

Risks and Liability:

WHO IS RESPONSIBLE FOR AVOIDING A CALIFORNIA "KATRINA," AND WHO WILL PAY IF WE DO NOT?

A Joint Hearing of the Judiciary Committee, the Water, Parks and
Wildlife Committee, and the Insurance Committee of
the California Assembly

**October 25, 2005
11:00 a.m. to 4:15 p.m.
State Capitol, Room 4202**

- I. "Rough Water Ahead" Video and Introductory Comments by Chairs
and Members
(11:00 a.m. – 11:15 a.m.)**
- II. Flood Management and Prevention in California: Who Builds And
Maintains California's Flood Management System?
(11:15 a.m.–12:15 p.m.)**

(Assemblymember Wolk, Chair)

1. Considering the design capacity and current conditions, what is the level of risk of failure and liability?
2. Who are the players, and what role does each have? Who is in charge?
3. Are the flood maps accurate?
4. What level of flood protection currently exists? How many people live in areas at risk of flooding?
5. What would a flood cost us in lives lost, injuries, property loss and economic damage?
6. What more needs to be done to prevent flooding and reduce the State's liability? Who should pay? How?

Witnesses

Steve Verigin, Deputy Director, Department of Water Resources
Pete Rabbon, Executive Officer, The Reclamation Board

Brandon Muncy, Chief of Planning, Sacramento Dist., Army Corps of Engineers
Mike Hardesty, President, California Central Valley Flood Control Association

III. Who Will Be and Who Should Be Footing the Bill If The Flood System Fails?

(12:15 p.m. – 1:15 p.m.)

(Assemblymember Jones, Chair)

1. Who is potentially liable in the event of a flood?
 - a. Is federal immunity complete?
 - b. Current state liability via the theory of inverse condemnation – *Paterno v. State*
 - c. Local liability in inverse condemnation cases
 - d. Negligence and other potential theories of liability
 - e. Are there any realistic theories of liability of builders and developers?
2. What are the consequences of the existing liability regime? What actions are encouraged or discouraged due to the existing liability regime?
3. Does liability rest with those who can take steps to prevent flood damage?
4. Can and should the state attempt to modify who is legally held liable in the event of a catastrophic flood? If so, how? What effect will this have? Or should the focus be solely on investing more money in prevention?

Witnesses:

Gary Livaich, Attorney at Law, Desmond Nolan, Sacramento
(counsel for plaintiffs in *Paterno v. State*)

Sterling Smith, Deputy Attorney General, California Department of Justice
(counsel for State in *Paterno v. State*)

Scott Shapiro, Attorney, Downey Brand, Sacramento
(counsel for California Central Valley Flood Control Association)

IV. How Does the Pervasive Lack of Flood Insurance Exacerbate the State's Liability Exposure in the Event of A Major Flood?

(1:15 p.m. – 2:15 p.m.)

(Assemblymember Nava, Chair)

1. What role, if any, does flood insurance play?
2. Does homeowner's or commercial insurance cover floods?
3. What is the federal flood insurance program and what does it cover?
4. When is federal flood insurance mandated and who is eligible?
5. What percentage of Californians living or working in flood plains have flood insurance? What can be done to increase coverage?
6. Can the State or local governments require flood insurance?
7. Should flood insurance be mandated?

Witnesses:

Les Harder and Ricardo Pineda, California Department of Water Resources
Stein Buer, Executive Director, Sacramento Area Flood Control Agency

Mike Paiva, Senior Legislative Advocate, Personal Insurance Federation of Calif.
Ronald Stork, Senior Policy Advocate, Friends of the River

V. New Development in Floodplains: How Do We Make Sure The Public Is Safe?
(2:15 p.m. – 3:45 p.m.)

(Assemblymembers Wolk & Jones, Co-Chairs)

A. What New Development is Projected in Areas of Potential Flooding?

1. Over the next 30 years, what development is expected to occur in areas subject to potential flooding?
2. What additional flood management measures will be needed and at what cost, to protect newly developed areas from flooding?
3. Who decides whether development can occur in an area subject to potential flooding? What role do the state, local and federal governments have in approving development in the floodplain?

B. Who and How Should We Decide Whether to Allow Floodplains to Develop and With What Level of Flood Protection?

1. Who are the players, and what role does each have?
2. Should development be allowed in areas subject to risk of flooding?
3. Who should decide if development can be allowed in areas at risk of flooding? Developers? Local government? The state?
4. What conditions, if any, should be placed on development allowed in areas at risk of flooding? What level of flood protection should be required?
5. Who should pay for flood management improvements needed to make new development safe from flooding? How?

Witnesses

Pete Rabbon, Executive Officer, The Reclamation Board
Jeffrey Mount, Professor, UC Davis, Center for Watershed Science
Gary Reents, Director of Utilities, City of Sacramento
(League of Cities, California State Association of Counties)
Mike Webb, California Building Industry Association

VI. Public Comment Period
(3:45 p.m. – 4:15 p.m.)
