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Floodplain Management/Protection of Wetlands: National Groundwater Association Comments Addressing Federal Emergency Management Agency Proposed Flood Risk Management Standard Rule

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The National Groundwater Association (“NGWA”) submitted December 2nd comments to the Federal Emergency Management Agency (“FEMA”) addressing a proposed rulemaking denominated:

Updates to Floodplain Management and Protection of Wetlands Regulations to Implement the Federal Flood Risk Management Standard (“Proposed Rule”).

The Proposed Rule is found at 88 Fed. Reg. 67870 (Oct. 2023).

NGWA describes itself as the largest organization of water well contractors, scientist and engineers, manufacturers and distributors of services and equipment supporting the prudent development of groundwater.

The FEMA Proposed Rule would amend the agency’s regulations to implement the federal flood risk management standard (“FFRMS”) and update its 8-step decision-making process for floodplain reviews. Also proposed is what is described as a supplementary that would clarify how FEMA will apply the FFRMS.

The Proposed Rule would also:

- Change how FEMA defines a floodplain with respect to certain actions;
- Require utilization of natural systems, ecosystem process, and nature-based processes where possible when developing alternatives to locating the proposed action in a floodplain.
- Provide allowance for consideration of both current and future flood risks in defining the floodplain.

The objective is the minimize the impact of floods on human health, safety and welfare along with reducing the risk of flood loss.

The NGWA supports what it describes as:

... FEMA’s recognition under §9.4 Definitions of “natural and beneficial values of floodplains and wetlands” of the processes of storing flood water and groundwater recharge that may occur in the

floodplain in response to climate change addressed at §9.10 – identify impacts and proposed actions; (d 2 natural values – related factors).

NGWA recommends that a final rule be clear that:

...while flood water storage and groundwater recharge are actions potentially being funded by federal agencies or through federal financial assistance to other entities, these funded actions may have activities and functions that extend beyond the time and area of a flood and may in fact continue to inundate an area.

Structures are referenced as potentially being placed in the floodplain or in coastal high hazard areas to provide for floodwater storage and groundwater storage. Similarly, it is suggested that structures may also be needed to convey stored floodwater away from the floodplain or coastal hazard areas to groundwater recharge sites such as infiltration bases.

The definition of “new construction” is addressed. It is recommended that the definition include:

... as allowed new construction managed aquifer recharge floodwater storage retention, spillways, injection wells and other built systems that must be located in the floodplain for the intended purpose of supplementing water supply.

Concern is expressed about the possibility of groundwater contamination when managing flood water for use in water supply storage. As a result, it is recommended that the final rule require that consideration be given to avoid the injection of the first flush of stormwater runoff which can contain higher concentrations of potential pollutants or to provide pretreatment of the first flush prior to injection.

Finally, NGWA asks that the rule acknowledge that MAR-related activities may be subject to State and/or federal regulations such as the United States Environmental Protection Agency Underground Protection Control program.

A copy of the NGWA comments can be downloaded [here](#).