



COLUMBIA LAW SCHOOL

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SABIN CENTER FOR CLIMATE CHANGE LAW

# **Potential Claims Against Municipalities Associated With Climate Change**

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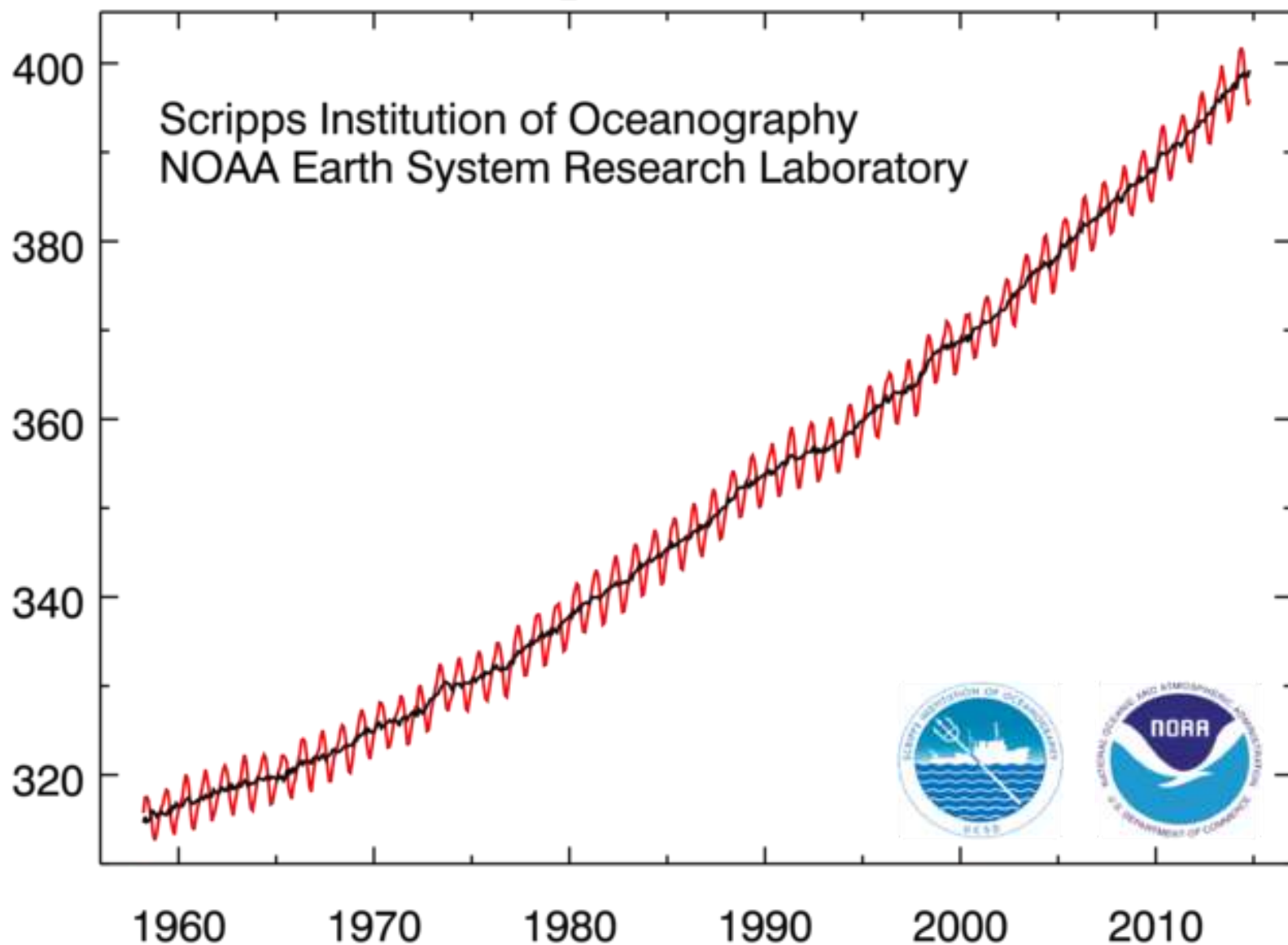
Great Lakes and St. Lawrence Cities Initiative Webinar

November 19, 2014

# Atmospheric CO<sub>2</sub> at Mauna Loa Observatory

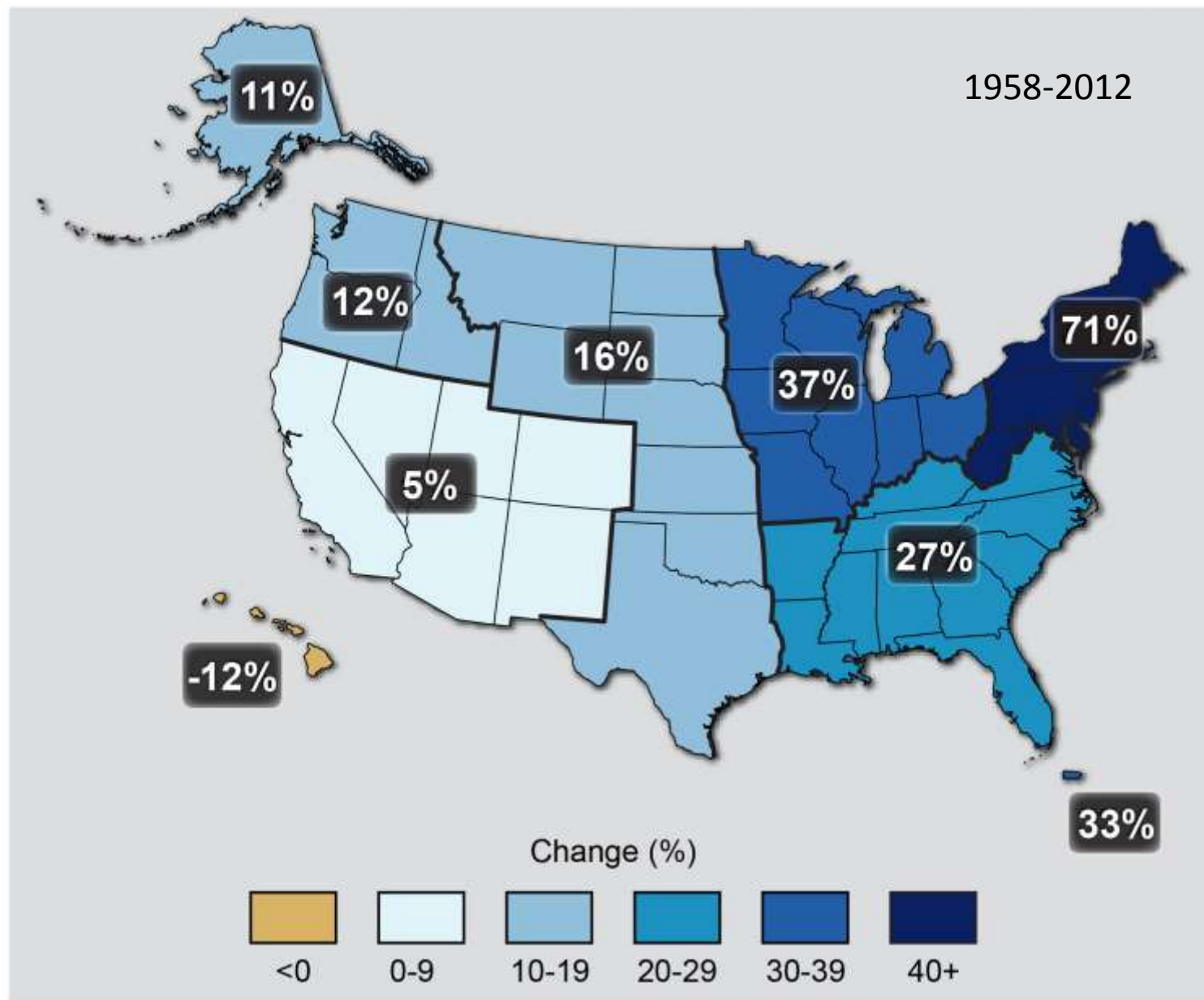
Scripps Institution of Oceanography  
NOAA Earth System Research Laboratory

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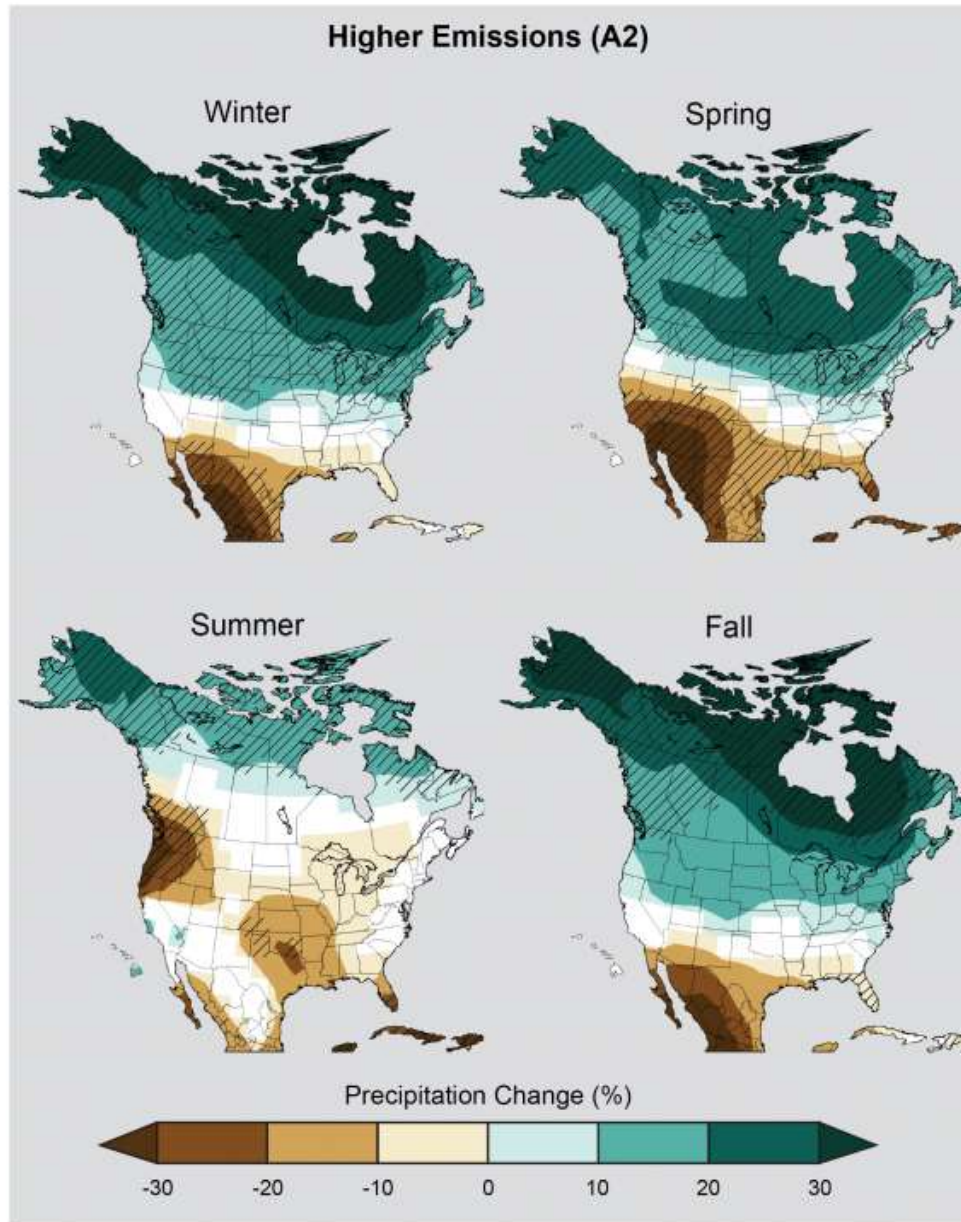
November 2014

# Observed Change in Very Heavy Precipitation



2071-2099 compared to 1970-1999

Projected Precipitation Change by Season



## Annual Maximum Precipitation

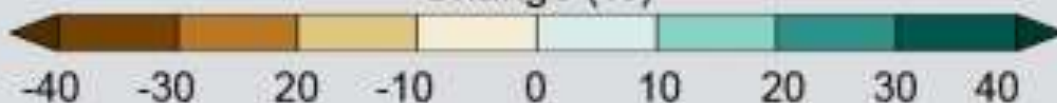
Rapid Emissions Reductions (RCP 2.6)



Continued Emissions Increases (RCP 8.5)



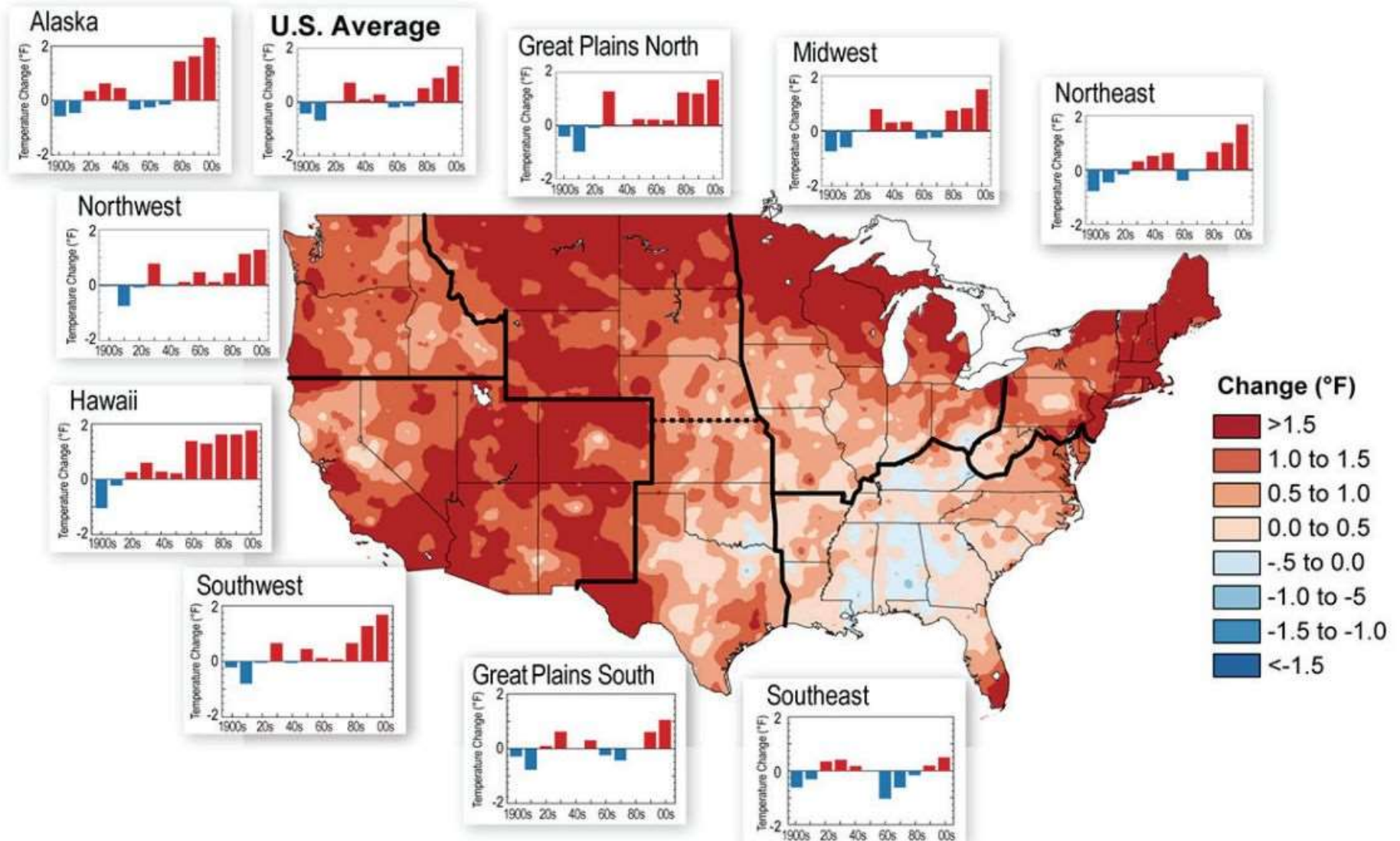
Change (%)





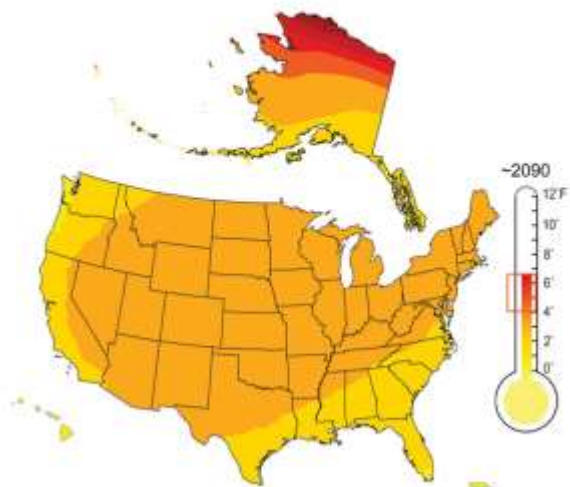
1991-2011 compared to 1901-1960

## Observed U.S. Temperature Change

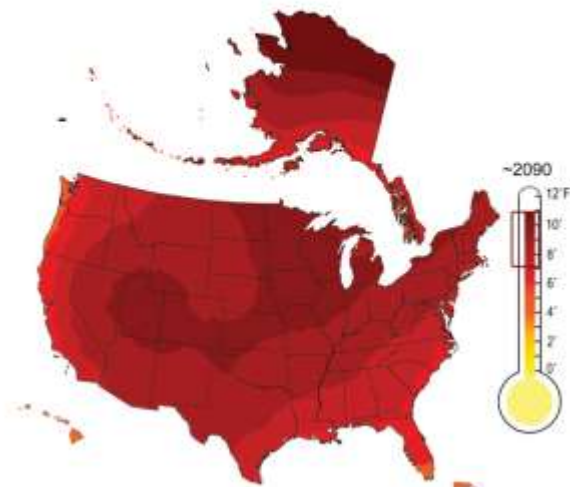


Higher Emissions Scenario - Projected Temperature Change (°F)  
From 1961-1979 Baseline

Mid-Century (2040-2059 average)

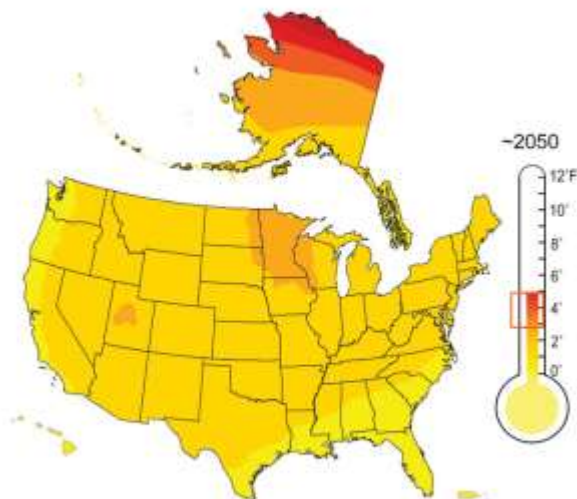


End-of-Century (2080-2099 average)

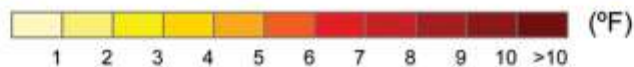
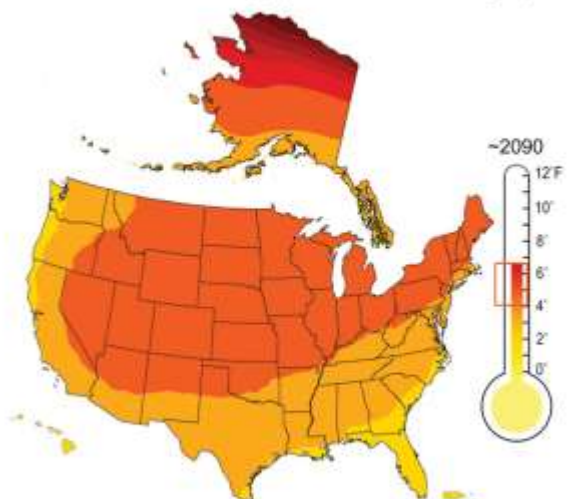


Lower Emissions Scenario - Projected Temperature Change (°F)  
From 1961-1979 Baseline

Mid-Century (2040-2059 average)



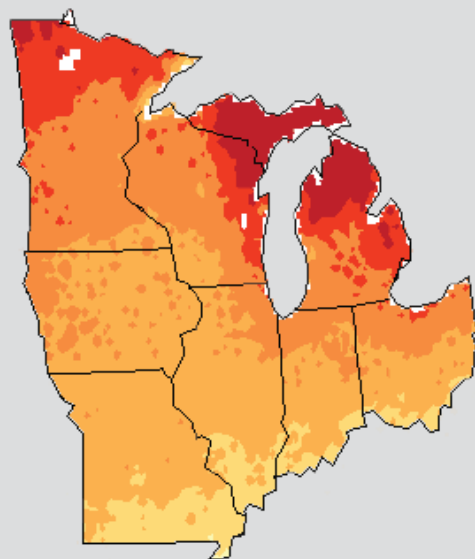
End-of-Century (2080-2099 average)



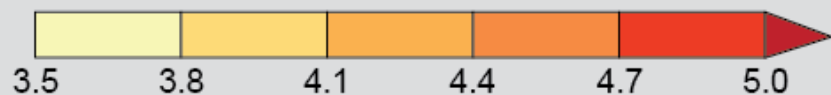
All Maps  
CMIP3-C

## Projected Mid-Century Temperature Changes in the Midwest

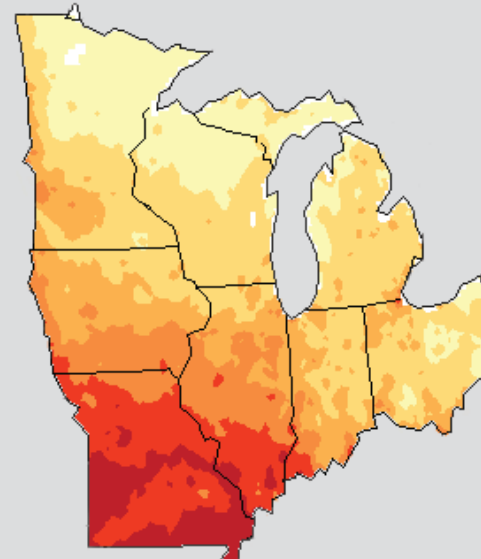
Average Temperature



Temperature Difference (°F)



Days Above 95°F



Difference in Number of Days





**The New York Times**

April 25, 2013

# In Midwest, Drought Gives Way to Flood

By **MONICA DAVEY**

CHICAGO — The nation's midsection, which was for months parched by severe drought, suddenly finds itself contending with the opposite: severe flooding that has forced evacuations, slowed commercial barge traffic down the Mississippi River and left farmers with submerged fields during a crucial planting time.

The flooding, driven in part by rainfall of as much as eight inches in some places last week, has affected a remarkably wide stretch in states along swollen rivers in the Midwest.

The deaths of at least three people have been linked to the flooding in the past week, officials said.

"It's so pervasive," said Gov. Pat Quinn of Illinois, who flew in a helicopter to survey the scope of damage to his state the other day. He recalled seeing an "ocean" beneath him.

Other sights he has seen: basement after basement where household items floated, ruined; sneakers bobbing through a flooded school.

"It is heartbreaking how many people suffered damage," he said.

# Illinois Farmers Insurance Company v. Metropolitan Water Reclamation District of Greater Chicago



# Liability Theories in Illinois Farmers Insurance

- Failure of local public entity to exercise ordinary care to maintain property in safe condition – 745 ILCS §3-102(A).
- Negligent failure of local public entity to remedy known dangerous conditions – 745 ILCS §3-103(A)
- Taking clauses of Illinois, U.S. constitutions





**David Ormsby**

♥ Become a fan



Public Relations Consultant, Ex-Press Secretary, Democratic  
Party of Illinois

# Climate Change Lawsuits Could Again Haunt Illinois Cities

Posted: 07/30/2014 10:05 am EDT | Updated: 09/28/2014 5:59 am EDT



Farmers Insurance may have withdrawn its recent climate change lawsuit against 98 local Illinois governments, but anxiety over future suits is simmering among Chicago-area communities.

Cook County local government attorney Michael Del Galdo, who represented nine suburban Cook communities named in the suit filed by Farmers Insurance, argues that Farmers' legal challenge may represent a new litigation front for Illinois cities rather than a one-off legal occurrence.



# Takings Claims

“private property [shall not] be taken for public use,  
without just compensation”

versus

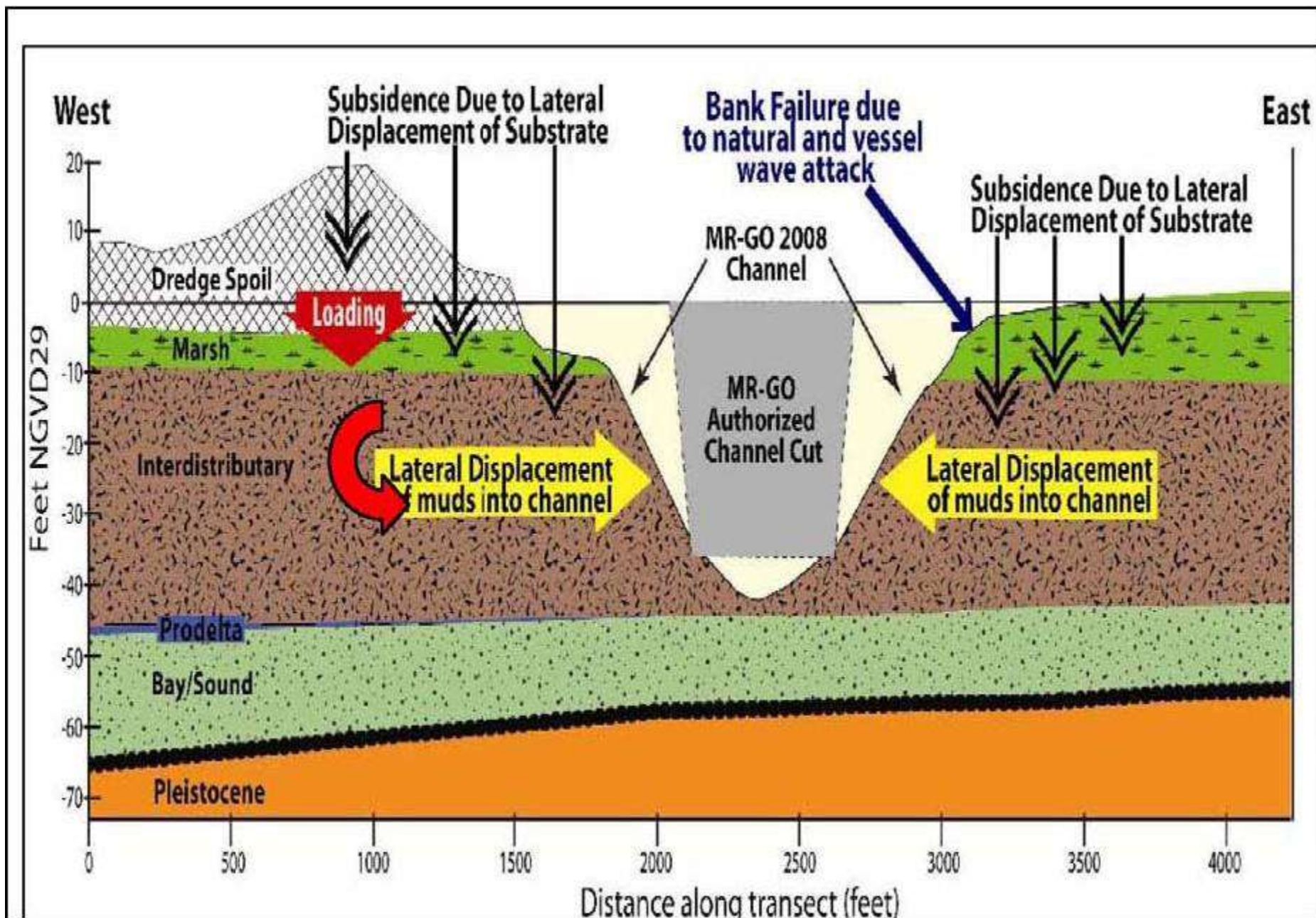
“private property shall not be taken *or damaged* for  
public use without just compensation...”

# Negligence

- Elements:
  - Duty
  - Breach of Duty
  - Causation
  - Damages
- Core concept: **reasonableness under the circumstances**

# In re Katrina Canal Breaches Litigation









**Hurricane Betsy (1965)**



**Hurricane Katrina (2005)**

# Event: Building or structure destroyed or damaged in storm



# Event: Building or structure destroyed or damaged in storm

Target: Architects, engineers, builders

Premise: Event was foreseeable in view of climate change projections

Legal theories:

- Breach of contract

- Professional malpractice

- Negligence

Protections:

- Disclaimer of warranty in contract

- Disclaimer of coverage in policy

- More resilient siting and building practices



# Event: Subdivision development floods





# Event: Subdivision development floods

- Premise: Flood was foreseeable in view of climate projections
- Targets: Developers, planners, real estate brokers

# Event: Flood causes oil and chemical spills



# Event: Flood causes oil and chemical spills

Potential claims against:

- Facility operators
- Facility owners
- Facility engineers
- Chemical waste owners

Potential regulatory violations

Claims by customers

Event: Leased structure destroyed or damaged in storm; valuable contents lost





Event: Leased structure destroyed or damaged  
in storm; valuable contents lost

- Target: Landlord
- Premise: Event was foreseeable

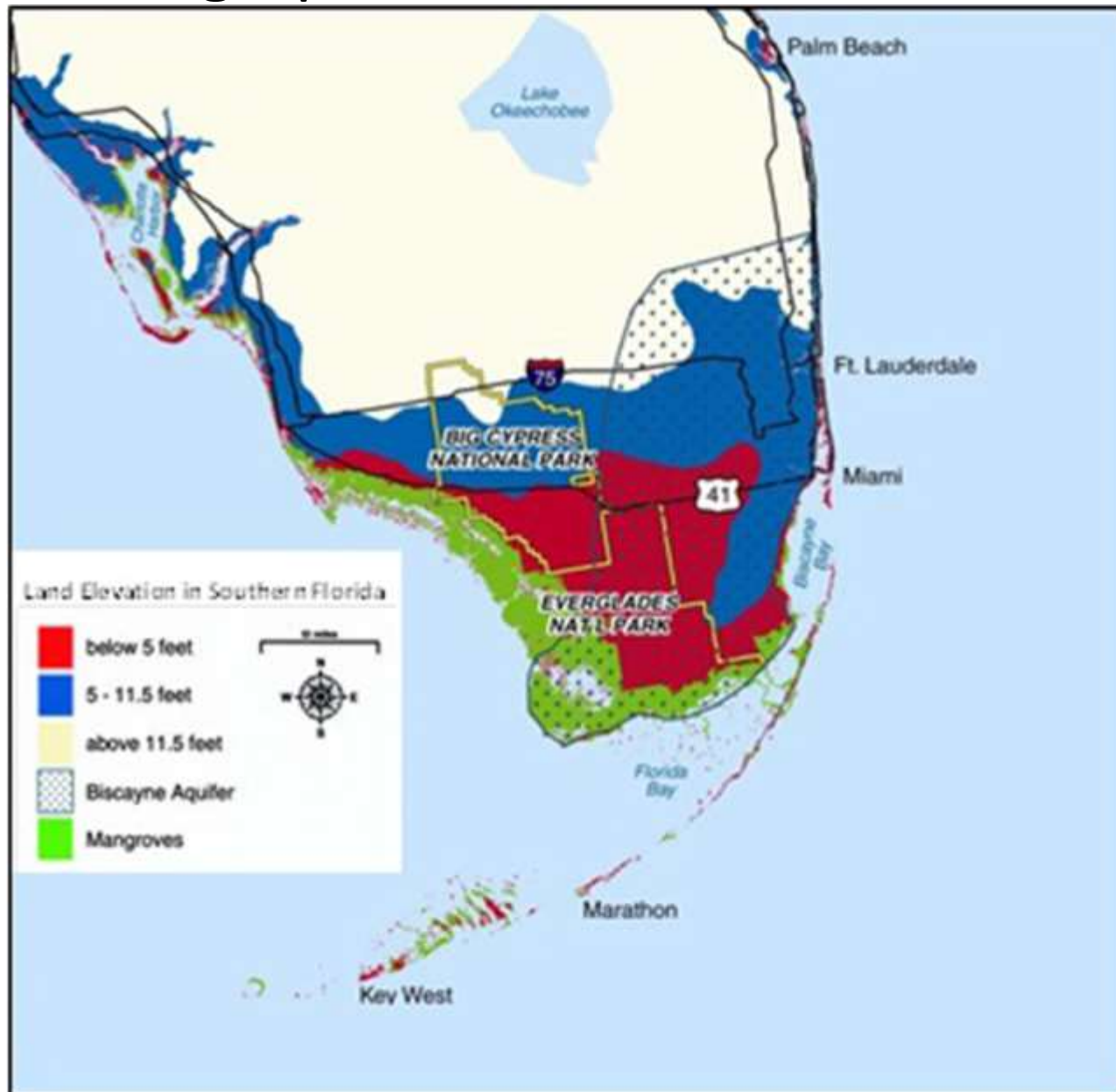
# Use restrictions strip property of value

- Targets
  - Prior owner of property
  - Real estate agents
  - Government (taking)

Event: Geographic area suffers devastating loss



# Event: Geographic area suffers devastating loss





Event: Geographic area suffers devastating loss

Swarms of claims of multiple types:

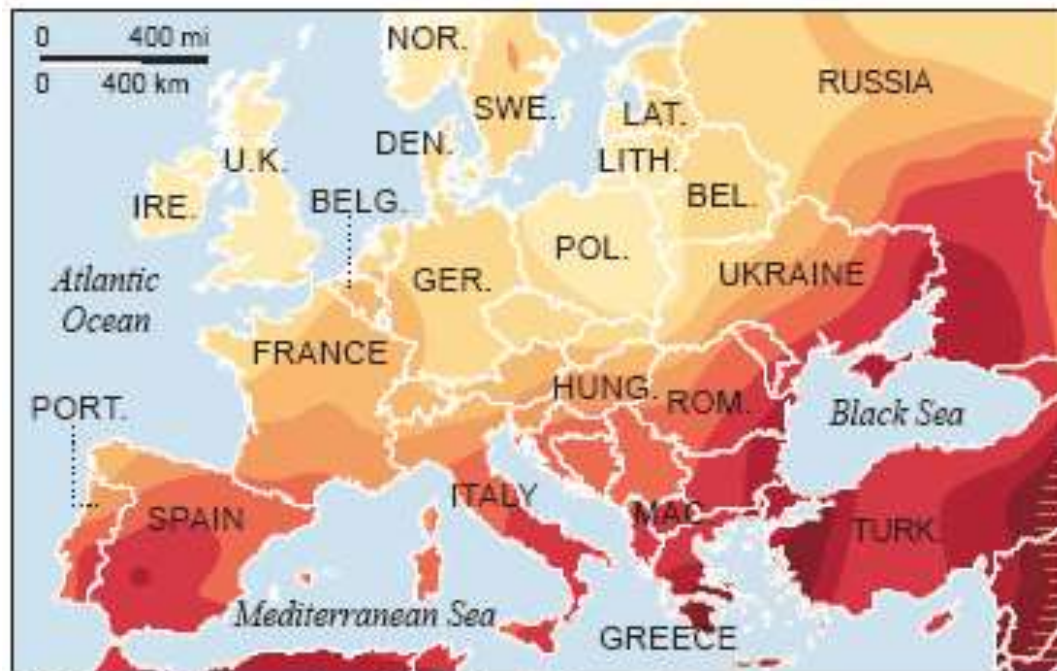
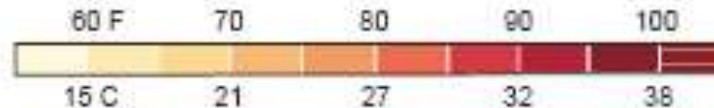
- First party
- Business interruption
- Architect, engineer, builder negligence
- Government liability
- Personal injury, death
- Loss of tax base

# Event: Extreme heat waves

## Oppressive heat settles in Europe

Officials warned citizens, especially the elderly, to stay indoors and drink plenty of water during the summer's second major heat wave.

Temperature,  
Wednesday,  
10 a.m. EDT



NOTE: Average temperatures from highest to lowest elevation

SOURCE: Weather Underground

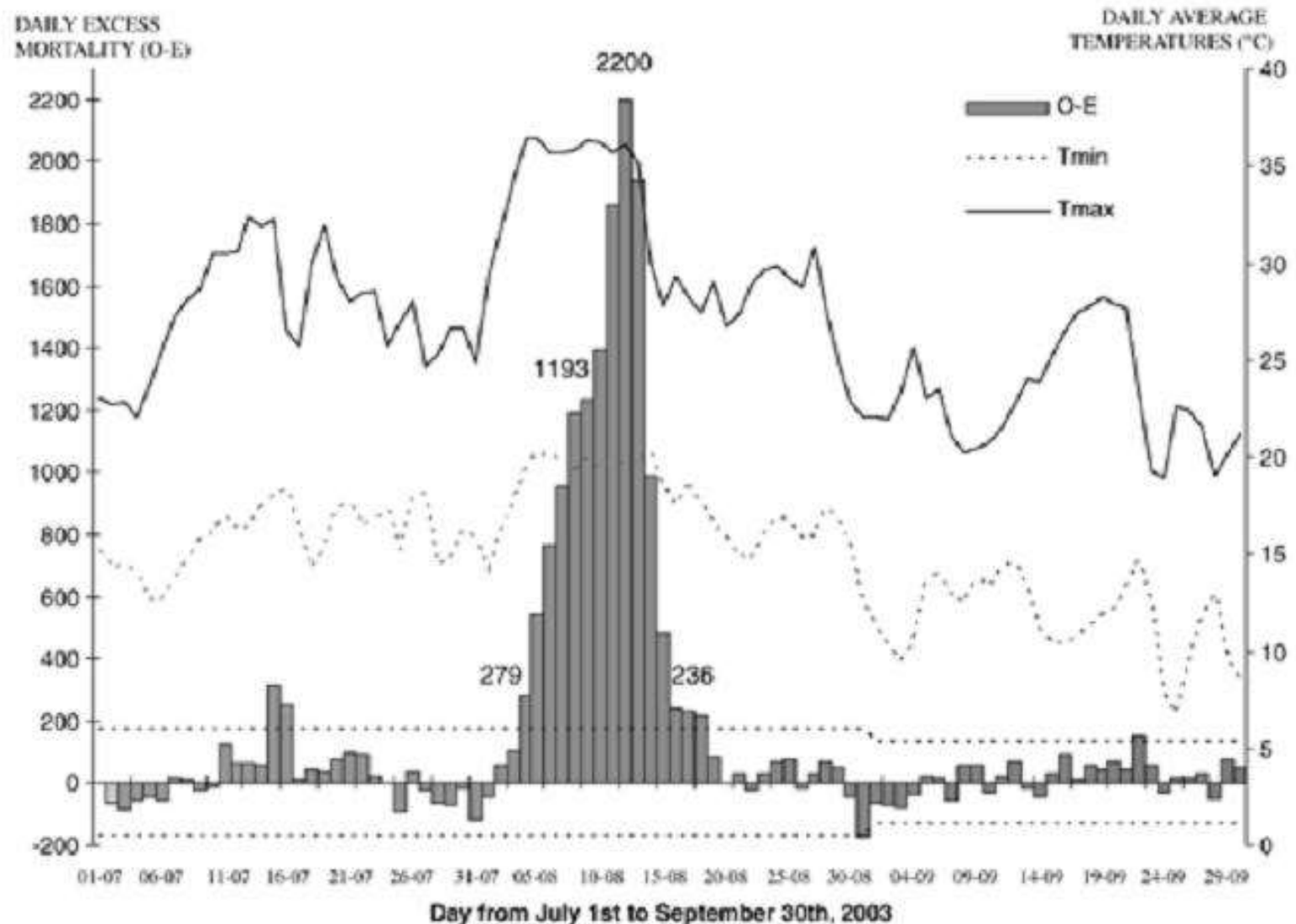
AP

# Event: Extreme heat waves

## Increased Mortality



**Figure 16:** Excess deaths observed during the 2003 heat wave in France. O= observed; E= expected.





# Event: Extreme heat waves

## Increased Mortality

- Life insurance claims
- Claims against landlords for failed air conditioning
- Claims against electric utilities for power failures
- Workers compensation claims

# Mother Of Woman Killed During Sandy Files Lawsuit Against Con Edison

By: NY1 News

09/18/2013 10:30 PM

Text size: + -



The mother of a Queens woman killed by a downed power line during Hurricane Sandy has filed a wrongful death lawsuit against Con Edison.

Lauren Abraham stepped on the wire after walking out of her Richmond Hill home.

Lawyers say neighbors watched helplessly as she died, unable to try to save her because the wire was still live.

## Lawyer sues Con Ed for \$500 million after post-Sandy power failure

Suit seeks shutdown of the utility and refunds for 8 million customers who reportedly lost electricity after the superstorm.

BY DAREH GREGORIAN / NEW YORK DAILY NEWS / Tuesday, January 15, 2013, 6:53 PM

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MARK BONIFACIO/NEW YORK DAILY NEWS

Staten Island lawyer Robert Prignoli is suing Con Edison for \$500 million because he was without power at his home in Annadale for 17 days after Hurricane Sandy.

A mad-as-hell Staten Islander is trying to zap Con Edison, saying its response to Hurricane Sandy was so bad, the company should repay customers \$500 million — and the state should flip the switch on the utility forever.

"Con Edison does not deserve to be in the electric power supply business since it is inept at every level," lawyer and Sandy victim Robert Prignoli said in papers filed in Staten Island Supreme Court.

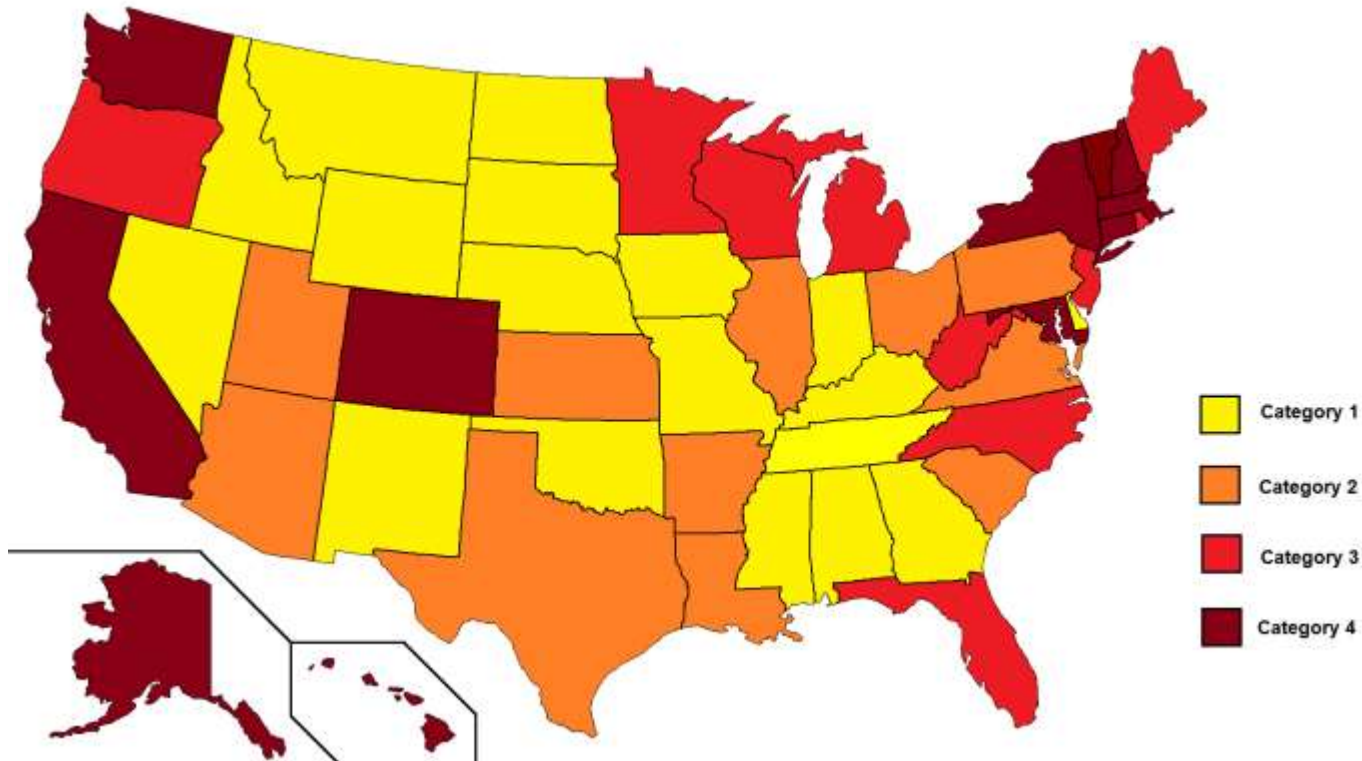
The suit seeks damages on behalf of all 8 million New Yorkers who found

# FEMA Draft Guidance

## State Hazard Mitigation Plans

- Statewide hazard mitigation plan required to receive federal disaster mitigation funding from FEMA.
- Must be submitted to and approved by FEMA every 3 years.
- Climate Change impacts relevant to hazard mitigation: rising temperatures, storm intensity and frequency, sea level rise, drought, and shifting disease patterns.

# FEMA Draft Guidance State Hazard Mitigation Plans



- 1 - **No discussion** or inaccurate discussion of climate
- 2 - **Minimal mention** of climate change related issues.
- 3 - **Accurate but limited** discussion of climate change and/or brief discussion with acknowledgement of need for future inclusion.
- 4 - **Thorough discussion** of climate change impacts on hazards and adaptation actions.



# FEMA Draft Guidance

## State Hazard Mitigation Plans

- September 8, 2014 – FEMA Draft Guidance published
- Draft encourages assessment of future risk in light of a changing climate
- Under “Hazard Identification and Risk Assessment” section of SHMP, states must consider how climate change affects probability of future hazards.

# FEMA Draft Guidance State Hazard Mitigation Plans

- Use as model to think through risks
- Make informed decisions
- Cite data, discuss rationale, and address balancing



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**Thank you!**

**Questions:**

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