# A Disaster by Any Other Name: Improving Assistance to States and Individuals During Long-Term Disasters

### by Rachel E. Phillips

Rachel E. Phillips is a 2017 J.D. candidate at the J. Reuben Clark Law School, Brigham Young University.

Turricane Katrina Slams Into Gulf Coast; Dozens Are Dead."1 "California Drought Is L the Driest Period in State History."<sup>2</sup> "Oklahoma Tornado 2013 Devastates Moore, Kills Dozens."3 "Florida's Everglades Face New Invasive Threat: Rising Sea Levels."4 Disasters and emergencies come in all shapes and sizes. Some are man-made while others are a result of natural events. The federal government has a system in place, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act),<sup>5</sup> that assists states in recovering from disasters and emergencies by providing federal relief in the form of funds and resources. However, this current system fails to appropriately address disasters that occur over a longer period of time. Long-term events such as drought, land subsidence, and sea-level rise and salt water intrusion can have devastating consequences that leave a state incapable of bearing the burden alone.

Long-term disasters lack the "appeal" of other disasters: they might not be as media-friendly, are not seen to be as devastating or impactful as short-term disasters, and are viewed as preventable or mitigable. One major difference between short- and long-term disasters is the resulting damage. Short-term disasters often result in

Author's Note: The author thanks Lisa Grow Sun for her guidance on this Comment, Eric Talbot Jensen for his encouragement, and her family for their love and support.

- Joseph B. Treaster & Kate Zernike, *Hurricane Katrina Slams Into Gulf Coast; Dozens Are Dead*, N.Y. TIMES, Aug. 30, 2005, http://www.nytimes.com/2005/08/30/us/hurricane-katrina-slams-into-gulf-coast-dozens-are-dead.html? r=0.
- California Drought Is the Driest Period in State History, HNGN, Jan. 27, 2014, http://www.hngn.com/articles/22969/20140127/california-droughtis-the-driest-period-in-state-history.htm.
- Alice Mannette, Oklahoma Tornado 2013 Devastates Moore, Kills Dozens, HUFFINGTON POST, May 20, 2013, http://www.huffingtonpost. com/2013/05/20/oklahoma-tornado-2013\_n\_3309844.html.
- Mike Taibbi, Florida's Everglades Face New Invasive Threat: Rising Sea Levels, PBS NEWSHOUR, June 10, 2015, http://www.pbs.org/newshour/bb/ floridas-everglades-face-new-invasive-threat-rising-sea-levels/.
- 5. 42 U.S.C. §§5121 et seq.

primarily physical damage (e.g., destroyed homes and buildings) and accompanying economic harm. However, long-term disasters are more likely to have predominantly economic damages.<sup>6</sup> These factors lead to less access to assistance and less action during such events. Additionally, the broad discretionary power of the president to declare and direct federal assistance results in long-term events not receiving adequate support to alleviate the burden on states and local communities. Further, the trend toward an increasing number of presidential declarations that qualify for Stafford Act assistance is burdening the system and pulling resources from other disasters, especially long-term disasters.

A change is needed in the way assistance is provided to states and cities for long-term disasters. Part I of this Comment will summarize the basic provisions and procedures of the Stafford Act that provide support to states in the event of an emergency or disaster. Part II will discuss drought, land subsidence, and sea-level rise and salt water intrusion as three long-term disasters that illustrate the inadequacy of the current system to provide support in these instances. Part III will propose two options to help counter the inadequacy of the Stafford Act to assist in the recovery and mitigation phase of long-term disasters. The first option involves amending the current Act to eliminate the misbalance of disaster declarations for long-term events, and the second option presents a program focused more on state responsibility, loans, and mitigation that would help to decrease the total number of presidential disaster declarations and ease the burden on Stafford Act funds. Part IV will conclude.

<sup>6.</sup> However, some long-term disasters that will be discussed in this Comment might result in physical damages as well. For example, land subsidence might lead to physical destruction of buildings and land. Salt water intrusion can also physically damage the land. But the overall economic damages, such as loss of work during a drought, taking preventive measures in groundwater pumping, etc., are more specific and unique to long-term disasters.

#### I. The Current System

The Stafford Act is the current federal scheme dedicated to responding to emergencies and natural disasters and providing assistance to states when needed. It is administered by the Federal Emergency Management Agency (FEMA). FEMA operates a National Planning Framework that incorporates a framework for each of its five "preparedness mission areas": prevention, protection, mitigation, response, and discovery.<sup>7</sup> There is also an additional National Response Framework<sup>8</sup> and National Mitigation Framework.<sup>9</sup> The Stafford Act allows the federal government to "step in to provide disaster aid to affected states when the disaster is of sufficient magnitude and severity that it overwhelms state and local capacity to respond."<sup>10</sup>

The Stafford Act provides for assistance during two separate events, emergencies and major disasters.<sup>11</sup> An emergency is defined as:

[A]ny occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.<sup>12</sup>

A natural disaster is defined as:

[A]ny natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or *drought*), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.<sup>13</sup>

Both of these events require the governor of the state<sup>14</sup> to request that the president make a declaration finding an

emergency or major disaster.<sup>15</sup> This is the main triggering function that allows the states to have access to federal assistance. Section 5170a details the general federal assistance that may be available for any major disaster.<sup>16</sup> This includes the president directing federal agencies to use resources to help the state, coordinate relief, provide technical and/or advisory assistance, etc.<sup>17</sup> Section 5170b details "essential assistance." This involves providing federal equipment, supplies, personnel, medicine, food, "work and services to save lives and protect property,"18 and even salary or benefits for state employees if certain conditions are met.<sup>19</sup> Basically, "federal disaster aid can take two forms: either emergency measures can be taken by the federal government itself, or the federal government can reimburse states and localities for debris removal and other 'emergency protective measures' taken by the state and local governments to respond to the disaster."20

After a governor has requested a declaration, and the president actually makes the declaration, the states then have access to federal funds and supplies, as directed by the president, to help to respond and recover from the emergency or disaster. However, as will be detailed in this Comment, this current scheme is ineffective for long-term events because of the broad discretionary power of the president, the "unappealing" nature of long-term disasters. Thus, a change in the procedures for states to obtain assistance, and the actual assistance available, is needed.

#### II. Why the Current Stafford Act Is Insufficient

Long-term disasters are unique in that they do not conform to the same standards and assumptions as short-term disasters. Presidential discretion, mitigation stigmas, timing concerns, and primarily economic damages are important characteristics of long-term disasters that prevent the Stafford Act and the current system from being truly effective in assisting the states.

One of the main issues with long-term disasters and a disparity in assistance from the Stafford Act is that resources are available only through the discretion of the president, who must declare such emergencies and disasters. However, these long-term disasters do not always receive the same recognition as more instantaneous or immediate events. This might be attributable to the pri-

FEMA, National Planning Frameworks, http://www.fema.gov/nationalplanning-frameworks (last updated Nov. 15, 2016).

U.S. DEPARTMENT OF HOMELAND SECURITY, NATIONAL RESPONSE FRAMEWORK (2d ed. 2013), *available at* http://www.fema.gov/media-librarydata/20130726-1914-25045-1246/final\_national\_response\_framework\_ 20130501.pdf.

U.S. DEPARTMENT OF HOMELAND SECURITY, NATIONAL MITIGATION FRAMEWORK (2013), *available at* http://www.fema.gov/media-librarydata/20130726-1914-25045-9956/final\_national\_mitigation\_framework\_ 20130501.pdf.

<sup>10.</sup> Daniel Farber et al., Disaster Law and Policy 109 (3d ed. 2015).

<sup>11. 42</sup> U.S.C. §5122.

<sup>12.</sup> Id.

<sup>13.</sup> Id. §5122(2) (emphasis added).

<sup>14.</sup> For ease, the author refers throughout to a governor; however, the same rules apply to tribal leaders.

<sup>15. 42</sup> U.S.C. §§5170, 5191.

<sup>16.</sup> *Id.* §5170a.

<sup>17.</sup> *Id*.

<sup>18.</sup> Id. §5170b(a)(3).

Id. §5170b(d)(1)-(3). The requirements include performing work "not typically performed by the employees; and the type of work may otherwise be carried out by contract or agreement with private organizations, firms, or individuals." Id. §5170b(d)(1)(A)(i)-(ii).

<sup>20.</sup> FARBER ET AL., supra note 10, at 118.

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marily economic impact of some long-term events. For example, graphic photographs and video of the destruction and aftermath in the days following Hurricane Katrina could evoke more emotion than scattered reports over five years of a drought in the western United States.

The heavy reliance on the discretion of the president is problematic in many ways. There has been a current trend for presidents to declare more major emergencies and disasters,<sup>21</sup> with an average of 56 per year during 2000 to 2009, and the top declarations have been for severe storms, flooding, hurricanes, and tornadoes; all more immediate disasters.<sup>22</sup> This troubling increase in declarations is straining the system and budget and can also make it less likely for other disasters, long-term or short-term, to be declared. Not only does the president have discretion in declaring disasters that will receive assistance, he has discretion to decide what kind of assistance a state receives.<sup>23</sup>

While there is no single specific reason why there has been an increase in declarations, a 2015 study indicated the trend might have various political motivations, and presidential declarations leave some skeptical that "declarations are solely made to provide disaster relief."24 In fact, critics argue "that declarations have become political tools-especially during election years-to gain political favor. Advocates of this position point to incidents which, in their view, could have been handled without federal assistance."25 Additionally, there have been conflicting studies about whether "congressional districts sharing the President's party affiliation are more likely to be issued a disaster declaration."26 Again, political motivations might come into effect when a president uses his discretion to declare an event an emergency or a disaster.<sup>27</sup> A checking feature might limit this discretionary power and provide more balanced distribution of assistance.<sup>28</sup>

Another reason why the current system is inadequate is that long-term events potentially face a stigma that shortterm events do not have. One such stigma is the idea that states could have prevented the effects or should be responsible for mitigating the impact of long-term events. This is unique to these long-term events since claims of mitigation for earthquakes, hurricanes, or tornadoes are not as prevalent.<sup>29</sup> The timing element of long-term disasters also sets them apart from short-term events. A state or city might not realize the effects or impact of a disaster until years into the event. For example, experts might not realize a drought will last five years, so by the end of the second year when the damage and impact becomes evident, it might be too late to start mitigating and beginning the recovery process.

Further, there is a timing element involved in long-term events that is not as prevalent with short-term disasters. Issues can arise from not knowing when a long-term disaster will end, while hurricanes, fires, floods, and storms typically do not last more than a few days or weeks. Advances in technology also allow for tracking storms and fires and even predicting potential paths and schedules.<sup>30</sup> In contrast, drought, land subsidence, and sea-level rise can span years or even decades. These events and other long-term disasters can easily be neglected or overlooked because the damage happens over a longer period of time—but the damage is still occurring.

Lastly, as will be illustrated in the examples that follow, long-term disasters often result in primarily economic damages. There are not as many destroyed homes, buildings, and business; however, the economic impacts of these disasters can still put a strain on individuals and local and state governments. The remainder of this part will give examples of three main types of long-term disasters that show the inefficiency of the current federal schemes to respond to and relieve disasters of this type.

#### A. Drought

Drought is defined as "a period of drier-than-normal conditions that results in water-related problems."<sup>31</sup> The West Coast has been suffering from a drought for years, with California recently experiencing its "fifth year of severe drought."<sup>32</sup> Further, 2014 was the third driest year on record.<sup>33</sup> In 2015, the California Department of Water Resources measured the "statewide water content

See Bruce R. Lindsay & Francis X. McCarthy, Cong. Research Serv., R42702, Stafford Act Declarations 1953-2014: Trends, Analyses, and Implications for Congress (2015), available at http://www.fas.org/ sgp/crs/homesec/R42702.pdf.

<sup>22.</sup> Id. at ii. This survey did show drought listed as a top event under the "emergency" category; however, this included data beginning in the 1970s when drought was included in the definition as an "emergency." It has been more than 30 years since drought has been declared an emergency or disaster. See Jeremy Brown, Drought: Always a Disaster, Never a Presidentially Declared One, KBH ENERGY CTR., July 11, 2014, https://kbhenergycenter. utexas.edu/2014/07/11/drought-always-a-disaster-never-a-presidentiallydeclared-one/.

<sup>23.</sup> See 42 U.S.C. §§5170a, 5170b.

<sup>24.</sup> LINDSAY & MCCARTHY, *supra* note 21, at ii.

<sup>25.</sup> Id.

<sup>26.</sup> Id. at 22. For the actual results of the studies, see Thomas A. Garrett & Russell S. Sobel, The Political Economy of FEMA Disaster Payments, 41 ECON. INQUIRY 496 (2003), and Richard S. Salkowe & Jayajit Chakraborty, Federal Disaster Relief in the U.S.: The Role of Political Partisanship and Preference in Presidential Disaster Declarations and Turndowns, 6 J. HOMELAND SEC. & EMERGENCY MGMT. 13 (2009).

<sup>27.</sup> While this issue extends beyond long-term disasters, Part III of this Comment will introduce proposed changes to limit the president's broad discretionary power that would not only be beneficial in providing help for long-term disasters, but also effective in ensuring no improper political motivations are influencing presidential declarations.

<sup>29.</sup> There is some discussion as to events, like global warming or fracking, that might be increasing these natural disasters, but the argument is dissimilar to a claim that a state mismanaged water, thereby exacerbating a drought. Also, while human intervention might lead to an increase in damages, these disasters are still natural in their occurrence.

<sup>30.</sup> For example, the National Hurricane Center has satellite, radar, and air reconnaissance that provide detailed information about the path and schedule of a hurricane. For more information, see National Oceanic and Atmospheric Administration (NOAA) National Hurricane Center, *Homepage*, http://www.nhc.noaa.gov/ (last updated Mar. 13, 2017).

U.S. Geological Survey (USGS) California Water Science Center, *California Drought*, http://ca.water.usgs.gov/data/drought/ (last modified Mar. 2, 2017).

<sup>32.</sup> *Id*.

<sup>33.</sup> Id.; see also NOAA National Centers for Environmental Information, Climate at a Glance—Time Series, https://www.ncdc.noaa.gov/cag/timeseries/us/4/0/pcp/12/9/1895-2015?base\_prd=true&firstbaseyear=1901&la stbaseyear=2015 (last visited Mar. 12, 2017).

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of Sierra snowpack at five percent of average for April 1st. These levels are lower than any year in records going back to 1950."<sup>34</sup> There are immediate and long-term impacts of drought, including seawater intrusion and damage to ecosystems.<sup>35</sup>

The long-term effects of drought "can be harder to see, but more costly to manage in the future."<sup>36</sup> In 2014, Governor Jerry Brown declared a state of emergency in California and "directed state officials to take all necessary actions to prepare for these drought conditions."<sup>37</sup> Additionally, Governor Brown poignantly stated: "We can't make it rain, but we can be much better prepared for the terrible consequences that California's drought now threatens, including dramatically less water for our farms and communities and increased fires in both urban and rural areas."<sup>38</sup>

Even though the Stafford Act categorizes drought as a "major disaster," no president has declared a drought as a major disaster in more than 30 years.<sup>39</sup> Some states have tried to correct this by introducing federal legislation requesting aid. In the past few years, California introduced federal legislation that asked "various federal agencies to provide California with additional water supplies during its current drought."<sup>40</sup> The Emergency Drought Relief Act of 2014<sup>41</sup> was introduced and passed in the U.S. Senate. However, the bill later died and was never passed by the U.S. House of Representatives.<sup>42</sup>

Even after this attempt by California to receive federal assistance, President Barack Obama still did not make a declaration regarding the drought.<sup>43</sup> Drought is simply not getting recognized like other disasters, even though it can have longer-term effects as compared to other disasters.<sup>44</sup> One argument is that droughts are "uncharismatic."<sup>45</sup> Because the effects and impacts of drought are slow-moving, it can be hard to gain the same support that disasters such as Hurricane Katrina or Superstorm Sandy can.

Even though the impacts of the California drought might not include as much physical damage as a hurricane

42. *Id.* 

or tornado, the economic damages for the state are still very real. One study in 2014 indicated that the drought in California could cost the Central Valley agriculture and farm communities \$1.7 billion.<sup>46</sup> Another study done in 2015 indicated that the impact of the drought was at \$2.7 billion.<sup>47</sup> Again, these figures only measure the financial impact of the drought, not the potential loss of jobs, subsidence repairs, and cost of fire control that is increased with drought. Further, this is the impact on only one state; other states in the region have also suffered greatly because of the drought.<sup>48</sup>

Droughts are simply not being recognized by presidents as a major disaster that requires federal assistance.<sup>49</sup> Even though drought is a detrimental disaster, because its impacts are felt over a longer period of time, it is not receiving the same kind of attention as other disasters. States that suffer long-term drought would greatly benefit from a change in the current federal assistance programs.

#### B. Land Subsidence

Another long-term event that has harmful effects and has not been presidentially declared a disaster is land subsidence. Subsidence occurs when groundwater is withdrawn from rocks and sediments, causing the rock or land to "fall in on itself."<sup>50</sup> In essence, the land "drop[s] in altitude" because of a lack of support below ground.<sup>51</sup> While western states like Arizona, California, and Texas have suffered more due to land subsidence,<sup>52</sup> "more than 17,000 square miles in 45 states, an area roughly the size of New Hampshire and Vermont combined, have been directly affected by subsidence."<sup>53</sup> Over a 75-year period, the land surface in the San Joaquin Valley of California has dropped nearly 30 feet,<sup>54</sup> and in the Las Vegas Valley, maps have measured

49. As will be discussed *infra* Part III.B., the Small Business Administration does provide an economic disaster loan for drought; however, this is conditioned on a presidential declaration.

- 53. DEVIN L. GALLOWAY ET AL., USGS, LAND SUBSIDENCE IN THE UNITED STATES 1 (2000) (USGS FACT SHEET-165-00), *available at* http://water.usgs.gov/ogw/pubs/fs00165/SubsidenceFS.v7.PDF.
- 54. Id. at 3.

<sup>34.</sup> USGS, California Drought, supra note 31.

USGS California Water Science Center, *Drought Impacts*, http://ca.water. usgs.gov/data/drought/drought-impact.html (last modified Dec. 21, 2016).
*Id.*

<sup>37.</sup> Press Release, Office of Governor Edmund G. Brown Jr, Governor Brown Declares Drought State of Emergency (Jan. 17, 2014), https://www.gov.ca.gov/news.php?id=18368. This important recognition will be discussed *infra* Part III.B., regarding the possibility of making loan funds contingent on mitigation measures by states. Governor Brown's statement could be evidence of a state's willingness to take money conditioned on meeting certain mitigation requirements.

<sup>38.</sup> Id.

FEMA, Disaster Declarations, https://www.fema.gov/disasters?field\_state\_ tid\_selective=All&tfield\_disaster\_type\_term\_tid=6857&field\_disaster\_ declaration\_type\_value=All&titems\_per\_page=20 (last visited Mar. 12, 2017); see also Brown, supra note 22.

<sup>40.</sup> Brown, *supra* note 22.

Emergency Drought Relief Act of 2014, S. 2198, 113th Cong., https:// www.govtrack.us/congress/bills/113/s2198/text/es.

<sup>43.</sup> As of the writing of this Comment, President Donald Trump has not made any declaration regarding drought.

<sup>44.</sup> See Brown, supra note 22; LINDSAY & MCCARTHY, supra note 21.

<sup>45.</sup> See Brown, supra note 22.

<sup>46.</sup> Kat Kerlin, Scientists Forecast Economic Impacts of the Drought on Central Valley Agriculture, UC DAVIS, May 19, 2014, https://www.ucdavis.edu/news/ scientists-forecast-economic-impacts-drought-central-valley-agriculture.

RICHARD HOWITT ET AL., ECONOMIC ANALYSIS OF THE 2015 DROUGHT FOR CALIFORNIA AGRICULTURE (UC Davis et al. 2015), *available at* https:// watershed.ucdavis.edu/files/biblio/Final\_Drought%20Report\_08182015\_ Full\_Report\_WithAppendices.pdf.

<sup>48.</sup> National Drought Mitigation Center, U.S. Drought Monitor, West, http:// droughtmonitor.unl.edu/home/regionaldroughtmonitor.aspx?west (last updated Mar. 7, 2017). As of March 16, 2017, the U.S. Drought Monitor estimated that still more than 16,000,000 people live in a drought area in the western states. Id. This includes Arizona, California, Colorado, Montana, Nevada, New Mexico, and Wyoming. While the drought has dissipated in some areas since the original drafting of this Comment, parts of southern California are still listed as being in "severe drought" conditions, and a small corner of southern Colorado is listed as being in "extreme drought"

USGS, Land Subsidence, http://water.usgs.gov/edu/earthgwlandsubside. html (last modified Dec. 9, 2016).

<sup>51.</sup> *Id.* 

<sup>52.</sup> Id.

"more than 1.7 meters of total subsidence" since 1935.<sup>55</sup> Subsidence is also an issue for the Gulf Coast. Over a 40-year period, there was a mean annual subsidence rate of 5 millimeters in New Orleans.<sup>56</sup> Subsidence can occur over a long period of time, or it can occur suddenly as a subsurface cavity or sinkhole.<sup>57</sup>

Land subsidence has serious consequences for infrastructure, "including the loss of conveyance capacity in canals, diminished levee effectiveness, and damage to roads, bridges, building foundations, and pipelines. It can also lead to the development of earth fissures, which can damage surface and subsurface structures, as well as provide pathways for contaminants to enter shallow aquifers."<sup>58</sup>

The impact of land subsidence on groundwater pumping is also important. In fact, "[n]early 20% of California's total electricity consumption" goes to heating, treating, and moving groundwater.<sup>59</sup> This can also impact greenhouse gas emissions since more energy is required to pump the water from deeper levels.<sup>60</sup> A city in central California recently spent \$9 million on electricity to pump groundwater.<sup>61</sup>

An important key in minimizing land subsidence is detection and mapping.<sup>62</sup> Land subsidence is costly. In the Santa Clara Valley alone, damage is estimated at \$756 million.<sup>63</sup> In the San Joaquin Valley, over a period of 17 years, damage was estimated at more than \$1 billion.<sup>64</sup> Some costs are more difficult to quantify, such as diminished surface water flows, degraded water quality, and increased food prices.<sup>65</sup> There are detection measures and mitigation processes that can be utilized for land subsidence, but individuals, cities, and states often cannot afford these on their own and need assistance.

#### C. Sea-Level Rise and Salt Water Intrusion

The third illustrative long-term disaster is sea-level rise and the salt water intrusion that often accompanies it. Sealevel rise is estimated at "3 or 4 millimeters per year" and might even reach "6 millimeters or more by the end of the century."<sup>66</sup> In fact, the global mean sea level "has risen by 4 to 8 inches" in the past century.<sup>67</sup> Sea-level rise is a global concern that can lead to erosion, loss of habitat for animals and plants, and flooding of communities.<sup>68</sup> This is problematic because, in 2012, almost 40% of the U.S. population lived in counties "directly on the shoreline."<sup>69</sup> Additionally, in a recent study based on varying scenarios of carbon emissions, one prediction was that the "current location of over 26 million Americans' homes might be inundated, and more than 1,500 U.S. cities and municipalities could find the areas where half of the residents live inundated."<sup>70</sup>

Sea-level rise can also lead to salt water intrusion. Coastal populations rely heavily on the accessibility of freshwater, but groundwater can become contaminated in coastal areas by salt water intrusion into freshwater aquifers.<sup>71</sup> Salt water intrusion is "the induced flow of seawater into freshwater aquifers primarily caused by groundwater development near the coast."<sup>72</sup> Salt water is more dense than freshwater, so it floats on top of freshwater.<sup>73</sup>

Salt water intrusion can be caused by groundwater pumping, which reduces "freshwater flow toward coastal discharge areas and cause[s] saltwater to be drawn toward the freshwater zones."<sup>74</sup> This contaminates or limits freshwater storage in aquifers used by communities.<sup>75</sup> Salt water intrusion "has been, and continues to be, one of the most significant global challenges for coastal water resource managers, industries, and agriculture."<sup>76</sup>

One example of damage that can occur through salt water intrusion is found in the Floridian aquifer system, which is "one of the most productive aquifers in the world."<sup>77</sup> Activities affecting this aquifer, including groundwater withdrawals, have led to water-level declines

 USGS, USGS Groundwater Information—Saltwater Intrusion, http://water. usgs.gov/ogw/gwrp/saltwater/salt.html (last modified Jan. 3, 3017).

77. BARLOW, *supra* note 71, at 26.

<sup>55.</sup> John W. Bell & Falk Amelung, Land Subsidence in Las Vegas Valley, Nevada: Evolution, Spatial Patterns, and Rates Through 2000, Address at USGS Subsidence Interest Group Conference (Nov. 27-29, 2001), in U.S. GEOLOGICAL SURVEY SUBSIDENCE INTEREST GROUP CONFERENCE, PROCEEDINGS OF THE TECHNICAL MEETING, GALVESTON, TEXAS (2003) (Open-File Report 03-308), at 115, available at http://pubs.usgs.gov/ of/2003/ofr03-308/pdf/OFR03-308.pdf.

<sup>56.</sup> Virginia R. Burkett et al., Sea-Level Rise and Subsidence: Implications for Flooding in New Orleans, Address at USGS Subsidence Interest Group Conference (Nov. 27-29, 2001), *in* U.S. GEOLOGICAL SURVEY SUBSIDENCE INTEREST GROUP CONFERENCE, PROCEEDINGS OF THE TECHNICAL MEETING, GALVESTON, TEXAS (2003) (Open-File Report 03-308), at 63, *available at* http://pubs.usgs.gov/of/2003/ofr03-308/pdf/OFR03-308.pdf.

<sup>57.</sup> GALLOWAY ET AL., supra note 53, at 3.

Tara Moran et al., *The Hidden Costs of Groundwater Overdraft*, WATER IN THE WEST, http://waterinthewest.stanford.edu/groundwater/overdraft/ #chapter-2.

<sup>59.</sup> Id.

<sup>60.</sup> *Id*.

<sup>61.</sup> *Id.* 

<sup>62.</sup> GALLOWAY ET AL., *supra* note 53, at 4.

<sup>63.</sup> Moran et al., *supra* note 58.

<sup>64.</sup> *Id.* 

<sup>65.</sup> See id.

Brian McNeill, Researchers Study the Impact of Saltwater Intrusion on Tidal Wetlands, PHYS.ORG, July 28, 2015, http://phys.org/news/2015-07-impactsaltwater-intrusion-tidal-wetlands.html.

<sup>67.</sup> National Geographic, *Sea Level Rise*, http://ocean.nationalgeographic.com/ ocean/critical-issues-sea-level-rise/ (last visited Mar. 12, 2017).

<sup>68.</sup> See id.

<sup>69.</sup> NOAA National Ocean Service, Ocean Facts—What Percentage of the American Population Lives Near the Coast?, http://oceanservice.noaa.gov/facts/population.html (last revised Feb. 29, 2016). This potential for physical damage is also different than the more economic damages of the previous examples. However, there is still a need for assistance.

Chris Mooney, This Is How Rising Seas Will Reshape the Face of the United States, WASH. POST, Oct. 12, 2015, https://www. washingtonpost.com/news/energy-environment/wp/2015/10/12/this-ishow-rising-seas-will-reshape-the-face-of-the-united-states/.

See Paul M. Barlow, U.S. DEPARTMENT OF THE INTERIOR/USGS, GROUND WATER IN FRESHWATER-SALTWATER ENVIRONMENTS OF THE ATLANTIC COAST 1 (2003) (Circular 1262), available at http://pubs.usgs. gov/circ/2003/circ1262/pdf/circ1262.pdf.

<sup>72.</sup> Solinst, *Pump/Recharge Rate Affects Saltwater Intrusion*, http://www.solinst. com/resources/papers/101c4salt.php (last visited Mar. 12, 2017).

<sup>73.</sup> Id.

<sup>75.</sup> See id.

<sup>76.</sup> CAROLINAS INTEGRATED SCIENCES AND ASSESSMENTS AND SOUTH CAROLINA SEA GRANT CONSORTIUM, ASSESSING THE IMPACT OF SALTWATER INTRUSION IN THE CAROLINAS UNDER FUTURE CLIMATIC AND SEA LEVEL CONDITIONS 7 (2012), available at http://cpo.noaa.gov/sites/cpo/Projects/RISA/2013/ reports/2012\_CISAandSCSeaGrant\_SalinitySARPReport.pdf.

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of more than 10 feet and "have reversed the generally seaward direction of ground-water flow, creating the potential for saltwater intrusion from the Gulf of Mexico or Atlantic Ocean."<sup>78</sup> Coastal communities can be substantially affected by this occurrence. A community in New Jersey abandoned 120 wells since 1940 because of salt water intrusion<sup>79</sup>; and in Maine, fractures in crystalline rocks acted as a "conduit for saltwater to move readily" toward the city's wells.<sup>80</sup>

Not only does saltwater intrusion impact accessibility to drinking water, it also damages wetlands. Wetlands help filter nutrients, improve water quality, provide habitat to animals, and help with carbon sequestration, or "the process of capturing and storing carbon dioxide, which helps slow global warming by keeping carbon dioxide out of the atmosphere."<sup>81</sup> This destruction of wetlands happens over time and can have major impacts on surrounding communities. While sea-level change and salt water intrusion might be difficult to stop,<sup>82</sup> funds can be used to mitigate the impacts and to help with expensive processes to clean water. However, like drought and land subsidence, these events do not receive presidential declarations and other means of assistance are often unavailable.

#### III. Proposed Changes

This Part will present and compare two options for assistance during long-term events. The first is an amendment to the Stafford Act. The second is a new system focused more on state responsibility and repayment of loans conditioned on mitigating future long-term events. Because of the difficulty in amending the Stafford Act and the issues that arise from the amendments, I suggest that the second option, relying on changing current loan requirements and expanding loans to state and local governments, is the better alternative not only to address long-term disasters, but also to reduce the number of presidential disaster declarations straining the current system and budget.

#### A. Option I: Amendments to the Stafford Act

As presented in Part II, the Stafford Act currently relies heavily on the discretion of the president to declare a disaster or emergency before support is given to a state.<sup>83</sup> By including a provision with triggers that would automatically authorize access to federal funds, a balance of power can be maintained by not relying on the discretion of one person. Further, a panel of experts might also be included to help direct how federal resources can be used.

The main changes to the Stafford Act would affect \$\$5170 and 5191, which provide for presidential declaration of an emergency or disaster before aid can be given. Section 5122 would likely need to be amended as well, as it currently defines both an emergency and major disaster with language including "in the determination of the President."<sup>84</sup> Additionally, the definition of disaster should be changed to remove "drought" as one of the enumerated events. The new text of §5122 could read:

#### (2) Major Disaster

(a) "Major disaster" means any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, or snowstorm), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President, or expert panel described in subsection (b), causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(b) An expert panel shall be created to consist of no less than three (3) and no more than six (6) experts to declare a disaster pursuant to Section 5170 and to assist the President in directing the use of federal assistance.<sup>85</sup>

The declaration process could be changed to the following:

5170(d) Absent a declaration by the President as set forth in subsection (a), any event meeting each of the following requirements may be automatically deemed a major natural disaster for purposes of Section 5122:

- Any natural catastrophe causing in excess of \$25 million dollars or (5%) of the state budget;
- (2) Any natural catastrophe that is deemed by the panel of experts designated in 5122(2)(a) to be a catastrophe;
- (3) Any natural catastrophe that alters or affects the environmental makeup of a city, county, or state; AND
- (4) Any natural catastrophe of which the effects last at least two (2) years.

Further, the sections that outline the manner in which the federal government can give support or assistance could be amended to include an expert panel directing resources.<sup>86</sup> For example, \$5170a would read, *In any major disaster, the President, or expert panel defined in Section 5122, may*...." Section 5170b(a) would read, *"Federal agencies may on the direction of the President or expert panel defined in Section 5122, provide assistance essential to meeting imme-*

<sup>78.</sup> *Id*.

<sup>79.</sup> Id. at 32.

<sup>80.</sup> *Id.* at 34.81. McNeill, *supra* note 66.

<sup>82.</sup> See id.

<sup>83.</sup> See supra Part I.

<sup>84. 42</sup> U.S.C. §5122.

<sup>85.</sup> This change removes "drought" from the listed events and includes the expert panel designation. As will be discussed *infra* Part III.A., there are numerous issues that arise with creating such an expert panel. Additionally, this example is only meant to be illustrative of the type of changes that could occur and is by no means conclusory in the actual amendment that would be required.

<sup>86.</sup> See, e.g., 42 U.S.C. §§5170a, 5170b.

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#### *diate threats to life and property resulting from a major disaster, as follows . . . .*

Including triggering factors and an expert panel could address the fact that long-term disasters do not receive the same recognition as other catastrophic or natural events.<sup>87</sup> This option would allow long-term disasters to qualify for aid by meeting the requirements. This would still allow the president to declare a disaster; however, the triggering factors could combat the discretionary power of the president by providing an alternative means by which certain events could receive funding even if they do not have the same political support or media attention.

Proposed triggering factors include (1) a set amount of financial impact to a state or percentage based on state budget; (2) a determination by an expert panel; (3) ecological or environmental damage meeting a certain requirement; and (4) a two-year minimum time element. These factors would likely be conjunctive, requiring all to be met before access to federal funds is granted. The purpose of the factors is not to remove all power from the president, but to remove some discretionary power and to ease the burden on the president by providing helpful recommendations.

The first factor that can be added would include a financial trigger. If the damage reaches a certain financial requirement, the first factor would be met. FEMA previously made recommendations to the president to determine if an event was too much for state or local governments to handle on their own.<sup>88</sup> A similar approach could be taken to set some threshold level of damage either in conjunction with the population or the income of the state to allow access to additional federal assistance. In fact, the Disaster Recovery Act of 2011 was introduced to amend the Stafford Act "to allow for a more effective recovery from disasters, and for other purposes."89 This change stated as one requirement that the president could make a declaration if "the total estimated amount of Federal assistance to support response, recovery, and mitigation costs related to the catastrophic incident exceeds \$1,000,000,000 as determined by the Administrator of the Federal Emergency Management Agency in coordination with the State."90

However, an exact number, for example \$25 million worth of damage in an area, might not be as beneficial since states have different incomes, resources, and budgets. A formula based on the capacity of the city and state to respond to such a disaster would likely be more useful. For instance, the threshold could be 5% of the state's budget or income. But, as will be discussed more in Section B, picking an arbitrary number is likely to be difficult and ineffective. The second proposed triggering factor that could limit presidential declaration discretion<sup>91</sup> would be to implement expert opinions or panels that are used to help the president make his declarations. This idea was also previously suggested in the Disaster Recovery Act of 2011 to help counter the troubling increase in presidential declarations.<sup>92</sup> It proposed adding a "catastrophic disaster" category that could be declared if "an independent panel of experts has issued a recommendation to the President concerning whether or not a catastrophic disaster should be declared."<sup>93</sup>

A panel of experts could be composed of scientific, environmental, and emergency management specialists that would be able to make accurate and helpful recommendations to the president at the request of a governor for federal assistance. This would remove the discretion from one person (i.e., the president), who is not necessarily an expert in such areas, and allow experts to recommend or make a declaration of an emergency or major disaster. Additionally, an expert panel would be able to make recommendations for directing the federal aid.

The third factor that could be included is a set impact level to the environment or ecological systems. For instance, in the drought example above, when a certain level of land subsidence or depletion of water resources has occurred, this second element would be satisfied. Some issues might arise with defining such an impact to the environment or ecological systems. Again, perhaps a monetary value could be given, or a simple declaration that if the event has created a percentage change in the land or environment, then the element would be met. For example, if the landscape of the area is changed by 20% in any way (whether land subsidence, lack of water, flooding, etc.), perhaps that would be sufficient to meet the requirement. The financial requirement might need an additional formula as well. If the damage to the environment reaches either a flat number (e.g., \$15 million) or perhaps a percentage (e.g., 20% of the state income), then the trigger would be met.

A fourth factor could be a timing element. Including a time element could better position long-term disasters for getting assistance. Perhaps, if there is sufficient evidence that a disaster or event has been occurring for more than two years, or is likely to continue for more than two years, this factor could be met.

Even though these amendments could limit presidential discretion and help long-term disasters meet Stafford Act requirements, these changes are likely to be difficult to implement and ineffective. One of the problems with adopting such changes is that a presidential declaration is arguably much faster than going through the factors to see if they are all triggered. For instance, with the financial trigger, it is likely that either an individual or specific agency (or perhaps a new agency) might need to perform estimates and calculations to ensure the financial threshold is met. However, this is unlikely to be as detrimental in

<sup>87.</sup> As mentioned *supra* Part II.A., a drought has not been declared a disaster by a president in more than 30 years, and many other long-term disasters do not appear on the top lists of declared events. *See* Brown, *supra* note 22.

<sup>88.</sup> See Lindsay & McCarthy, supra note 21, at 27.

Disaster Recovery Act of 2011, S. 1630, 112th Cong., https://www. congress.gov/bill/112th-congress/senate-bill/1630/text. This legislation was introduced in the Senate, but it later died before being able to be sent to the House. GovTrack, S. 1630 (112th): Disaster Recovery Act of 2011, https:// www.govtrack.us/congress/bills/112/s1630 (last visited Mar. 12, 2017).

<sup>90.</sup> Disaster Recovery Act, supra note 89, §327(a)(5).

<sup>91.</sup> See supra Part III.A.

<sup>92.</sup> See LINDSAY & MCCARTHY, supra note 21, at 28.

<sup>93.</sup> Disaster Recovery Act, supra note 89, §327(a)(4).

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the event of a long-term disaster since the same timing and immediacy concerns (such as those that might be required when responding to a hurricane or tornado) are not at issue. Also, maintaining the option for a presidential declaration would ensure that immediate disasters and emergencies are able to receive assistance as soon as possible without having to complete the same process.

Another flaw with this option is the expert panel. There can be difficulty in determining who will appoint the officials, how many officials should be on the panel, how long the panel will serve, and what kind of decision the panel must make to qualify for a declaration. An expert panel, even though composed of more people, could run the same risks of discretionary abuse or even accountability issues. The panel might be influenced by the same political pressures to make declarations as the president presumably is.<sup>94</sup> There are also budgetary concerns for creating an expert panel.

Even though these changes address the issue of too much presidential discretion, they do not address the already increasing presidential declarations that are likely straining the current federal system. Further, presidential declarations are only the first step. The president directs where the federal resources go, and even the creation of a panel to assist with that is likely to do more harm than good.

## B. Option 2: Loan Programs to Individuals and Local or State Governments

State and local leaders are the first responders and see the impacts of emergencies and disasters firsthand; they are often in a better position to assess the needs of the people and local environment. They are also more likely to be effective in directing and implementing recovery and repairs because of the local knowledge they hold. The federal government can step in to supplement state support in the form of funds or resources, however, as one recent study suggested, shifting a portion of funding and responsibility back to the states could be another solution to alleviate the burden on the Stafford Act and address the neglect of long-term disasters.<sup>95</sup>

By removing long-term disasters from the Stafford Act, expanding current individual loan programs, and implementing state loan programs, the burden on the Stafford Act can be lifted, and better-suited programs can recognize states' needs for assistance with long-term disasters. Individuals and business owners can have more streamlined access to loans through already existing programs. This option would require states, local governments, and individuals to repay loans and perhaps only be granted assistance or a loan after certain mitigation requirements are met.

If these options are to be implemented, one of the first changes that could be made is in the definition sections of the Stafford Act.<sup>96</sup> There is some criticism that the definitions of emergencies and major disasters are "ill-defined" and therefore there are "not many restrictions on the types of emergencies and disasters for which the President may issue a declaration."<sup>97</sup> Drought is specifically enumerated in §5122 as a major disaster.<sup>98</sup> Removing it from the definition would streamline the loan process and allow for better treatment under a loan program. Since drought would no longer be listed as a major disaster, other options might be more accessible.

Instituting a brand-new loan program could be challenging. However, there is already a loan program through the Small Business Administration (SBA), known as the SBA Disaster Loan Program,<sup>99</sup> that could serve as a model for expanding loans to state and local governments. The majority of loans in the current program are made to "individuals and households (renters and property owners) to help repair and replace homes and personal property."100 Interest rates are capped at 6%.<sup>101</sup> Homeowners can apply for a loan of up to \$200,000 to repair or replace a primary residence.<sup>102</sup> One important similarity to this loan process and a potential long-term disaster loan is that a 20% loan increase is available to homeowners if they are making "improvements that help prevent the risk of future property damage caused by a similar disaster."103 This is verified by the SBA.<sup>104</sup> A similar provision could be required for loans to local and state governments.

Further, to ensure payment, loans "must be secured with collateral to the extent possible"; however, the SBA "will not decline a loan for lack of collateral."<sup>105</sup> The SBA runs fairly efficiently and processes most applications within 21 days.<sup>106</sup> Additionally, the SBA has a separate economic injury disaster loan (EIDL) that provides up to \$2 million "to help meet financial obligations and operating expenses that could have been met had the disaster not occurred."<sup>107</sup>

- SBA, Loans & Grants—Types of Disaster Loans, https://www.sba.gov/loansgrants/see-what-sba-offers/sba-loan-programs/disaster/types-disaster-loans (last visited Mar. 12, 2017).
- 100. LINDSAY & MCCARTHY, supra note 21, at 29.

105. Id.

<sup>94.</sup> See supra notes 23-26 and accompanying text.

<sup>95.</sup> See LINDSAY & MCCARTHY, supra note 21, at 3.

<sup>96.</sup> This would technically not be required since simply including drought in the list of potential disasters does not automatically grant access to funds. However, removing it would exclude drought from future declarations by the president.

See LINDSAY & MCCARTHY, supra note 21, at 27. This is also likely a source for the increasing presidential declarations. See supra notes 20-21 and accompanying text.

<sup>98. 42</sup> U.S.C. \$5122(2).

<sup>101. 15</sup> U.S.C. §636b.

<sup>102.</sup> SBA, Loans & Grants—Home and Personal Property Loans, https://www. sba.gov/loans-grants/see-what-sba-offers/sba-loan-programs/disaster-loans/ types-disaster-loans/home-and-personal-property-loans (last visited Mar. 12, 2017).

<sup>103.</sup> Id.

<sup>104.</sup> Id.

<sup>106.</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, SMALL BUSINESS ADMIN-ISTRATION: ACTIONS NEEDED TO PROVIDE MORE TIMELY DISASTER AS-SISTANCE 3 (2006) (GAO-06-860), available at http://www.gao.gov/new. items/d06860.pdf. However, after Hurricane Katrina, the SBA took roughly 74 days to process more than 204,000 applications. Id.

<sup>107.</sup> SBA, Loans & Grants—Economic Injury Disaster Loans, https://www.sba.gov/ loans-grants/see-what-sba-offers/sba-loan-programs/disaster-loans/typesdisaster-loans/economic-injury-disaster-loans (last visited Mar. 12, 2017).

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The amount is based on the actual economic injury and the financial needs, "regardless of whether the business suffered any property damage."<sup>108</sup> However, there is a cap on the combined maximum loan amount.<sup>109</sup>

Making small changes to the requirements of the SBA loans could have positive changes in addressing needs during long-term disasters. Currently, these loans are only available in a federally declared disaster area, meaning that the president must have made a declaration, which involves the same discretion problems described in Section A. States are left to bear the burden of the costs of business and homeowners that suffer when these individuals could receive loans directly if only the president had declared a disaster.

For instance, agricultural businesses in California are denied loans because the drought has not been declared a disaster. There is a drought-specific loan known as "drought disaster assistance" that is for "[s]mall, nonfarm businesses, small agricultural cooperatives, small business engaged in aquaculture and most private nonprofit organizations of any size affected [by] drought (in a federally declared drought area)."<sup>110</sup> This is a potential remedy for many people who might be suffering in the California drought; however, relief is not being granted because of the need for a presidential declaration.

Removing the requirement that the drought be presidentially declared would be one option. Because it does not grant automatic access to funds, but rather qualifies someone to begin the loan application process, there are still other requirements that must be met before funds are given. Further, because the money is a loan, and not a grant like in some of the Stafford Act provisions, the money will be repaid and some of the requirements could be loosened or conditions could be set for receiving the money. Additionally, because the money is repaid, it can provide future funding for other disasters without needing substantial outside funding.

Another option could be to adopt an alternative requirement that the disaster, if not presidentially declared, meet certain triggering factors like the ones mentioned in Section A. The same difficulties with setting arbitrary financial amounts and creating an expert panel might be present. However, instead of amending the Stafford Act, only the SBA loan requirements could be changed. The best option simply might be to provide that a panel of experts within the SBA could find that a certain event (like drought) meets the criteria for a loan in addition to any event that is declared a disaster by the president. This would have no effect on the declaration process by the president.

By simply expanding these individual loans beyond presidentially declared disasters, a burden can be lifted and provide those suffering most, the people who live in affected areas, the help they need. It is even likely that a similar loan program would not need to be expanded to state and local governments since individuals could have direct access to resources. However, creating a separate loan program for state and local governments could also be beneficial. This could be added to the Stafford Act or legislation could be created for an entirely new system.

The question of funding is likely to arise. If the requirements for individual loans are changed to allow for non-presidentially declared disasters, then funding would not be an issue since the loans would fall under the existing program. However, if this loan program is to be expanded to state and local governments, new funding would have to be created. One option might be to divert some of the funds already apportioned to the Stafford Act to this loan category. It is likely that some short-term disasters would also benefit from a loan program, so the burden on the Stafford Act would be alleviated. However, state and local governments are more likely to accept free federal assistance as opposed to money that must be repaid.

Currently, there is no requirement for states to repay the federal government for assistance given under the Stafford Act framework.<sup>111</sup> By providing the money as a loan for long-term disasters, the fund can serve as a perpetual long-term disaster program in which no additional funding is needed because funds are pulled from what is being repaid. The federal government could also include low interest rates and a liberal payback schedule that gives states the opportunity to recover and repay their debt.

Perhaps for more predictable long-term events, such as drought or land subsidence, the government could provide funds when states have met certain requirements that would prepare them for a disaster of that type. The federal government has instituted similar requirements in the National Flood Insurance Program,<sup>112</sup> which was created to help flood-prone areas by providing affordable insurance and "encouraging communities to adopt and enforce floodplain management regulations."113 There are certain criteria that communities and individuals must meet before gaining access to the insurance program.<sup>114</sup> A similar loan program could be established for state and local governments to receive loans contingent on certain mitigation requirements being met.<sup>115</sup> These requirements might include having certain amounts of water on reserve, water conservation plans, etc.

While these loan programs would be an improvement, they do have their own flaws. One criticism of shifting the

<sup>108.</sup> *Id*.

For instance, a combined EIDL and physical disaster loan cannot exceed \$2 million. SBA, *Loans & Grants—Economic Injury Disaster Loans, supra* note 107.

SBA, Loans & Grants—Drought Disaster Assistance, https://www.sba. gov/loans-grants/see-what-sba-offers/sba-loan-programs/disaster-loans/ drought-disaster-assistance (last visited Mar. 12, 2017).

<sup>111.</sup> See, e.g., 42 U.S.C. §§5170a, 5170b.

<sup>112. 42</sup> U.S.C. §§4001-4131; FEMA, *The National Flood Insurance Program*, http://www.fema.gov/national-flood-insurance-program (last updated Feb. 22, 2017).

<sup>113.</sup> FEMA, The National Flood Insurance Program, supra note 112; see also 42 U.S.C. §4001(e).

<sup>114.</sup> See sources supra note 111.

<sup>115.</sup> For discussion on the government's ability to condition states' spending of money, see *South Dakota v. Dole*, 483 U.S. 203 (1987), and *National Fed'n* of Indep. Bus. v. Sebelius, 132 S. Ct. 2566 (2012).

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burden onto states includes federalism concerns and distribution of power. For example, a 2015 study stated that "limiting federal disaster assistance could hamper the ability of states and localities to adequately recover from an incident and create long-term consequences."<sup>116</sup> Additionally, issues of federalism and duties of both the state and federal governments come into play. One report stated:

While it is generally agreed that the government should help disaster victims in time of need, it is unclear whether the fiscal responsibility resides primarily with the federal or the state government. Finding the balance has thus far been elusive, and altering the declaration process could have important implications for both federal and state officials, as well as disaster victims.<sup>117</sup>

Political debates continue to rage over the responsibilities of the state and federal governments.

Nevertheless, expanding a loan program to state and local governments is likely to be burdensome since new legislation and funding will have to be created or diverted from other resources. However, making the changes to the preexisting SBA loans for individuals can be effective by simply removing the requirement for a presidential declaration.

#### C. Recommendation

Neither of the two options presented are likely to make immediate or dramatic changes to disaster declarations or state access to federal assistance during long-term disasters. An amendment to the Stafford Act would be difficult, as is evidenced by the fate of the Disaster Recovery Act of 2011. Additionally, even though the triggering factors discussed above would remove presidential discretion, the issues arising from quantifying the factors and establishing an expert panel are likely to cause additional problems relating to accountability, discretion, and funding. A better alternative to amending the Stafford Act, even though it may only be a marginal step in the right direction, is the second option, which moves toward shifting the burden and cost-bearing on the states and providing loans directly to individuals. With these loan programs, long-term disasters, including drought and land subsidence, can better be addressed, and residents in states like California can receive the assistance needed to repair the impacts of such disasters. By changing the requirement for a disaster to be presidentially declared before loan funds are available, individuals and states can get the help they need. Even though expanding loans to state and local governments might be a more difficult and lengthy process, it is a step in the right direction.

#### **IV.** Conclusion

Not all disasters are created equal. While the Stafford Act might be well-suited for some events, it is not the best solution for all events, especially long-term disasters. There needs to be a change in the current system to allow states better access to assistance for long-term disasters. Amending the Stafford Act is likely to address presidential discretion, but is unlikely to present any real improvements for long-term disasters and the triggering factors would be difficult to quantify and implement.

However, broadening the current suite of SBA disaster loans to include non-presidentially declared disasters, or creating loan programs for state and local governments, is likely to be more successful in providing the relief that is needed during these long-term events. By making these small, but positive changes through the loan programs, individuals and states can have better access to assistance during long-term events while also alleviating the overall burden on the Stafford Act.

<sup>116.</sup> LINDSAY & MCCARTHY, *supra* note 21, at 3. 117. *See id.* at 31-32.