

# CRS Issue Brief for Congress

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## Soil and Water Conservation Issues

Updated July 8, 2003

Jeffrey A. Zinn  
Resources, Science, and Industry Division

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## Soil and Water Conservation Issues

### SUMMARY

Soil and water conservation remains a prominent topic in farm policy in the 108<sup>th</sup> Congress as the Administration implements provisions in the 2002 farm bill (P.L. 107-171). This farm bill increased spending and expanded the scope of the conservation effort, especially in Title II, which reauthorized and amended most existing conservation programs and enacted several new ones through FY2007. Other titles also contained some conservation provisions.

The Congressional Budget Office estimated that conservation spending would increase \$9.2 billion in new mandatory budget authority above the April 2001 baseline through FY2007. Funding is growing for the Environmental Quality Incentives Program (from \$200 million annually to \$1.3 billion in FY2007), the Farmland Protection Program (from a total of \$35 million to \$125 million annually starting in FY2004), and the Wildlife Habitat Incentive Program (from a total of \$50 million to \$85 million annually starting in FY2005). Enrollment ceilings were raised for the Conservation Reserve Program (CRP) (from 36.4 million acres to 39.2 million acres) and the Wetlands Reserve Program (from 1,075,000 acres to 2,275,000 acres).

Several new programs are expanding the scope of the conservation effort. The largest of these, the Conservation Security Program, will provide payments to producers who apply conservation practices on working lands. Other new programs will retire grasslands, address surface and ground water conservation needs, address conservation issues in certain regions, permit approved third parties to supplement federal capabilities to provide conservation assistance, and (in the forestry title) replace existing programs with a new assistance program.

Two agencies in the Department of Agriculture are implementing most of these programs, which continue to be based on providing incentives to attract voluntary participants. The Natural Resources Conservation Service provides technical assistance and administers many of the smaller cost-sharing programs, and the Farm Service Agency administers the most expensive program (the CRP) and emergency programs.

As both agencies implement the farm bill, controversies continue to arise when the Administration's interpretation of the law's intent differ from that of interested Members of Congress. Three major issues that have been raised since the May 2002 enactment are: (1) how to fund technical assistance in support of the mandatory programs because of an OMB determination that would not allow this assistance to be fully funded as part of each program by the CCC; (2) how to implement the Conservation Security Program; and (3) how to implement the third party provider provisions.

The 107<sup>th</sup> Congress addressed the first issue in FY2003 appropriations, and the 108<sup>th</sup> Congress is considering a legislative proposal (H.R. 1907) and additional action in the FY2004 appropriations. The House Agriculture Committee's subcommittee with conservation responsibilities focused on this issue at a June 4 oversight hearing, and other similar hearings are possible.

In addition, appropriators will continue to have some influence on implementation through their actions on agriculture appropriations in FY2004 and beyond.

## **MOST RECENT DEVELOPMENTS**

Agencies at the Department of Agriculture, primarily the Natural Resources Conservation Service and the Farm Services Agency, are implementing provisions in Title II of the Farm Security and Rural Investment Act of 2002, which authorize most conservation programs through FY2007. The House Agriculture subcommittee with conservation responsibilities reviewed implementation efforts at a June 4, 2003 hearing. One issue that this hearing centered on was funding for technical assistance to support implementation of mandatory programs. This was addressed in the FY2003 appropriations and is being addressed in both the FY2004 appropriations and free-standing legislation (H.R. 1907). H.R. 1907 was introduced on May 3, 2003, and reported to the full House Agriculture Committee by the Subcommittee on Conservation, Credit, Rural Development, and Research on June 17, 2003.

The Administration has submitted its FY2004 appropriations proposals. Agriculture subcommittees of the House and Senate Appropriations Committees have held hearings on the Administration proposals, and the House Appropriations Committee has approved an FY2004 agriculture appropriations bill (unnumbered). Among the many agricultural issues it is addressing are (1) how to fund the technical assistance needed to support each of the mandatory conservation programs as the overall effort grows rapidly from year to year, and (2) at what level to cap any of the mandatory programs (programs funded through the Commodity Credit Corporation) and claim savings.

## **BACKGROUND AND ANALYSIS**

### **Evolution of Federal Resource Conservation Issues**

Conservation of soil and water resources has been a public policy issue for more than 60 years, an issue repeatedly recast as new problems have emerged or old problems have resurfaced. Two themes involving farmland productivity dominated the debate until 1985. One was to reduce the high levels of soil erosion, and the other was to provide water to agriculture in quantities and quality that enhance farm production.

Congress responded repeatedly to these themes by creating new programs or revising existing ones. These programs were designed to reduce resource problems on the farm. These programs combined voluntary participation with technical, educational, and financial assistance incentives. By the early 1980s, however, concern was growing, especially among environmentalists, that these programs were not adequately dealing with environmental problems resulting from agricultural activities (especially off the farm). Publicized instances of significant problems, especially soil erosion rates said to rival the dust bowl era, increased awareness and intensified the policy debate.

Congress responded, in a watershed event, by enacting four major new conservation programs in the conservation title of the 1985 Food Security Act. One of these programs, the Conservation Reserve (CRP), greatly increased the federal financial commitment to conservation and targeted federal funds at some of the most severe problems by retiring land

under multi-year contracts. The other three, sodbuster, conservation compliance, and swampbuster, created a new approach to conservation, by halting producer access to many federal farm program benefits if they did not meet conservation program requirements for highly erodible lands and wetlands.

Provisions enacted in the next farm bill, in 1990, reflected a rapid evolution of the conservation agenda, including the growing influence of environmentalists and other non-agricultural interests in the formulation of conservation policy, and a recognition that agriculture was not treated like other business sectors in many environmental laws. Congress expanded this agenda to address groundwater pollution, water quality, and sustainable agriculture, and allowed for the use of easements, as well as amending existing programs. Amendments to the CRP reflect these changes; its earlier focus on highly erodible land shifted to give greater emphasis to environmental concerns.

Prior to the Republican congressional takeover in 1994, conservation policy discussions centered on: (1) how to build from conservation initiatives enacted in previous farm bills; (2) how to secure more dependable funding for programs at a time when reducing the federal deficit was a major priority; and (3) how to incorporate new concepts for resource management at scales larger than individual farms, called landscapes, watersheds or ecosystems. The takeover shifted the focus to identifying ways to make the conservation compliance and swampbuster programs less intrusive on farmer activities. It also reduced the influence of environmental interests in developing conservation policy. The 1996 farm bill included a wide ranging conservation title drafted by the Senate Agriculture Committee staff. The enacted bill gave considerable attention to wildlife. (For an overview of conservation provisions in the 1996 farm bill, see CRS Report 96-330, *Conservation Provisions in the Farm Bill: A Summary*.)

The role of conservation has continued to evolve since 1996. The debate over conservation in the 2002 farm bill was framed in terms of: (1) increasing funding; (2) creating new programs and addressing new issues; (3) providing more conservation on land that is in production; and (4) using funding for conservation programs to meet world trade obligations. Specific conservation provisions amending old programs enacted in Title II are discussed below, followed by new programs, then implementation activities. (Other provisions that could be categorized as conservation can be found in many titles, especially those addressing research, forestry, and energy.) For detailed information about the enacted provisions in Title II, including how they compare with the House and Senate-passed bills and prior law, see CRS Report RL31486, *Conservation Title of the 2002 Farm Bill: A Comparison of New Law with Bills Passed by the House and Senate, and Prior Law*.

The Administration had little formal involvement in the development of this farm bill, beyond issuing principles it should meet on September 19, 2001. Principles for conservation included:

- Sustain past environmental gains;
- Accommodate new and emerging environmental concerns;
- Design and adopt a portfolio approach to conservation policies;
- Reaffirm market-oriented policies;
- Ensure compatibility of conservation and trade policies;
- Coordinate conservation and farm policies; and
- Recognize the importance of collaboration with conservation partners.

## Current Major Conservation Activities

USDA's conservation efforts, while increasingly diverse, have centered in recent years on implementing the Conservation Reserve Program (CRP), compliance programs, wetland protection programs, the Environmental Quality Incentives Program (EQIP), and providing technical assistance. USDA is in the process of adjusting this effort to reflect the 2002 enactment. By FY2007, when the current law expires, the size of the overall conservation effort will be much larger and give less emphasis to land retirement programs and programs that support traditional row crop production. Responding to this growth, Congress included provisions in Section 2005 of the 2002 farm bill that require the Secretary to submit a report to both agriculture committees by December 31, 2005, with implementing recommendations, about how to better coordinate and consolidate conservation programs. Lead conservation agencies will continue to be the Natural Resources Conservation Service (NRCS), which provides technical assistance and administers most programs, and the Farm Service Agency (FSA) which provides cost-sharing assistance and administers the CRP.

### Conservation Reserve Program (CRP)

Under the CRP, producers can bid to enroll highly erodible or environmentally sensitive lands into the reserve during signup periods, retiring it from production for at least 10 years. Successful bidders receive annual rental payments, and cost-sharing and technical assistance. Enrollment is limited to 25% of the crop land in a county. Funding is mandatory spending. Section 2101 of the 2002 farm bill reauthorizes the CRP through FY2007 and raises the enrollment cap from 36.4 million acres to 39.2 million acres. Also, only land that was cropped 4 of 6 years preceding enactment is eligible, thus making it more difficult to cultivate land primarily to gain access to the program. It makes the 6-state pilot program to retire small, isolated farmable wetlands a national program, with an enrollment ceiling of 1 million acres within the total enrollment cap. Some economic uses of enrolled lands will be permitted for the first time, with a reduction in annual rental payments. FSA issued an interim rule on May 8, 2003 that implements changes enacted in 2002 and is being used to guide the general signup that ended in June, 2003. It has slightly altered its Environmental Benefits Index that will be used to rate and compare all the bids for this signup.

USDA has estimated that the average erosion rate on enrolled acres was reduced from 21 to less than 2 tons per acre per year. Retiring these lands also expanded wildlife habitat, enhanced water quality, and restored soil quality. The annual value of these benefits has been estimated from less than \$1 billion to more than \$1.5 billion; in some regions where there is heavy participation, estimated benefits exceed annual costs. However, the General Accounting Office and others have criticized the potentially ephemeral nature of these benefits, because the landowner is under no obligation to retain them after contracts expire. Annual CRP expenditures have been between \$1.5 billion and \$2.0 billion in recent years, or about half of all USDA conservation expenditures annually prior to the 2002 farm bill.

FSA held one open enrollment period each year between FY1997 and FY2000, and then did not hold the next one until May and early June of 2003. Final results will be announced soon. FSA's most recent monthly summary of participation through May 2003 (which does not include the most recent signup) shows that 31.6 million acres had been enrolled this way, with more than 4 million acres in Texas and more than 3 million acres in Montana and North Dakota. It continues to enroll land in three other ways. It has enrolled more than 2.4 million

acres under these three alternatives, and several recent statements from the Department have indicated that an additional 2 million acres is being reserved for future enrollment under these options, including 500,000 acres for hardwood trees. One of these allows continuous signup for individuals who wish to enroll portions of fields with particularly high environmental values. FSA reported that through May 2003 almost 1.9 million acres have been enrolled, with more than 300,000 acres in Iowa and more than 200,000 acres in Illinois. The conservation practice that has received the most attention is buffer strips along water bodies. NRCS started an initiative in 1997 to enroll 2 million miles of buffer strips by 2002, and estimates that over 750,000 miles have been enrolled. In April 2000, the Department announced incentives to attract more participation: signing bonuses; higher cost-share payments for cover crops and maintenance payments on buffers; and increasing payments on pasture. It estimated these payments could cost up to \$350 million over 3 years.

The second way is a state-initiated enhancement program, under which states contribute funds so that higher rents can be paid to attract additional participation. Maryland, the first state to implement an approved program starting in October 1997, is trying to enroll 100,000 acres of stream buffers, restored wetlands, and highly erodible lands along streams in a portion of the Chesapeake Bay Watershed. The Maryland program will cost the state \$25 million and the federal government \$170 million. Today, 24 states have approved enhancement programs (including two programs in Ohio and New York), and three additional states and an Indian tribe have submitted proposals. FSA data show that almost 490,000 acres had been enrolled through May 2003, and with more acres (almost 109) in Illinois than in any other state.

A third way to enroll land outside the general enrollment periods was created when Congress authorized a new pilot program to enroll up to 500,000 acres of small, isolated farmable wetlands in six upper Midwestern states in Title XI of the FY2001 Agriculture Appropriations legislation. USDA offers signup bonuses to attract participation. Signup started in June 2001, and almost 85,000 acres had been enrolled by May 2003, with more than half those acres in Iowa. As noted above, this option is now available nationally with a 1 million acre enrollment ceiling.

NRCS provides technical assistance in support of CRP, but the 1996 farm bill placed a cap on funding from the CCC that can be used to reimburse agencies for services provided to deliver CCC programs. These funds have been insufficient to pay all related technical assistance costs in recent years, and in FY1999, NRCS briefly suspended CRP-related activities. The FY1999 Supplemental Appropriations (P.L. 106-31) and FY2001 Agriculture Appropriations (P.L. 106-387) provided additional funds, and provisions in the 2002 farm bill have sought, unsuccessfully, to eliminate the problem. Recent efforts to address this issue are discussed in the subsection titled *Technical Assistance*, below.

Another CRP concern was raised in March 2000 when the Sixth U.S. Circuit Court of Appeals reversed a 1996 federal tax court ruling and required that farmers must pay a 15.3% self-employment tax on CRP payments. Program supporters fear the ruling could have a chilling effect on participation. Legislation to overturn the ruling has been reintroduced, but as tax legislation, it would not be considered by the agriculture committees and was not considered in the farm bill. (For more information on this issue, see CRS Report RS20564, *Conservation Reserve Payments and Self-Employment Taxes*, and for CRP generally, see CRS Report 97-673, *Conservation Reserve Program: Status and Current Issues*.)

## Conservation Compliance and Sodbuster

Under sodbuster provisions, established in the 1985 farm bill, producers who cultivate highly erodible land (HEL) not cultivated between 1981 and 1985 are ineligible for most major farm program benefits, including price supports and related payments. These benefits are lost for all the land the farmer operates, not just for the HEL. A smaller penalty can be imposed on producers once every 5 years if circumstances warrant. Producers who cultivate highly erodible land using an approved conservation plan are not subject to these provisions. The 1996 farm bill revised these provisions in ways that increased producer flexibility, while Section 2002 of the 2002 farm bill prohibits the delegation of authority by USDA to other parties to make highly erodible land determinations.

Under conservation compliance, also established in the 1985 farm bill, producers who cultivate HEL lose the same program benefits as sodbusters unless they obtained an approved conservation plan by 1990 and had fully implemented it by the end of 1994. As under sodbuster, benefits are lost for all the land the non-complying farmer operates, and graduated penalties are available once every 5 years. Any person who had HEL enrolled in the CRP has 2 years after a contract expires to be fully in compliance (or longer if the Secretary determines that 2 years is insufficient).

According to 1997 data compiled by NRCS for an annual status review, producers were actively applying plans on more than 97% of the tracts of land that were reviewed. NRCS estimates that soil erosion on these acres is being reduced from an average of 17 tons per year to 6 tons per year. More generally, a 1997 national survey of erosion rates taken by NRCS showed that annual erosion from cropland has declined almost 1.4 billion tons since 1982, to about 1.9 billion tons, primarily because of the compliance and CRP programs. More recent NRCS status reviews continue to show similar levels of producer performance.

Critics, primarily from the environmental community, have contended that USDA staff has not vigorously enforced conservation requirements. The Inspector General and the U.S. General Accounting Office (GAO) also have been critical of the implementation effort. The GAO issued a report in April 2003 titled *USDA Needs to Better Ensure Protection of Highly Erodible Cropland and Wetlands* (GAO-03-418). Others, primarily from the agriculture community, have countered that the Department has been too vigorous, and was inconsistent in its enforcement from state to state, especially in the early years. (For more background on the compliance programs, see CRS Report 96-648, *Conservation Compliance for Agriculture: Status and Policy Issues*.)

## Wetlands and Agriculture

Swampbuster and the Wetlands Reserve Program (WRP) have been the main agricultural wetland protection programs, and an expanded small, isolated farmable wetlands program, added to the CRP in the 2002 farm bill, is discussed above. Under swampbuster, farmers who convert wetlands to produce crops lose the same federal farm program benefits as would be lost under conservation compliance or sodbuster until the wetland is restored. Swampbuster includes four major exemptions. It allows a partial penalty once a decade.

Swampbuster has been controversial since it was first enacted. Some from the farm community view wetland protection efforts on agricultural lands as too extensive or

overzealous. They observe that it protects some sites that appear to provide few of the values attributed to wetlands. A portion of this group also view these efforts as an unacceptable intrusion of government into the rights of private property owners, or “takings.” Environmental and other groups counter that the swampbuster program has been enforced weakly and inconsistently, with few violators losing farm program benefits. Controversies also arise over inconsistencies, such as when adjoining states use different interpretations of rules that lead to different determinations. The only provision in the 2002 farm bill amending swampbuster addresses a concern expressed by the farm community by prohibiting USDA from delegating the authority to make wetland determinations to other parties.

Some concerns raised by the agricultural community were thought to have been addressed when a Memorandum of Agreement (MOA) making NRCS responsible for all federal wetland determinations on agricultural lands under swampbuster and the Clean Water Act’s §404 Program was signed by NRCS, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the U.S. Environmental Protection Agency (EPA) on January 6, 1994. But aspects of implementation were controversial, and these agencies have been unable to revise the MOA to reflect changes in the 1996 farm bill.

A new issue for agriculture was raised when the Supreme Court determined, in *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers* (January, 2001) that the §404 (of the Clean Water Act) wetland permit program should not apply to “isolated waters.” One result is that an estimated 8 million acres of agricultural wetlands that had been subject to the §404 program will now be subject only to swampbuster. Some of these wetlands (up to 1 million acres) may be enrolled in the new farmable wetland component of the CRP. For more information on this decision, see CRS Report RL30849, *The Supreme Court Addresses Corps of Engineers Jurisdiction Over “Isolated Waters”*: *The SWANCC Decision*.

The second wetlands program, the WRP, was established in the 1990 farm bill. It uses permanent and temporary easements and long-term agreements to protect farmed wetlands. Enrollment has reached the cap of 1,075,000 acres, with almost 35% of that total in 3 states: Louisiana, Mississippi, and Arkansas, by the end of FY2001. Permanent easements account for almost 90% of the total. The Secretary may delegate the administration of easements to other federal or state agencies with the necessary expertise. Section 2201 of the 2002 farm bill reauthorizes the WRP through FY2007 and increases the enrollment cap to 2,275,000 acres, while limiting enrollment to 250,000 acres per year. A related program is created in Section 2101 to retire 1 million acres of small isolated agricultural wetlands as part of the CRP (see above in the CRP discussion). (For more information about wetlands, see CRS Issue Brief IB97014, *Wetland Issues*, updated regularly.)

## **Environmental Quality Incentives Program (EQIP)**

EQIP (and earlier programs) have provided financial incentives to induce farmers to participate in conservation efforts. These programs pay a portion of the cost of installing or constructing approved conservation practices. Before 1996, the largest of these programs, by far, had been the Agricultural Conservation Program (ACP), administered by the FSA and funded at between \$175 and \$200 million annually.

The 1996 farm act replaced the ACP and three smaller cost-sharing programs with the EQIP. EQIP is a mandatory spending program which supports structural, vegetative, and land management practices. Under provisions in the 2002 farm bill, annual funding is authorized to increase from \$200 million in FY2001 to \$1.3 billion in FY2007, with 60% of these funds each year to be used to address the needs of livestock producers. A plan is required to participate. The total of all EQIP payments a single entity can receive, combined, is \$450,000 through FY2007. Contracts can be 1 to 10 years in length. Producers with comprehensive nutrient management plans are eligible for incentive payments, and producers receiving funding for animal waste manure systems must have these plans. Cost share assistance can be higher for beginning and limited resource producers. The final rule implementing these changes was approved by OMB on May 13 and is expected to be published shortly in the Federal Register. It lists four national priorities that will be used to guide which producers receive assistance and sets forth additional guidance to help optimize environmental benefits from this program.

Three new subprograms are authorized under EQIP. First, a portion of EQIP funds in FY2003 through FY2006 can be used for innovative grants, such as fostering markets for nutrient trading. Second, additional funds, starting at \$25 million in FY2002 and growing to \$60 million annually between FY2004 and FY2007 are provided for a new ground and surface water conservation program within EQIP. USDA announced on May 9, 2003 that it was providing \$53 million from these funds to 17 western states to implement water conservation practices in response to drought conditions. Third, \$50 million is earmarked for the Klamath River basin and is to be provided as soon as possible; through FY2003, almost \$10 million had been allocated.

Interest in participating in EQIP continues to far exceed available funds. For FY2000, for example, NRCS received about 54,000 applications requesting \$402 million, but was only able to sign 16,000 contracts, with a total cost of almost \$177 million. These contracts provided \$140 million in financial assistance, \$33 million in technical assistance, and almost \$4 million in educational assistance. Congress usually limited funding to less than \$200 million prior to FY2001, when it provided full funding in omnibus appropriations legislation (P.L. 106-554). Even with the much higher funding levels authorized in 2002, only about one in six applicants is receiving funding. (For further information on the early implementation of EQIP, see CRS Report 97-616, *Environmental Quality Incentives Program (EQIP): Status and Issues*, last updated March 2, 1998.)

## Technical Assistance

NRCS provides technical assistance on a voluntary basis to conserve and improve natural resources. Technical assistance is a component of most conservation programs, and the cost of providing it has amounted to just under \$1 billion annually in recent years, according to the NRCS. Almost two thirds of this funding is found in the Conservation Operations line item. NRCS has characterized technical assistance as the “intellectual capital” of the agency, allowing it to combine its scientific and technical expertise with knowledge of local conditions.

A subsection of Section 2701 of the 2002 farm bill provides that funding for technical assistance in support of each mandatory program come from the funding provided by the CCC for that program. Another subsection authorizes the Secretary to establish a program

to certify qualified third parties to provide technical assistance. However, funding for technical assistance for the growing mandatory programs was challenged in late 2002, when the Office of Management and Budget, supported subsequently by the Department of Justice, issued an opinion that technical assistance funding for mandatory programs remains limited under a cap that has been placed in Section 11 of the Commodity Credit Corporation charter under prior law. Congress had thought that it had resolved this issue through language it included in the 2002 farm bill, and was supported in this conclusion by an opinion issued by the GAO. The Administration proposed to address this limit through a January 2003 proposal to create a new farm bill technical assistance line item and to fund it at \$333 million in FY2003. It proposed to fully offset this funding with reductions from several other, mostly conservation, programs. It stated that this line item, combined with other funding would fund all technical assistance necessary to implement all mandatory and discretionary conservation programs.

Congress rejected this proposal. The conservation title of the FY2003 omnibus appropriations law prohibits using any of the discretionary funds for technical assistance to implement any mandatory conservation programs. Additional language states that the 2002 farm bill already addressed this issue by providing that funding from the CCC for each program include funding for necessary technical assistance through FY2007. This language was added as an amendment to the farm bill in Section 213 of the disaster assistance package portion of the FY2003 omnibus appropriations (Division N, Title II). It does not affect technical assistance funding for the CRP and the WRP, where limits are set by acres rather than dollar amounts.

In its FY2004 appropriations request, the Administration has again proposed a separate account, at \$432 million. In addition, it has stated that if Congress takes no further action for FY2003, a total of \$158 million in technical assistance for mandatory programs will need to be “donated” by 4 programs (the technical assistance contributions and authorized program levels for each are listed in parenthesis). These donor programs are EQIP (\$108 million of \$695 million), Farmland Protection Program (\$28 million of \$100 million), Grasslands Reserve Program (\$15 million of \$85 million), and Wildlife Habitat Incentives Program (\$9 million of \$30 million).

The chairman of the conservation subcommittee, Representative Lucas of Oklahoma, introduced a bill (H.R. 1907) on May 1, 2003, to address this issue, by requiring that funds from each of five mandatory programs could be used only to pay for technical assistance in support of that program. The subcommittee reported the bill to the full committee by voice vote on June 17, 2003.

## **Selected Other Conservation Activities**

The conservation includes many additional activities and programs. The list below includes only conservation activities in USDA that are administered by NRCS and FSA. Several other USDA agencies also make significant contributions to the conservation effort; examples include the Agricultural Research Service, which conducts research on numerous conservation topics; the Economic Research Service, which provides analysis of many conservation topics and played a major role in developing the Environmental Benefits Index used to compare CRP bids; and the Forest Service, which conducts research on forest and

tree topics and administers programs to enhance timber stands on private lands. The many programs that are authorized but are not being implemented are not included.

**Watershed Programs.** NRCS has worked with local sponsors under several authorities for more than 50 years to construct more than 10,500 structures to prevent floods, protect watersheds, control erosion and sediments, supply water, improve water quality, provide recreation opportunities, enhance habitat, and create or restore wetlands. A 5-year rehabilitation program for aging small watershed structures was enacted in the Small Watershed Rehabilitation Amendments of 2000 (§313 of P.L. 106-472). Section 2505 of the 2002 farm bill authorizes both mandatory funding for the rehabilitation program, rising from \$45 million in FY2003 to \$65 million in FY2007, and additional appropriations, rising from \$45 million in FY2003 to \$85 million in FY2007. The law permits federal funds to pay for 65% of rehabilitation projects, with the remainder coming from local sponsors. NRCS released a status report in June 2000.

**Resource Conservation and Development (RC&D).** RC&D provides a framework for local interests to work together to improve the economy, environment, and living standard in multi-county areas through RC&D Councils. USDA provides technical and financial assistance to councils, and helps them secure funding and services from other sources. NRCS states that 368 areas encompassing more than 85% of the counties in the country have been designated. Section 2504 of the 2002 farm bill permanently reauthorizes the program, and makes numerous technical amendments.

**Farmland Protection Program (FPP).** The 1996 farm bill authorized USDA to assist state and local governments to acquire easements to limit conversion of agricultural lands to nonagricultural uses. Eligible lands must be subject to a pending offer. From FY1996 through FY1998, \$33.5 million was obligated in 19 states to place easements on 127,000 acres on 460 farms with an estimated easement value of \$230 million. Congress provided an additional \$17.5 million in FY2001. The 2001 legislation also made certain private nonprofit organizations eligible to compete with state and local governments for these funds. These funds were used to protect about 28,000 acres in 28 states. Demand to participate has greatly exceeded available funds.

Section 2503 of the 2002 farm bill increases annual mandatory funding from \$50 million in FY2002 to a high of \$125 million in FY2004 and FY2005. The definition of eligible land is expanded to include rangeland, pastureland, grassland, certain forest land, and land containing historic or archeological resources. The program will be subject to conservation compliance. Certain private nonprofit organizations can continue to participate. It also authorizes appropriations for grants to carry out new farm viability programs. The \$50 million spent in FY2002 protected almost 100,000 acres in 41 states; less than \$3 million was spent in every state. An additional \$67.2 million will be allocated in 45 states in FY2003. States that will receive more than \$3 million include Maryland (\$4.0 million), Pennsylvania (\$4.0 million), and New Jersey (\$3.6 million).

**Wildlife Habitat Incentives Program (WHIP).** WHIP was authorized in 1996 to use a total of \$50 million from mandatory funds allocated to the CRP to provide cost sharing and technical assistance for conservation practices that primarily benefit wildlife. This money was appropriated in FY1998 and FY1999. Congress provided additional conservation funding for FY2001, and the Department allocated \$12.5 million to WHIP. Section 2502 of

the 2002 farm bill provides \$15 million in FY2002, growing to \$85 million in FY2005 and thereafter. It provides that up to 15% of the funding each year can be used for higher cost sharing payments to producers whom protect and restore essential plant and animal habitat under agreements of 15 years or longer. The Department announced that it would be implementing this 15-year agreement option in a May 15, 2003 press release. It also noted that more than 11,000 participants have enrolled more than 1.6 million acres in the program.

**Emergency Programs.** The Emergency Watershed Program (EWP) is administered by the NRCS and the Emergency Conservation Program (ECP) is administered by the FSA. The EWP provides technical and cost sharing assistance for projects that restore land after flooding and protect it from future damage. The ECP provides cost-sharing and technical assistance to rehabilitate farmland damaged by natural disasters, and to carry out emergency water conservation measures during severe drought. The 2002 farm bill does not amend emergency conservation programs. The Department announced on September 16, 2002, that it would release \$94 million in the EWP to 34 states in response to wildfires and other natural disasters.

**Water Quality Programs and Initiatives.** Groundwater and nonpoint pollution have emerged as major issues for conservation policy as more instances of contamination in which agricultural sources play major roles have been identified. Specific instances that drive public interest and concern range from a very large hog farm waste spill in North Carolina to the outbreak *Pfiesteria* and fish kills in portions of the Chesapeake Bay and a large “dead zone” in the central Gulf of Mexico. Questions are being raised about the extent of the problems, the severity of the potential threat to human health, the adequacy of government programs, and the contribution of agriculture. In some cases, contamination may have resulted even though producers followed accepted agricultural practices, and did not commit illegal acts. Current agricultural conservation programs that address water quality concerns center on EQIP, plus both the Enhancement Program (CREP) and the continuous enrollment option under CRP.

NRCS released proposed revisions to its nutrient management policy, which are designed to help the farm community more effectively address these topics, on June 30, 1998. USDA and EPA released a “unified national strategy for animal feeding operations.” on March 9, 1999. Elements in the strategy were controversial because it would greatly expand the number of animal operations at which nutrient management plans would be required. EPA and USDA announced the final revised rule, which is required under court order, on December 12, 2002. Large operators will be required to develop comprehensive nutrient management plans while smaller operators will be encouraged to develop them. It was published in the February 12, 2003 *Federal Register*, effective April 14, 2003. Farm interests were generally pleased because it will affect less producers and cost less when compared with earlier proposals. (For more information on this rule, see CRS Report RL31851, *Animal Waste and the Environment: EPA Regulation of Concentrated Animal Feeding Operations (CAFOs)*.)

Limiting total maximum daily loadings (TMDLs) is another approach to cleaning polluted waterways authorized under the Clean Water Act. Congress included a rider in H.R. 4425, the FY2001 Military Construction and FY2000 Urgent Supplemental Appropriations bill, prohibiting EPA from using FY2000 or FY2001 funds to implement the TMDL proposal the Clinton Administration had announced in August, 1999. It responded to the rider by

issuing a revised rule delaying the effective date of the program until October 31, 2001. (For more information, see CRS Report RL30437, *Water Quality Initiatives and Agriculture*.)

Water quality problems are likely to be addressed not only through existing programs, such as EQIP, discussed above, but also through the new programs, including:

- The Conservation Security Program, enacted in §2001, which is expected to be used to address water quality problems, especially nutrient management;
- the Ground and Surface Water Conservation Program, enacted in §2301 as part of EQIP and discussed above;
- the Small Watershed Rehabilitation Program amendments enacted in §2505;
- the Agricultural Management Assistance Program, reauthorized in §2501, to provide \$20 million annually between FY2003 and FY2007 and \$10 million annually thereafter to 15 specified states that have been underserved by risk management programs;
- a new program for the Great Lakes Basin states enacted in §2502;
- a new Grassroots Source Water Protection Program, enacted in §2502; and
- a new program for the Delmarva Peninsula enacted in §2601-2604.

**Private Grazing Lands Program.** A voluntary coordinated technical and educational assistance program was enacted in the 1996 farm bill to maintain and improve resource conditions on private grazing lands. Section 2502 of the 2002 farm bill reauthorizes the program through FY2007 with appropriations of \$60 million annually. Appropriators continue to earmark a portion of NRCS's Conservation Operations funds for this effort annually, providing \$23.5 million for FY2003.

**Grasslands Reserve Program.** Section 2401 of the 2002 farm bill authorizes a new Grasslands Reserve Program to retire 2 million acres under arrangements ranging from 10-year agreements to permanent easements, permits the delegation of easements to certain private organizations and state agencies, and provides up to \$254 million in mandatory funding. The Department started a national sign-up on June 30, 2003. An earlier proposal to implement the program in designated counties in 10 western states was controversial, as interests from other states who had anticipated that they could participate raised objections.

**Air Quality Activities.** The 1996 farm bill created an interagency air quality task force in USDA. The task force represented USDA on scientific topics such as EPA's proposals to revise National Ambient Air Quality Standards for ground-level ozone and two sizes of particulates in 1997. Cooperation grew after USDA and EPA signed a Memorandum of Agreement in January 1998. More recently, federal agencies have been discussing how agricultural practices and programs affect global warming, especially by sequestering carbon. The Department will be testifying at a global warming hearing to be held by the Senate Environment and Public Works Committee on July 8, 2003. The 2002 farm bill does not amend air quality provisions. On April 9, 2003, USDA announced that it had appointed new members. The task force met in late May. (For more information, see CRS Report 97-670, *Agriculture and EPA's Proposed Air Quality Standards for Ozone and Particulates*.)

**Research and Technical Activities.** Many agencies in USDA conduct research and provide technical support. NRCS, for example, provides basic data about resource conditions and characteristics through the soil and snow surveys and periodic surveys

through the National Resources Inventory. It also does applied research through the plant material and technical centers.

**Other Conservation Programs and Provisions in the 2002 Farm Bill.** In addition to the farm bill programs described above, the conservation title contains several other programs. It:

- Authorizes the Conservation Security Program in §2001 to provide payments to producers starting in FY2003, based on which of three levels of conservation is planned for and practiced. Payments are available on all agricultural land that was cropped in 4 of 6 years before 2002. The lowest level allows contracts of 5 years and annual payments up to \$20,000; the middle level allows contracts of 5 to 10 years and annual payments up to \$35,000; the top level allows contracts of 5 to 10 years and annual payments up to \$45,000. The lowest level requires a plan that addresses at least one resource concern on part of a farm; the middle level requires a plan that addresses at least one resource concern on the entire operation, and the top level requires a plan to address all resource concerns on the entire operation.
- Authorizes Partnerships and Cooperation in §2003, using up to 5% of conservation funding, for both stewardship agreements with other entities and special projects designated by state conservationists to enhance technical and financial assistance to address resource conservation issues.
- Amends administrative requirements in §2004, to provide the option of providing incentives to beginning and limited resource farmers and ranchers and Indian tribes, and to protect the privacy of personal information related to natural resource conservation programs and information about National Resources Inventory data points.
- Reauthorizes the Agricultural Management Assistance Program through FY2007 in §2501, and provides an additional \$10 million (for a total of \$20 million) in mandatory funding annually.
- Authorizes a Grassroots Source Water Protection Program in §2501 and annual appropriations of \$5 million through FY2007.
- Authorizes a Great Lakes Program for Erosion and Sediment Control in §2501 and annual appropriations of \$5 million through FY2007.
- Authorizes Desert Terminal Lakes provisions in §2507 require the Secretary to transfer \$200 million in mandatory funds to the Bureau of Reclamation to pay for providing water to at-risk natural desert terminal lakes; other provisions prohibit using these funds to purchase or lease water rights.
- Authorizes appropriations of matching funds through FY2007 to demonstrate local conservation and economic development through a Conservation Corridor Demonstration Program with state and local partners on the Delmarva Peninsula in §2601-2604.

## **Implementing the 2002 Farm Bill Conservation Provisions**

Official actions, including announcements in the *Federal Register (FR)*, taken to implement selected conservation programs authorized or significantly amended by the 2002 farm bill are listed below.

**Conservation Reserve Program:** On April 22, 2003, FSA announced the next general signup, which is being held between May 5 and June 13, 2003. This signup is being administered under an interim rule, published in the May 8, 2003 *Federal Register (FR)*.

**Wetland Reserve Program:** *FR (06/07/02)* contains notice of amendment to existing rule published. On September 6, 2002, a press release announced that approximately \$275 million in FY2002 would go to 42 states to enroll up to 250,000 acres.

**Environmental Quality Incentive Program:** *FR (07/24/02)* contains notice providing additional \$275 million for FY2002. On September 16, 2002, a press release announced that \$10 million in FY2002 funds will go to 14 drought-stricken states. *FR (2/10/03)* contains notice of proposed rules and requests comments by March 12, 2003. *FR (5/30/03)* contains final rule.

**Conservation Technical Assistance:** On November 7, 2002, a “summit” is hosted by USDA in Washington to receive public input. *FR (11/21/02)* contains interim final rule, with comments to be submitted by February 19, 2003. Comments were requested on an interim final rule establishing payment rates for technical service providers and USDA policy for subcontracting in the *3/24/03 FR*, with comments due by June 23, 2003 (a correction was published in the *3/31/03 FR*).

**Small Watershed Rehabilitation Program:** No action.

**Resource Conservation and Development Program:** No action.

**Farmland Protection Program:** *FR (05/30/02)* notice requests proposals for FY2002, due August 15, 2002. On September 6, 2002, a press release announced that \$48 million would be spent in 32 states in FY2002. *FR (10/28/02)* contains proposed rule, with comments to be submitted by December 30, 2002. *FR (4/03/03)* contains requests for FY2003 proposals, to be submitted by May 19, 2003. *FR (5/16/03)* contains final rule (Note: USDA is now calling this the Farm and Range Lands Protection Program.)

**Wildlife Habitat Incentive Program:** *FR (07/24/02)* contains final rule providing additional cost share assistance to participants with agreements exceeding 15 years.

**Agricultural Management Assistance Program:** On August 19, 2002, NRCS announces release of \$1.5 million. *FR (8/28/02)* contains proposed rule.

**Private Grazing Lands Program:** *FR (06/29/02)* contains proposed rule. *FR (11/12/02)* contains final rule.

**Grasslands Reserve Program:** *FR (6/13/03)* contains a notices of availability of funds that will apply to the 2003 signup only, which started on June 30, 2003.

**Conservation Security Program:** *FR (2/18/03)* contains advance notice of proposed rule-making, with request for comments by March 20, 2003. A March 21, 2003 *FR* notice extended the comment period to April 3.

**Partnerships and Cooperation:** No action.

## Appropriations

**FY2003 Appropriations.** The 2003 fiscal year will end September 30, 2003. FY2003 omnibus appropriations law (P.L. 108-7) provides \$1.027 billion for NRCS discretionary conservation programs. For the largest discretionary conservation program, Conservation Operations (CO), most of which supports technical assistance, the law provides \$825 million, an increase of \$46 million from FY2002. According to NRCS, Congress identified 114 earmarks for CO with a total cost of more than \$110 million during the appropriations process; earmarks are to be treated as additions to each state’s allocation. For other programs, the law provides \$110 million for Watershed and Flood Prevention Operations, \$11 million for Watershed Surveys and Planning, \$30 million for Watershed

Rehabilitation Program, and \$51 million for the Resource Conservation and Development Program. Numerous earmarks are identified. This law limits spending for technical assistance to \$45.5 million of the total for Watershed and Flood Prevention Operations, and limits expenditures related to protecting threatened and endangered species to \$1 million.

The Administration's FY2003 request was submitted prior to enactment of the 2002 farm bill, so it did not include any of the anticipated reauthorizations or increases for mandatory programs, except that it requested level funding at \$200 million for EQIP. Congress placed few limits on mandatory funding in FY2003. It limited enrollment in the WRP to 245,833 acres instead of the authorized level of 250,000 acres; funds for EQIP to \$695 million instead of the authorized level of \$700 million; and provided no mandatory funding for the Watershed Rehabilitation Program (but \$30 million in discretionary funds). (For more details on FY2003 conservation funding, see CRS Report RL31301, *Appropriations for FY2003: U.S. Department of Agriculture and Related Agencies.*)

As part of the FY2003 appropriation, savings from the CSP was used to fund the entire agricultural disaster assistance package of more than \$3 billion. This was done by limiting CSP funding between FY2003 and FY2013 to a total of \$3.773 billion. The estimated saving provided by this cap, based on January 2003 CBO estimates of the total program cost of \$6.878 billion, not only funds the entire disaster package, but also leaves more funding for the CSP than had been estimated to be spent when the farm bill was enacted. Revised CBO estimates are that the program will have \$87 million in FY2004, then grow rapidly in future years.

**FY2004 Appropriations.** The House Appropriations Committee approved an unnumbered bill that provides \$1.044 billion for all discretionary conservation programs administered by NRCS, which is an increase of \$23 million from FY2003. The Administration requested \$1.241 billion and included a proposal to create a new discretionary line item of \$432 million to pay for technical assistance in support of the mandatory conservation programs. The Committee bill rejected the proposal for a new line item and differs from the request and from FY2003 funding levels for almost all other programs. The Committee bill provides \$850 million for Conservation Operations (an increase of \$30 million from FY2003 and \$146 million more than the Administration requested). In the watershed area, it provides \$11 million for Surveys and Planning (the same as FY2003 and \$6 million more than the Administration requested); \$90 million for Watershed and Flood Prevention Operations (a decrease of \$19 million from FY2003 and \$50 million more than the Administration requested); and \$40 million for the Rehabilitation Program (\$10 million more than FY2003 and \$30 million more than the Administration requested). It provides \$53 million for the Resource Conservation and Development Program (an increase of \$2 million from FY2003 and \$3 million more than the Administration requested). The bill retains many of the same funding limits that had been included in appropriations legislation in past years.

This bill reflects continued growth in the use of earmarks within the Conservation Operations and Watershed and Flood Prevention Operations accounts. The FY2003 appropriation included 214 congressional earmarks with a total value of more than \$200 million, according to a compilation prepared by the NRCS budget office. Some conservation supporters have expressed concern that the increased use of earmarks means that less money

is available for the most pressing conservation priorities, unless they happen to coincide with the earmarked projects and activities.

Annual funding levels for each of the mandatory conservation programs were set in the 2002 farm bill. (For two of the programs, the Conservation Reserve and the Wetlands Reserve, limits were set in enrolled acres rather than dollars, so savings are made by limiting the number of acres that can be enrolled.) The Committee bill limits funding to four of these programs to a total of \$229 million below authorized levels. Spending would be reduced for the Wetlands Reserve Program by \$56 million; the Environmental Quality Incentives Program (EQIP) by \$25 million (to \$975 million); the Conservation Security Program (CSP) by \$53 million (to \$0); and the Dam Rehabilitation Program by \$95 million (to \$0). The budget submission had included a different mix of proposals to limit total funding to \$285 million below the authorized levels. That reduction would offset part of the cost of establishing a proposed new line item to fund technical assistance in support of mandatory programs, a proposal the House Committee rejected (see discussion above). Proposed reductions included \$150 million for the EQIP; no funding for the CSP; \$95 million for the Dam Rehabilitation Program; \$9 million for the Ground and Surface Water Conservation Program; \$18 million for the Wildlife Habitat Incentives Program; and \$13 million for the Farmland Protection Program. In sum, the total budget authority would rise from \$533 million in FY2003 to \$785 million under the Committee bill or to \$729 million under the Administration request in FY2004.

## **LEGISLATION**

Almost 100 bills with conservation provisions were introduced in the 107<sup>th</sup> Congress; only the enacted farm bill is listed below. Several bills addressing conservation topics have been introduced in the 108<sup>th</sup> Congress. They will be included only after Congress takes some action following introduction.

### **P.L. 107-171, H.R. 2646**

Provides for the continuation of farm programs through FY2011. Introduced July 26, 2001; referred to Committee on Agriculture. Reported August 2, 2001 (H.Rept. 107-191, pt. 1) and August 31, 2001 (H.Rept. 107-191, pt. II). Passed the House (amended) October 5, 2001. Passed the Senate (amended) February 13, 2002. House agrees to conference report May 2, 2002 (H.Rept. 107-424). Senate agrees to conference report May 8, 2002. Signed into law May 13, 2002.

### **H.R. 1907 (Lucas)**

Ensures the availability of funds for technical assistance to implement certain mandatory conservation programs. Introduced May 1, 2003; referred to Agriculture Committee; forwarded by Subcommittee on Conservation, Credit, Rural Development, and Research to full committee by voice vote, June 17, 2003.

**CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS**

U.S. Congress. Senate. Committee on Agriculture. *Conservation*. Hearings. 107<sup>th</sup> Congress, 2nd session. February 28 and March 1, 2002. 250p. S. Hrg. 107-225.

---- *Conservation on Working Lands for the New Federal Farm Bill*. Hearings. 107<sup>th</sup> Congress, 1<sup>st</sup> session. July 31, 2001. 86p. S. Hrg. 107-828.