



April 27, 2015

Federal Flood Risk Management Standard

Waters of the US or “WOTUS,” as it is popularly referred to, represents a major expansion of Federal authority with regard to local interests via the Clean Water Act. Although it has received less publicity, Executive Order 13690, issued on January 30 of this year has the potential to also have a huge local impact. This is the “Federal Flood Risk Management Standard or “FFRMS.”

Under the Executive Order, both public and private facilities on flood plains will have to comply with flood plain management standards that meet one of three criteria: (1) Implementation of the Administration’s “Climate-Informed Science Approach.” (2) Adding an additional 2 or 3 feet of freeboard protection to the 100-year base flood elevation. (3) Acceptance of a 500-year flood plain as the basis of flood protection.

A number of Federal agencies will chose from among these three options in administering Executive Order 13690 including the Departments of Transportation, HHS, Homeland Security, Agriculture, Interior, USEPA, and the Army Corps of Engineers. FFRMS will impact Federal permitting on the flood plain as well as actual construction. Many interpret the EO as providing each Federal agency with the option of selecting whichever of the three options best suites them, so local stakeholders may find themselves in a very confusing situation.

The FY16 House Energy and Water Appropriations bill that funds the US Army Corps of Engineers includes draft report language that addresses FFRMS. This is another example of the Congress involving itself directly in an Executive Action taken by the Obama Administration. The House Energy and Water Appropriators choose their words carefully in their bill and appear to be positioning themselves to possibly take further action at some later stage of the bill. The FFRMS issue is one of the topics that will be thoroughly discussed during the WESTCAS annual conference, June 17-19 in San Diego.

Please see below for the House Energy and Water Appropriations Language.

House Energy and Water FY16 Appropriations Draft Report [p. 14]

“On January 30, 2015, the President issued Executive Order 13690 establishing a new Federal Flood risk Management Standard and amending Executive Order 11988 (Flood Plain Management.) The Administration describes it as furtherance of the President’s Climate Actin Plan and as building on the work done by the interagency task force in the



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wake of Hurricane Sandy.

The Committee has heard numerous concerns about the new standard from many potentially affected stakeholders. These concerns include the process by which the standard was developed, the lack of clarity as to which specific programs and activities will be affected, and the uncertainty related to how each agency will implement the new standard. The Committee takes these concerns seriously and will continue to closely monitor the Administration's activities related to this new Federal Flood Risk Management Standards.

The new standard and draft-revised guidelines for implementing Executive Order 11988 are currently out for public comment until early May 2015. Executive Order 13690 directs each agency to issue or amend existing regulations and procedures to comply with the order and to submit to the National Security Council staff within 30 days of the closing of the public comment period for the revised guidelines an implementation plan that contains milestones and a timeline for implementation of the executive order and the standard. The Corps is directed to submit this implementation plan to the Committees on Appropriations of both Houses of Congress not later than 3 days after it has been submitted to the National Security Council staff."

