incorporate the NAI approach, impacts will be allowed only to the extent that they are offset by mitigation. When no local plan exists, all federal and state actions in the floodplain would strive to achieve no adverse changes in hydrology, stream depths, velocities, and sediment transport functions. Having these local comprehensive watershed management plans on file with state agencies would qualify individual community for certain types of funding to implement mitigation techniques.

Many communities are taking action now!

There are many examples of communities around the country that are striving for a No Adverse Impact approach. These communities have recognized that development activity anywhere in the watershed can adversely impact properties elsewhere in the watershed, not just in the floodplain.

For example, DuPage County, Illinois chose to strengthen comprehensive regulations in their approach to managing flood problems.

The Comprehensive Stormwater Management Objectives for DuPage County, Illinois include:

Reduce the existing potential for stormwater damage to public health, safety, life and property.

Control future increases in stormwater damage within DuPage County and in areas of adjacent counties affected by DuPage drainage.

Protect and enhance the quality, quantity, and availability of surface and groundwater resources.

Preserve and enhance existing aquatic and riparian environments and encourage restoration of degraded areas.

Control sediment and erosion in and from drainageways, development, and construction sites.

Promote equitable, acceptable, and legal measures for stormwater management

No Adverse Impact promotes preserving, not controlling, the natural floodplain. Why keep a Natural Floodplain?

Here are some reasons why:

Flood water storage

Enhanced stormwater management

Reduced flood damages

Improved water quality

Recreational opportunities

Preservation of wildlife and natural habitats

Enhanced erosion control

Increased property values

Conclusion

This central message--- that we are inducing flood damages--- has not been communicated effectively, in part due to the floodplain management community as a whole spending too much time debating issues of individual standards while not stepping back and evaluating the broad impact of these approaches.

Current management systems within the floodplain are costly and often allow development that fails to evaluate or mitigate adverse impacts on other properties, both now and in the future. No Adverse Impact is an approach that will lead to reduced flood losses throughout the nation while promoting and rewarding strong management and mitigation actions at the local level.

Let me conclude this part of my speech with a quote, from Shakespeare's "All's Well that Ends Well"

"Great floods have flown from simple sources"

We know floods will come, we know the damage they cause, so I encourage you to take proactive steps like No Adverse Impact. Doing so will make you like the wise man whose house stood still when the rains came.

And now, for a brief Legislative Update

House Bill 1969 - In 1999, Legislature passed HB1841 which created a state hazard mitigation fund and account not dependant on a presidential declaration that could provide monies for individual assistance projects as well as match money for FEMA's mitigation grant programs.

The fund has a balance of zero

WHAT DOES HB1969 DO?

Establishes a mechanism to buy out and remove repetitively damaged

structures from the floodplain, thereby interrupting the costly cycle of rebuilding and/or repair.

DEFINE PROBLEM

Quick Statistics

There are 644 flood insured structures that have received flood damage at least twice in the last ten (10) years.

If these properties were removed, \$332,000.00 in flood insurance dollars could be saved.

Less than 2% of the properties in the floodplain are insured.

One structure in Ottawa County valued at \$20,000.00 has flooded 5 times. Owner has collected over \$100,000.00 in flood insurance claims for this one structure.

Costs of not having this account funded affect everyone. Local and state government are burdened with costs for emergency response and recovery; the community suffers losses in lives, personal property and wages; employers sacrifice production and revenues due to employee absences; local tax bases decline.

MONETARY SAVINGS

Costs

If it floods, local community still has the responsibility for providing evacuation services, emergency services, special care needs, temporary shelters, food services, animal care and other individual assistance services – *these services all cost money.*

Benefits

Because this legislation would result in fewer rescue events and other direct flood response activities, it would also serve to protect both prospective flood victims and emergency personnel who put their lives in jeopardy when responding to flood problems.

If these properties were removed, \$332,000.00 in flood insurance dollars could be saved.

This can significantly reduce future losses of life, property and tax dollars.

Encourages communities to develop comprehensive hazard mitigation plans by requiring such plans to establish eligibility for the grant program.

Allows and assists local governments to purchase flood prone properties and forever remove them from harm's way.

Keep property owners from building in the floodplain.

Encourage purchase of flood insurance

Reduce the costs of disaster response and recovery operations to localities

Mitigation

Encourage localities to develop and publish a comprehensive hazard mitigation plan

The best example of mitigating a flood susceptible home is to move it, acquire it, move it to higher ground or demolish it and then keep the property open.

Removal of this structure once and for all where no tax dollars or other funds are used to repair it so it can be damaged again. Break the cycle of flood damage, repair - flood damage, repair, etc.

Acquisition and relocation of floodprone buildings is a very effective tool for reducing

flood losses. In just three years, the cost of relocating buildings out of the floodplain was saved in damages avoided

House Bill 2228 - this bill, which has already passed the House, pertains primarily to annual training, but also changes the purpose of the Oklahoma Floodplain Management Act, to include **physical and emotional impact of flooding on individuals and communities, increased costs of disaster relief and restoration of natural resources and functions of floodplains.** The bill's primary function is to encourage counties and municipalities that choose to participate in the program to attend floodplain development management classes.

OFMA Resolution in support of Mandatory Training for Floodplain Managers

"Annual training is an absolute necessity if community officials are going to reduce property from floods and loss of life and protect the natural & beneficial uses of the floodplain."

SB 972 - This bill sets up a process to address impaired scenic river watersheds. The bill states that all "scenic river areas" shall be returned to their original pristine condition. The DEQ, Dept. of Agriculture, and the Oklahoma Conservation Commission are charged with producing an annual report identifying all agency actions taken to reduce pollutant levels in scenic river watershed and to outline future reductions in pollution.

SB 1352 - This bill expands the authority of the Department of Environmental Quality to establish statewide land protection standards for the release of non-hazardous materials, products or wastes into the environment.

HB 2349 - Prohibits new poultry operations from construction in a hundred-year floodplain or within buffer zones for surface public water supplies, scenic rivers, public drinking water wells, and outstanding resource waters. The bill also limits the location of poultry waste within buffer zones for scenic rivers, public wells and nutrient-limited water bodies.