Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Bill Shuster
Chairman

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June 5, 2014

The Honorable W. Craig Fugate
Administrator
Federal Emergency Management Agency
500 C Street, SW
Washington, D.C. 20472

Dear Administrator Fugate:

We are concerned about the Federal Emergency Management Agency's (FEMA's) recently-issued policy to ban hydraulic fracturing on any property purchased with FEMA mitigation funds. This policy has immediate, negative consequences in our state, as well as significant potential impacts in virtually every state across the country. The policy was issued without any consultation with those directly impacted by these decisions, most notably state and local governments and other stakeholders. Beneficial, cost-effective mitigation projects intended to protect lives and property have been halted due to this policy, and will continue to be a burden on the taxpayer. At this time, FEMA seems unable to answer questions regarding the rationale for this decision, as well as the impact on surface flooding. Therefore, we are asking you to rescind this policy until it can be thoroughly vetted, reviewed, and the consequences understood.

On May 5, 2014, FEMA issued the policy "Limits on Subsurface Uses of Hazard Mitigation Assistance Acquired Lands" (FP 302-405-46-1). FEMA did not afford any stakeholders an opportunity to comment on or provide input in the policy. The decision broadly bans hydraulic fracturing on certain properties, and it is keeping mitigation projects in Pennsylvania from moving forward. FEMA is unable to articulate or substantiate how hydraulic fracturing impacts surface flooding and open space, thereby justifying the policy. Additionally, the policy could unfairly require bifurcated property owners to relinquish their subsurface rights without fair compensation. Finally, we are concerned that landowners, who have current leases but want to move out of a severely flooded area, will not be able to sell their property to the government because the landowner is unable to get out of the lease. This policy seems to work against the goals of mitigation and could cost taxpayers in the long run—when the federal government is on the hook for repeatedly paying for damage to severely flooded properties.

Since the release of the policy, FEMA has not been able to provide Committee staff answers to fundamental questions about the implications of this policy. We have enclosed a list of questions that we request be answered by June 20, 2014. Finally, we urge you to rescind the policy to avoid any further unintended consequences and the erosion of the programs' mitigation goals.

Sincerely,

Bill Shuster
Chairman
Committee on Transportation and Infrastructure

Lou Barletta
Chairman
Subcommittee on Economic Development, Public Buildings, and Emergency Management

Questions Regarding FEMA Mitigation Policy FP 302-405-146-1
"Limits on Subsurface Uses of Hazard Mitigation Assistance on Acquired Lands"

1) What specific, potential impacts can subsurface hydraulic fracturing have on surface water flows and flood elevations? How is hydraulic fracturing incompatible with property maintained for open space or recreation?
2) The policy specifically prohibits hydraulic fracturing, but that is only one of many subsurface activities that may occur to extract oil and gas or minerals. Are there other extraction methods, mechanisms, techniques and activities prohibited, including those for oil and gas, minerals and water wells?
3) How does this policy compare to the policies other federal land management agencies – and state land management agencies? Are there other agencies prohibiting hydraulic fracturing and other subsurface activities?
4) What other jurisdictions are likely to be impacted by this policy and unable to use Hazard Mitigation Assistance funds to purchase properties with subsurface rights?
5) If the owner of the surface property rights does not own the subsurface property rights, are they ineligible for the program?
6) If a property owner has to forfeit subsurface property rights to participate in FEMA's mitigation grant program, is the federal government going to compensate the property owner for the forfeiture of those rights?
7) How many properties have been previously acquired with Hazard Mitigation Assistance funds that have subsurface rights held by an entity other than the surface rights owner? Does hydraulic fracturing or other forms of oil, gas or mineral extraction take place beneath properties acquired with mitigation funds? Will these property owners have to terminate subsurface rights and will they be compensated for that?
8) FEMA notes, other federal agencies "with environmental and land use authorities are currently evaluating the practice," yet FEMA has already made the determination that subsurface activity (or the possibility of any activity) is inherently incompatible with the program purposes. Why is FEMA not waiting for further information from the experts before issuing this policy?
9) Was this policy coordinated with the relevant land management agencies at either the federal and/or state level? Any other stakeholders? Was there any opportunity for public notice and comment? If not, why not?
10) Are there other mitigation options and programs available to property owners who wish to remove structures from harm's way and mitigate the effects of future disasters?