

# DEADLY TAKINGS

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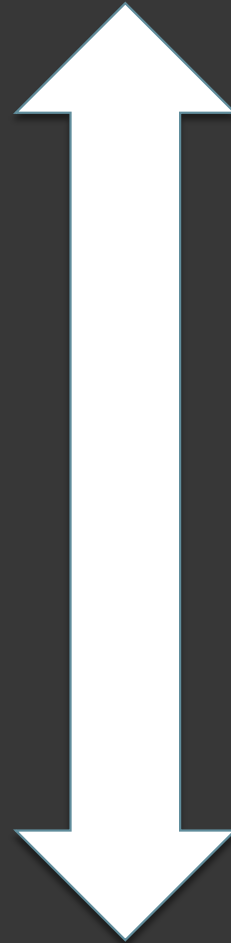
University of Florida Levin College of Law



*Here lies the NFIP. . .*

1968 - ??

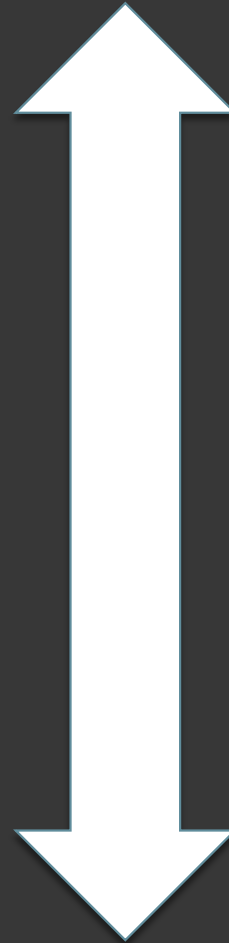
**Takings**



**NFIP**

*A Deadly Combination?*

**Takings**



**NFIP**

The purpose: “. . . to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.”

*A Deadly Combination?*

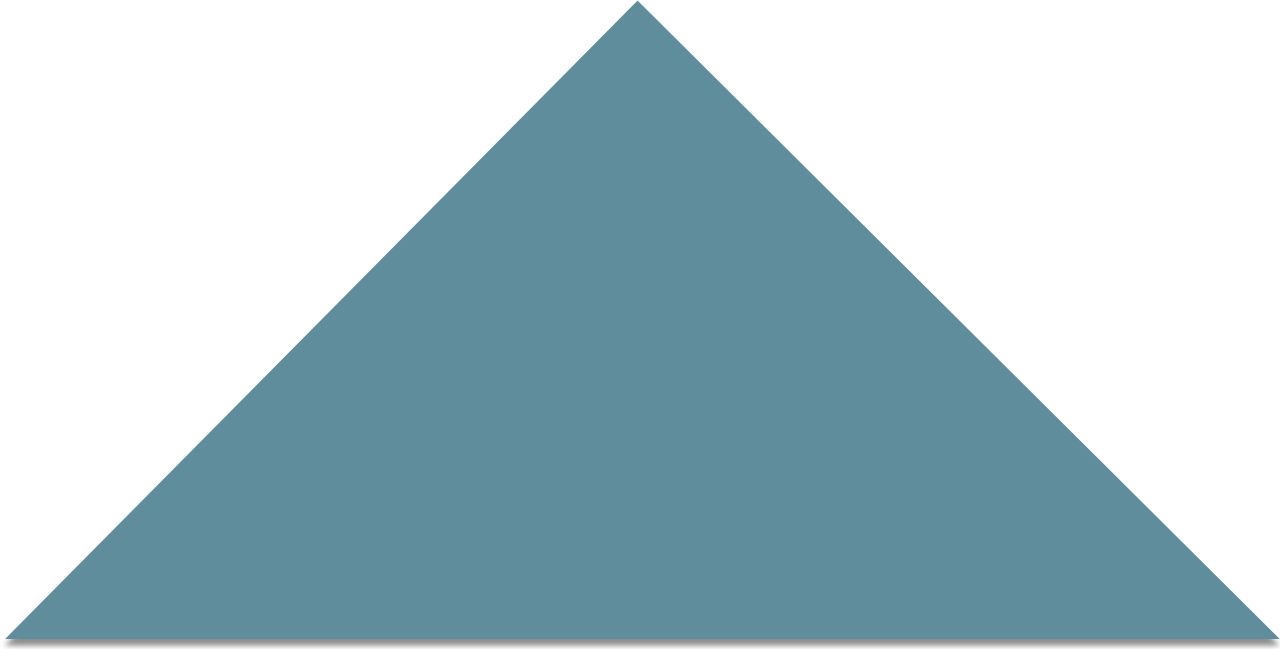
# I. The National Flood Insurance Program



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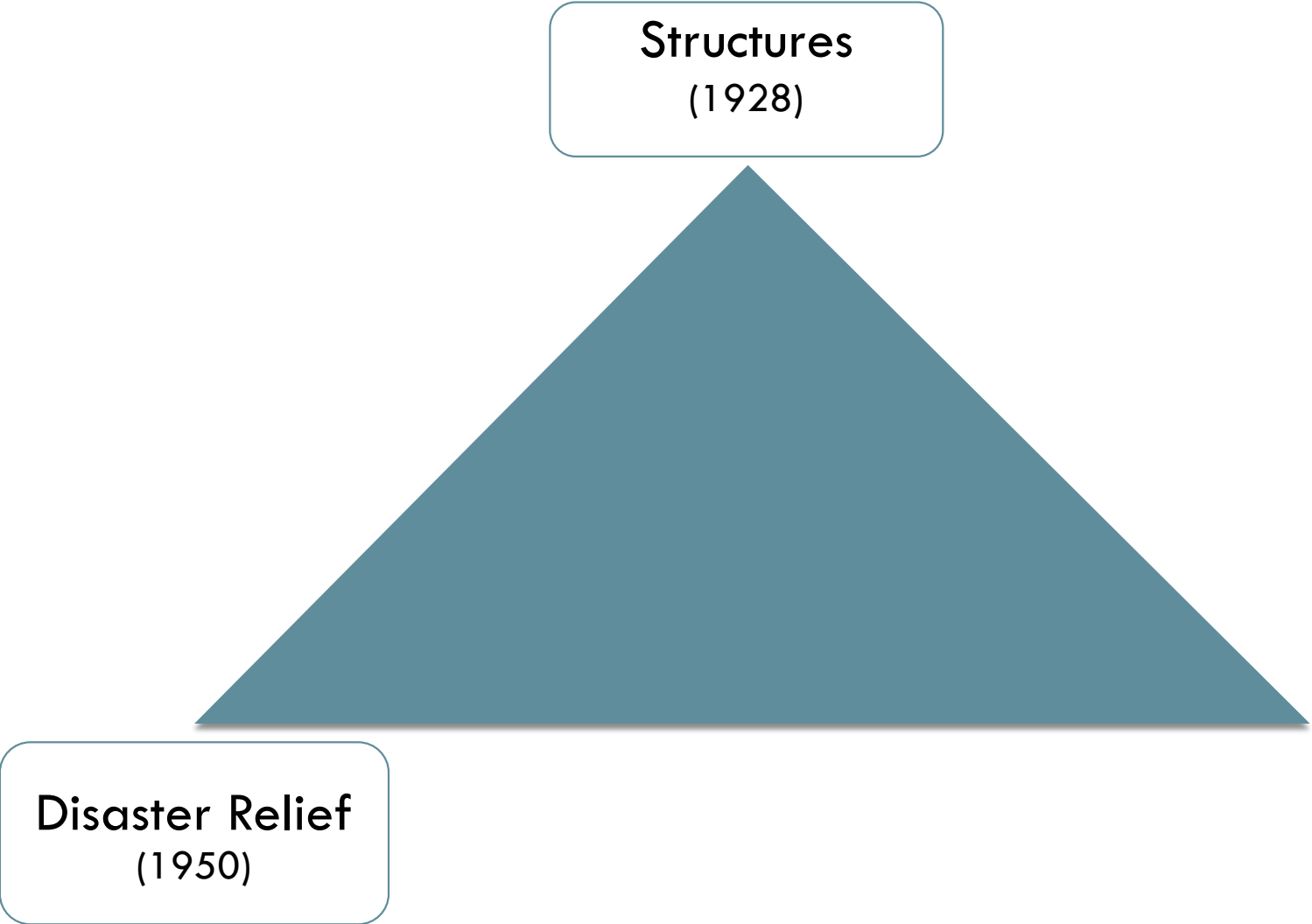
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**Structures**  
(1928)



# I. The National Flood Insurance Program

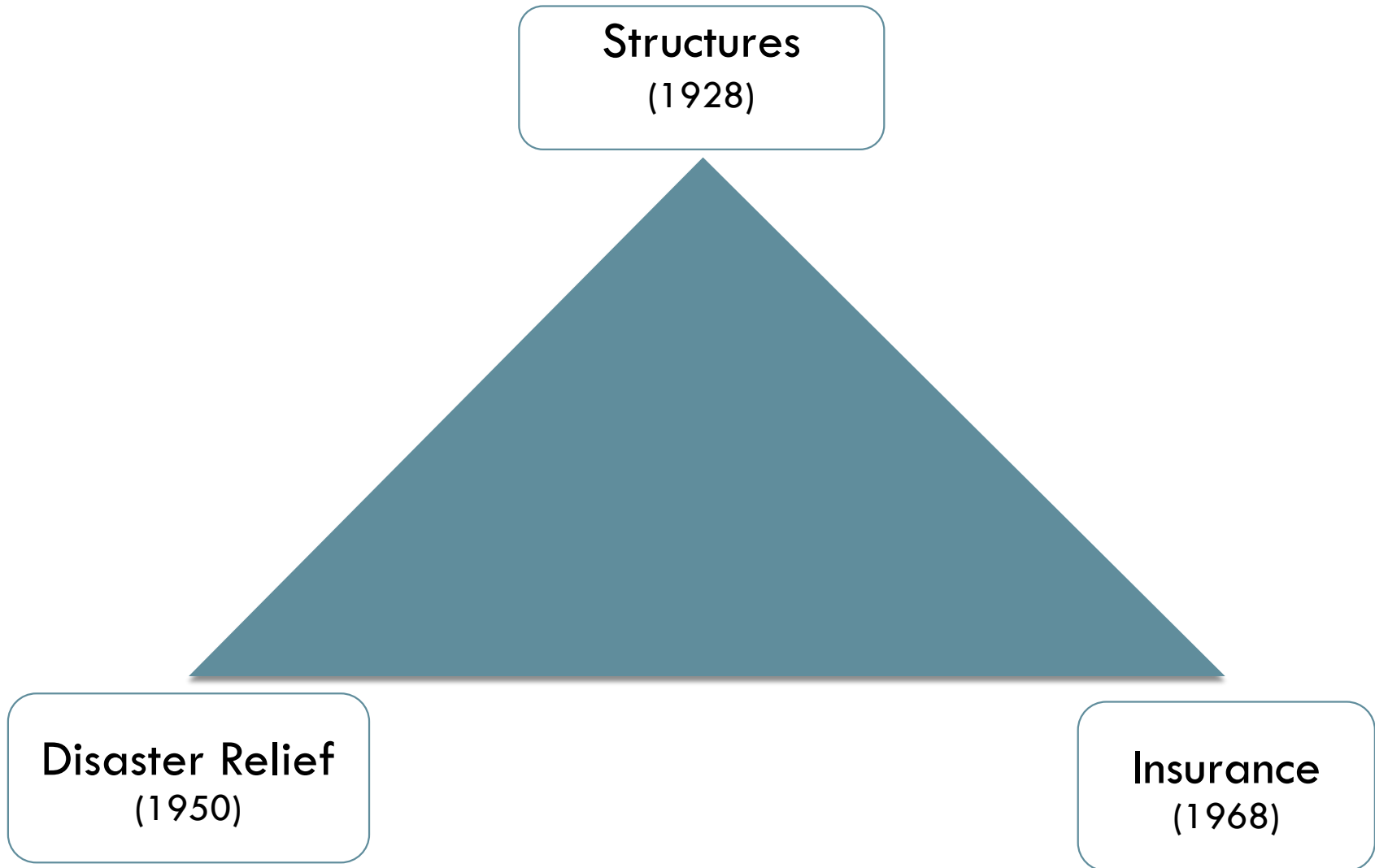
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**Structures**  
(1928)

**Disaster Relief**  
(1950)

# I. The National Flood Insurance Program





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- **The funding: Temporary federal subsidy**

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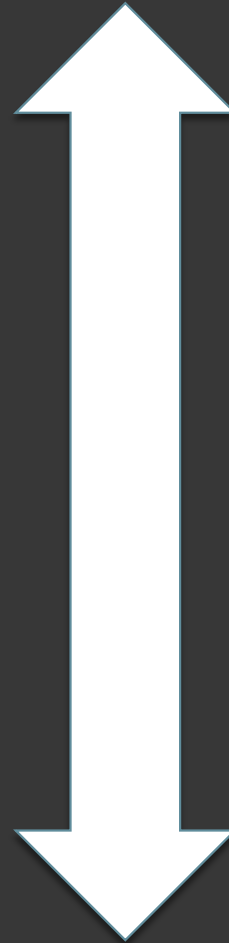
- The funding: Temporary federal subsidy
- The mechanism: Land use regulation

# I. The National Flood Insurance Program

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- The funding: Temporary federal subsidy
- The mechanism: Land use regulation
- **The goal: Floodplain retreat (partial)**

**Takings**



**NFIP**

*The goal: "Measures that internalize risks reduce the moral hazard associated with full government support."*

*A Deadly Combination?*

## II. The Takings Doctrine



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- **The timing: Flood takings**

## II. The Takings Doctrine

### □ The timing: Flood takings

1968: NFIP

1987: First English Evangelical Lutheran Church

1992: Lucas v. S. Carolina Coastal Council

2002: Tahoe-Sierra Preservation Council

2012: Arkansas Game & Fish Comm'n

2017: Murr v. Wisconsin

## II. The Takings Doctrine

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- The timing: Flood takings
- The rhetoric: Environmental cynicism



“We think the Takings Clause requires courts to do more than insist upon artful harm-preventing characterizations.”

Lucas v. S. Carolina Coastal Council (1992)



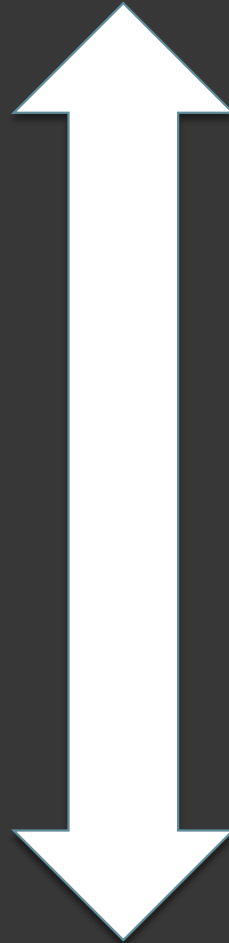
## II. The Takings Doctrine

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- The timing: Flood takings
- The rhetoric: Environmental cynicism
- **The result: Nationalizing flood risk**

**Takings**

*The purpose: “. . . to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.”*



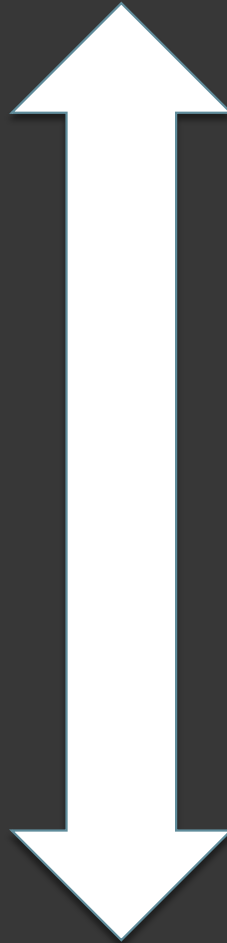
**NFIP**

*The goal: “Measures that internalize risks reduce the moral hazard associated with full government support.”*

*A Deadly Combination?*

## Takings

- Externalize costs & risks
- Chill regulation
- Floodplain development



- Internalize costs & risks
- Encourage regulation
- Floodplain retreat

NFIP

*A Deadly Combination?*

# III. The Way Forward



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- **The NFIP: Back to basics**

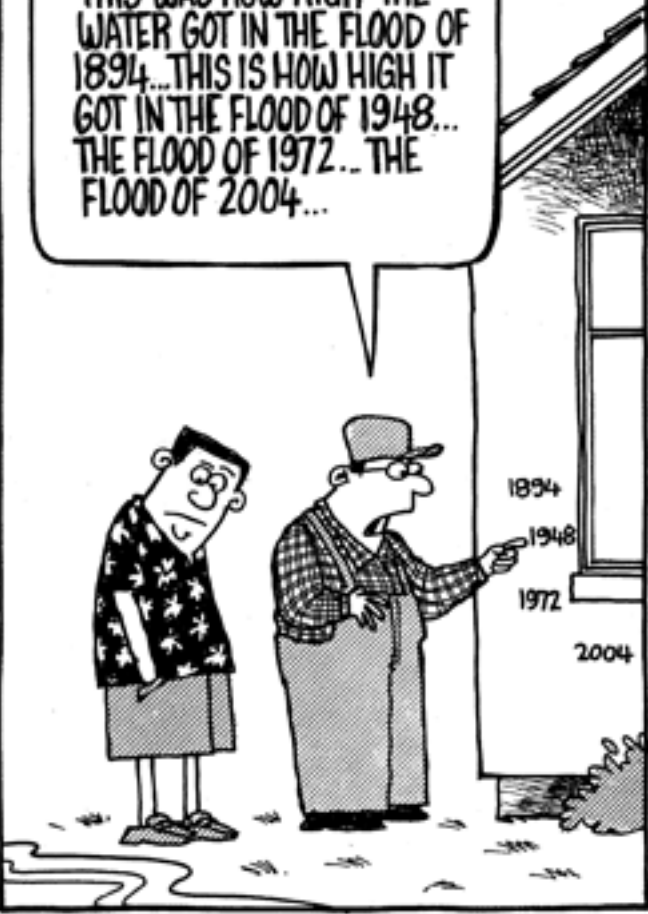
# III. The Way Forward

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- The NFIP: Back to basics
- The takings doctrine: From cynicism to reality

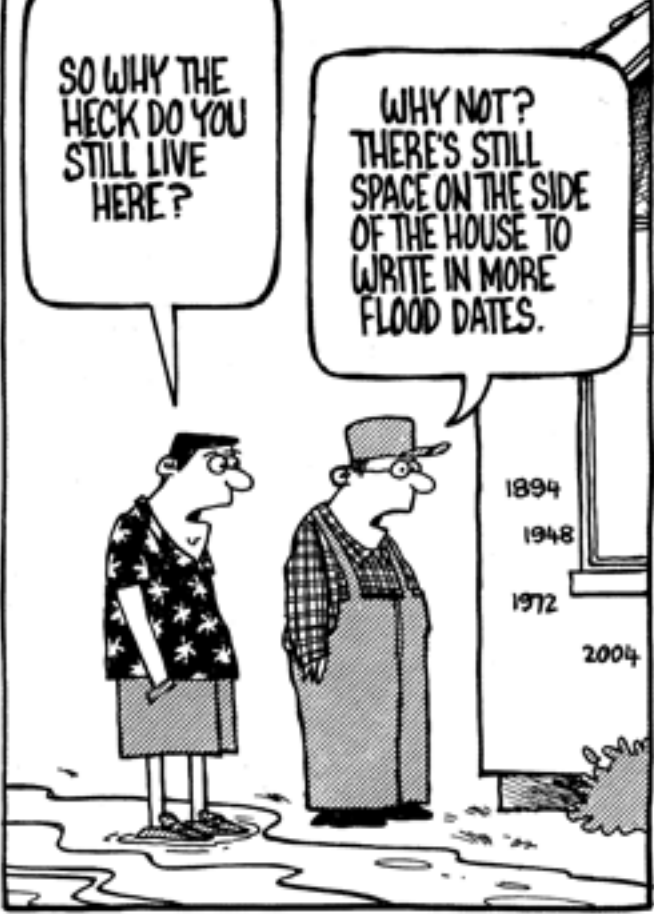
RIVERSIDE  
1988

THIS WAS HOW HIGH THE WATER GOT IN THE FLOOD OF 1894... THIS IS HOW HIGH IT GOT IN THE FLOOD OF 1948... THE FLOOD OF 1972... THE FLOOD OF 2004...



SO WHY THE HECK DO YOU STILL LIVE HERE?

WHY NOT? THERE'S STILL SPACE ON THE SIDE OF THE HOUSE TO WRITE IN MORE FLOOD DATES.





*Thank you!*

