



April 9, 2007

The Honorable Lois Wolk, Chair
Members, Assembly Water, Parks and Wildlife Committee
State Capitol, Room 3120
Sacramento, California 95814

Re: Opposition to Assembly Bill 5 (Wolk): Flood Protection

We must respectfully **oppose your AB 5** unless it is amended to remove the provision requiring that certain local agencies approve an ordinance mandating the purchase of flood insurance.

The undersigned support efforts to improve California's levees. In addition, we support efforts by the Federal Emergency Management Agency (FEMA) to update existing flood plain maps so that these maps accurately reflect flood risk. However, we can not support California legislation attempting to expand the scope of the National Flood Insurance Program (NFIP). We oppose this California-only approach because such action is preempted, is unnecessary, and would lead to confusing results.

Preemption. AB 5 does not specify from whom the impacted property owners would purchase flood insurance. However, flood insurance is sold almost exclusively through the NFIP. Therefore, AB 5 would result in an increased number of property owners being forced to purchase flood insurance through the NFIP. Since the NFIP exists through funding from the federal government, premiums collected by the program are property of the U.S. Treasury. A state law that creates additional liability for the U.S. Treasury conflicts with federal law.

In addition, insurers have specific preemption concerns. Insurers typically write flood insurance through the NFIP's Write Your Own (WYO) program. A private insurer becomes a WYO company by entering into an "Arrangement" with the federal government to act as its "fiscal agent" and "fiduciary" in the context of selling flood insurance. As a result of this Arrangement, insurers assert that their member companies would likely be prohibited from complying with the provisions of this bill that will result in an expansion of the federal mandate to purchase flood insurance.

Finally, it should be noted that by expanding the number of property owners mandated to purchase flood insurance through the NFIP, AB 5 puts an additional strain on an already

weakened program. In the wake of the 2005 Gulf Coast storms, the NFIP had to rely on a series of loans from the U.S. Treasury in order to pay claims. In fact, in the months following the Gulf Coast storms, the NFIP sought to increase their borrowing authority from \$2 billion to over \$20 billion. Even now, Congress is considering legislation that would increase the NFIP's borrowing authority by another \$725 million.

Unnecessary. The Gulf Coast storms of 2005 were a wake-up call to disaster preparedness experts throughout the country. The tragedy of New Orleans, and other Gulf Coast towns, spawned an effort by federal, state, and local officials to do more to protect citizens from tragic natural disasters. No where is this three-pronged effort more apparent than in the Sacramento and San Joaquin Valley.

In January of this year, the federal government announced that it is reversing its earlier decision and is redrawing flood maps for residents of the Natomas neighborhood north of downtown Sacramento. FEMA determined that Natomas is at risk for flooding in a 100-year storm. As a result, residents of Natomas will be required to purchase flood insurance as a condition of their federally backed mortgage or credit line.

In a separate action, FEMA announced in February that it intends to triple the size of the San Joaquin River flood plain which will mean that thousands of property owners will be required to purchase flood insurance as a result of this re-assessment of risk.

Also at the federal level, a bi-partisan group in Congress is pushing for reforms to the NFIP, including an ongoing map modernization program that will lead to more accurate maps. In addition, the legislation will boost the NFIP's borrowing authority, will raise policy limits for homes and for businesses, will allow the NFIP to raise rates in areas where rates are not actuarially sound, and will provide for more rigorous enforcement of the existing mandate to purchase. The coauthors on this measure include California Representatives Doris Matsui, Gary Miller, and Maxine Waters.

At the state level, the Legislature passed and the Governor signed a historic infrastructure bond package. This bond package, which was approved by the voters in November 2006, includes over \$4 billion for levee repairs and improvements.

Finally, at the local level, the Sacramento Area Flood Control Agency (SAFCA) has sought voter approval for a plan to assess a new property tax on property owners. If passed, the assessment would generate hundreds of millions of dollars from the owners of the 140,000 parcels most at risk to flooding from the American and Sacramento Rivers. This money would then be leveraged to secure federal and state matching dollars. The overall goal is to achieve a 200-year level of flood protection within the next decade. It was widely noted after the flooding in New Orleans that Sacramento is the most flood-vulnerable city in the nation. The repairs contemplated by SAFCA would go a long way towards providing real protection from the threat of flooding.

Confusing. As drafted, AB 5 does not provide direction to the local agencies charged with passing the mandatory flood insurance ordinance. Undoubtedly, this will result in a piecemeal approach to flood insurance. This piecemeal approach will erode the clear standards that currently exist regarding flood insurance. As a result, insurers, lenders, builders and realtors may be exposed to liability in the event of a flood. Under this scenario, a property owner may claim that their insurer, lender, realtor or builder should have informed the property owner of the mandate to purchase flood insurance. Finally, AB 5 does not contain an enforcement provision. This lack of an enforcement mechanism will exacerbate the liability problem.

Conclusion. In conclusion, we applaud your efforts to increase the number of property owners who purchase flood insurance. However, we regretfully oppose the mandatory purchase requirement in AB 5. We believe that a state mandate on a federal program is preempted and unwise given the already weakened condition of the NFIP. We believe that the federal government alone is authorized to expand this federal program. We support FEMA's recent actions to update maps to reflect the true risk of flooding and we look forward to additional remapping in the future. We are concerned that the mandatory purchase requirement that originates at the local agency level will lead to confusing results.

For all of the above reasons, we **oppose AB 5** and urge you to remove the provision in the bill mandating flood insurance.

cc: Assembly Member Lois Wolk, Author
Mike Proso, Chief Deputy Legislative Affairs Secretary
Alf Brandt, Consultant, Assembly Water, Parks and Wildlife Committee
Phil Nails, Assembly Republican Caucus
Kathleen Webb, Office of the Insurance Advisor