

The U.S. Court of Appeals for the Fifth Circuit has [upheld](#) a district court ruling that the federal government is liable for damage from the Katrina storm surge that went up the MRGO canal into the city. As I read the opinion, it is limited in three ways. First, it is crucial that MRGO — the Mississippi River Gulf Outlet — was a navigation project, not a flood control project. The government is immune from flooding caused by a flood control project. Second, the specific negligent action, failure to shore up the sides of the channel, was primarily related to protecting the canal itself rather than to flood control. And third, failure to shore up the sides was not a policy decision, but was based on careless science that led the Corps of Engineers to conclude that there was no risk of harm from a storm surge.

These are fairly unusual circumstances, and it doesn't seem likely that the opinion would have huge repercussions elsewhere. The government may appeal anyway: it's not half as serious about building walls against floods as it is about building walls against liability.