



July 16, 2012

Dear Representative:

On behalf of our members and supporters across the nation, we write to express our concerns regarding S. 2039, a bill that would exempt the state of North Dakota from Stafford Act requirements designed to protect property, the environment and taxpayer interests. As currently written, the Stafford Act requires that once federal funds are used to relocate communities and buildings out of floodplains, the land will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. S. 2039, which will be considered tomorrow on the suspension calendar, has passed the Senate and now will receive a House vote without receiving any hearings or in depth consideration in either chamber of Congress. This bill would negatively impact wetland protection, wildlife habitat and water quality and for these reasons, among others, we urge you to oppose this legislation.

S. 2039 was proposed to address a circumstance in North Dakota in which temporary levees are built on land bought out under Federal Emergency Management Agency's (FEMA) Hazard Mitigation Grant Program (HMGP) during a flood which must then be removed following the flood. The legislation would establish a pilot program within the state of North Dakota to allow for the construction of permanent levees on land purchased with federal dollars and deed restricted as open space. We have concerns first, that this legislation would set unwise federal policy and that it may be unnecessary given existing federal policies, and second that the federal government would be unintentionally causing harm to the North Dakota communities seeking to manage their flood risk.

S. 2039 violates the purpose and spirit of the Hazard Mitigation Grant Program. Property acquisition for open space under FEMA's mitigation programs is a commonsense flood risk management approach. By relocating homes and businesses that are in flood-prone areas, we eliminate the risk of flooding to those structures, and eliminate the need for the federal taxpayers to pay for recovery every time the structures flood. The space remains as deed-restricted open space to ensure that the taxpayer investment in that area is preserved, and allows for the storage and conveyance of flood waters without harming life and property.

The Federal taxpayer has already paid once to purchase the land in question and the open space requirement ensures that the taxpayers will not have to pay disaster costs associated with this land again. Though the Senate bill was amended to require State, local, or tribal funding of levee construction, the bill would create a backdoor for these nonfederal entities to use federal taxpayer dollars. By enrolling the completed levees in the U.S. Army Corps of Engineers' (USACE) Rehabilitation and Inspection Program, local partners are eligible for the 80% federal share of future rehabilitation and repair costs.

We are also concerned that in the long run S. 2039 will unintentionally result in harm to unsuspecting North Dakota communities by encouraging more development behind the constructed levees. The 2011 flooding brought images of walls of water flooding homes after levees breached or overtopped reminding us that it is impossible to out build Mother Nature. No matter how strong or tall we build

levees, they still fail, often with catastrophic consequences. Many people living behind these structures don't even know that their homes are in danger. It does not appear that development would be restricted in the inundation zone behind the constructed levees allowed in this pilot program.

Furthermore, while S. 2039 requires the community to participate in the National Flood Insurance Program (NFIP), this program does little or nothing to assist communities that live behind levees. Homeowners who live behind levees are not currently required to purchase flood insurance, and they often assume the levee will protect them. But when the levee is overtopped or fails, the homeowner must rely on federal disaster assistance to recover.

Finally, FEMA's HMGP buy-outs occur most often in deep floodplains, right next to the rivers because these are areas that receive the heaviest damage to structures. These portions of the floodplains are incredibly valuable for the multiple environmental benefits they provide in addition to their ability to convey and store floodwaters naturally. It is estimated that floodplains provide approximately 25% of all terrestrial ecosystem service benefits despite that they only cover 2% of the land surface.¹ These services include clean water, recreation, and wildlife habitat, among many others. In addition, communities that allow room for rivers and protect their floodplains are more resilient to the next flood and often recover more quickly from a flood event.

S. 2039 would only benefit communities in North Dakota. However for the reasons above, it should in no way be expanded to other states or nationwide. We understand that a Memorandum of Understanding currently exists between the USACE and FEMA that allows these agencies to provide limited exemptions on buyout land for certain circumstances. For this reason we question whether this legislation is necessary to address the challenges that North Dakota communities are facing.

We understand the challenges North Dakota and other states and communities face as they attempt to recover from floods. However, we urge you to oppose this legislation.

Sincerely,



Sincerely,
Jim Bradley
Senior Director of Government Relations
American Rivers



Joshua Saks
Legislative Director
National Wildlife Federation