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Soil and Water Conservation Issues

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Soil and Water Conservation Issues

SUMMARY

Soil and water conservation were prominent farm policy topics in the 108th Congress as the Administration implemented provisions in the 2002 farm bill (P.L. 107-171). This farm bill increased spending and expanded the scope of the conservation effort by reauthorizing and amending most existing conservation programs and enacting new ones through FY2007.

The Congressional Budget Office (CBO) estimated that conservation spending would increase by \$9.2 billion in new mandatory budget authority above the April 2001 baseline through FY2007 (and the March 2004 baseline raises this total by an additional \$2.3 billion). Examples of increases include the Environmental Quality Incentives Program (from \$200 million annually to \$1.3 billion in FY2007) and the Farmland Protection Program (from a total of \$35 million to \$125 million annually starting in FY2004). 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 expand the scope of the conservation effort. The largest of these (potentially), the Conservation Security Program (CSP), provides payments to producers who address natural resource concerns on private lands in specified locations. Other new programs conserve grasslands, address surface and ground water conservation needs and conservation issues in certain regions, permit approved third parties to provide conservation assistance, and (in the forestry title) replace existing programs with a new consolidated financial assistance program.

Two Department of Agriculture agencies implement most agriculture conservation programs, which attract voluntary participants by providing financial and technical incentives. The Natural Resources Conservation Service provides technical assistance and administers most programs, and the Farm Service Agency administers the most expensive program currently (the CRP) and an emergency program.

As both agencies implement the farm bill, controversies arise, especially when the Administration's interpretation of the law's intent differs from that of interested Members of Congress. Issues that have been attracting attention include (1) how to fully fund technical assistance in support of the mandatory programs and (2) how to implement the Conservation Security Program.

To address the first issue, the 108th Congress considered a legislative proposal (H.R. 1907) and inserted language in FY2004 and FY2005 appropriations. The House Agriculture Committee's subcommittee with conservation responsibilities focused on this issue at a June 4, 2003 oversight hearing before reporting H.R. 1907. The second issue became more prominent after NRCS published rules and held the initial CSP signup in summer 2004 in 18 specified watersheds. The Senate Agriculture Committee's conservation subcommittee focused on CSP at a May 11, 2004 oversight hearing, while the House Agriculture Committee's conservation subcommittee examined other topics at a June 15, 2004 hearing. Appropriators continue to have some influence on conservation topics, including these issues, through their actions on the budget each year, such as earmarking funding and limiting funding for some programs.

MOST RECENT DEVELOPMENTS

The Senate Agriculture subcommittee with conservation responsibilities reviewed implementation efforts at a May 11, 2004 hearing, while House Agriculture subcommittee with conservation responsibilities reviewed similar topics at a June 15, 2004 hearing. One issue that both hearings explored, especially the House hearing, was funding for technical assistance needed to implement the mandatory conservation programs. Congress continues to address this topic annually in appropriations legislation (while rejecting Administration proposals), and is considering more enduring solutions in free-standing legislation (H.R. 1907). H.R. 1907 was reported by a subcommittee to the full Agriculture Committee on June 17, 2003. Its provisions were attached in a floor amendment to the House-passed version of the FY2005 agriculture appropriations legislation (H.R. 4766), but are not a part of the Senate-passed version of these appropriations.

The Natural Resources Conservation Service announced in August 2004 that it had enrolled nearly 2,200 participants into the Conservation Security Program in 18 selected watersheds, under an interim final rule. More recently, it announced that 202 watersheds encompassing more than 83 million acres will be eligible for the FY2005 sign up, to be held during the coming winter.

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 debate on this issue 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 or revising programs. These programs were designed to reduce resource problems on the farm. They 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.

After the congressional party switch in 1994, conservation policy discussions shifted, with greater attention 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 nature of the conservation effort continued to evolve after 1996, as reflected in the provisions of the 2002 farm bill. Conservation themes included (1) increasing overall funding, (2) creating new programs and addressing new issues, (3) providing more conservation on lands that are in production (called working lands), and (4) using funding for conservation programs to meet world trade obligations. Major conservation activities are discussed below, followed by other new programs, then implementation activities. (Other activities that could be categorized as conservation are not discussed below, including those that center on research, forestry, and energy.) For detailed information about the enacted provisions in the farm bill's conservation title, including how they compare with 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*.

Current Major Conservation Activities

USDA's conservation efforts, while increasingly diverse, have centered in recent years on implementing the Conservation Reserve Program (CRP), wetland protection programs, the Environmental Quality Incentives Program (EQIP), and the Conservation Security Program (CSP), and on funding technical assistance. USDA continues to adjust this effort to reflect the 2002 enactment. By FY2007, when the current law expires, funding for the overall conservation effort will be much larger. By that year, this effort will give proportionally less emphasis to land retirement programs and to land producing row crops, and more attention to conservation on land that is in production and to livestock producers. Recognizing this expanding effort with additional programmatic components, Congress also included a provision in Section 2005 of the 2002 law 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 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 most expensive program currently, 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 in four of six 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 are being permitted for the first time, with a reduction in annual rental payments.

FSA issued an interim rule on May 8, 2003, that implements these changes. It was used to guide a summer 2003 signup, which enrolled 2.0 million acres selected from 4.1 million that were offered. Of this total, about 700,000 acres had been in the program and were being reenrolled. It held a second general signup on August 30, 2004, in which it enrolled 1.2 million acres of 1.7 million acres that were offered. FSA's summary of participation through September 2004 shows 35.6 million acres were enrolled, with about 4 million acres in Texas and more than 3 million acres in Montana and North Dakota. Also, USDA announced that emergency haying and grazing would be allowed on CRP lands in areas affected by drought on June 24, 2004. In August 2004, USDA requested comments in response to 10 questions it posed about long-term policy topics related to the CRP, due December 8, 2004.

USDA has estimated that the average erosion rate on enrolled acres has been 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, although any land that is classified as highly erodible can only be farmed if the producer follows a conservation plan.

In addition to general signups, FSA has enrolled about 2.5 million acres under several more targeted options, and an additional 2 million acres are being reserved for future enrollment. These acres can be enrolled continuously because they provide large environmental benefits. The newer options include enrolling up to 500,000 acres of floodplains to be planted in hardwood trees, with allotments specified for states; enrolling up to 250,000 acres of field borders for northern bobwhite quail habitat; and creating up to 250,000 acres of wetlands in non-floodplain areas. The three largest and oldest options are:

- Enrolling portions of fields with especially high environmental values. Through January 2004, more than 2.1 million acres had been enrolled, with

more than 434,000 acres in Iowa. The most common conservation practice is buffer strips along water bodies. NRCS estimated that almost 1.55 million miles of buffer strips had been enrolled through December, 2003.

- A state-initiated enhancement program (Conservation Reserve Enhancement Program, or CREP) under which states contribute funds so that higher rents can be offered to potential participants in smaller specified areas where benefits will be greater. Maryland, the first state to implement a program, is enrolling stream buffers, restored wetlands, and highly erodible lands along streams in a portion of the Chesapeake Bay watershed. Currently, 25 states have one or more approved enhancement programs. FSA data show that almost 560,000 acres had been enrolled through January 2004, with more than 109,000 acres in Illinois.
- A program to enroll up to 1 million acres of small, isolated farmable wetlands. It was authorized in Title XI of the FY2001 Agriculture Appropriations legislation as a pilot program in six upper midwestern states. USDA offers sign-up bonuses to attract participation. Almost 95,000 acres had been enrolled by May 2003, with almost half those acres in Iowa.

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. 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. (For more information on CRP, see CRS Report RS21613, *Conservation Reserve Program: Status and Current Issues*.)

Wetlands and Agriculture

Swampbuster and the Wetlands Reserve Program (WRP) have been the main agricultural wetland protection programs. (An expanded small, isolated farmable wetlands program, added to the CRP in the 2002 farm bill, was discussed above.) Under swampbuster, farmers who convert wetlands to produce crops lose many federal farm program benefits 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 about the potential roles of other federal agencies 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) in 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.

An additional issue for agriculture was raised in January 2001 when the Supreme Court determined, in *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers*, that §404 (of the Clean Water Act) wetland permit program should not apply to certain "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 more than 1,470,000 acres. Permanent easements account for more than 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. On June 29, 2004, USDA announced a partnership initiative in Nebraska, modeled after the CREP component of the CRP, to enroll almost 19,000 acres. This may be a prototype for future initiatives. Another wetland protection program is created in Section 2101 to retire 1 million acres of small isolated agricultural wetlands as part of the CRP, and a more recent initiative will be used to create 250,000 acres of wetlands (see the CRP discussion, above). (For more information about wetlands, see CRS Issue Brief IB97014, *Wetland Issues*, updated regularly.)

Environmental Quality Incentives Program (EQIP)

EQIP provides financial incentives to induce farmers to participate in conservation efforts. It pays a portion of the cost of installing or constructing approved conservation practices. 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 FY2002 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 implementing regulations list four national priorities that guide decisions about which producers receive assistance and 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 to make grants for innovative efforts, such as fostering markets for nutrient trading. On March 22, 2004, NRCS announced that it was soliciting proposals and making \$15 million available; it announced that it had awarded \$14.5 million to 41 entities on September 23, 2004. 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, an additional \$50 million is earmarked for the Klamath River basin in Oregon and California, and is to be provided as soon as possible; through FY2003, more than \$12 million had been allocated, and an additional \$19 million has been released so far in 2004.

Interest in participating in EQIP continues to far exceed available funds. For FY2003, for example, NRCS reports that it received more than 116,000 applications, but was only able to sign almost 34,000 contracts. Obligations for FY2003 totaled almost \$643 million. In early May 2004, USDA announced that it was making \$32 million available to low income farmers. (For further information on EQIP, see CRS Report 97-616, *Environmental Quality Incentives Program (EQIP): Status and Issues.*)

Conservation Security Program (CSP)

Section 2001 of the 2002 farm bill authorizes the new Conservation Security Program to provide payments to producers on all agricultural land that was cropped in four of six years before 2002. Payments are based on which of three levels of conservation is planned for and practiced. The lowest level allows contracts of five 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.

Implementation has proven controversial, as the authorizing legislation created this program as a true entitlement, but appropriators provided no funding in FY2003 and only \$41.4 million in FY2004 to implement this program. NRCS issued a draft rule that generated more than 10,000 comments, then issued an interim final rule on June 21. This rule requires interested producers to complete a self-assessment to determine their eligibility. NRCS designed the program so that it could be expanded or contracted from year to year based on funding levels, by limiting signup each year to producers in specified watersheds. Based on this rule, signups in the summer of 2004 enrolled nearly 2,200 producers in 18 specified "priority watersheds." On November 2, 2004, NRCS announced that 202 watersheds encompassing more than 83 million acres in every state would be eligible for the FY2005 signup, to be held during the winter of 2005. In a separate action that will affect CSP in the future, Congress capped total funding for CSP over the next 10 years at \$6.0 billion to pay for disaster assistance during October 2004 (Division B, P.L. 108-324). This action generated complaints from program supporters in Congress and elsewhere. (For more information, see CRS Report RS21739, *The Conservation Security Program in the 2002 Farm Bill*; and CRS Report RS21739, *Implementing the Conservation Security Program.*)

Technical Assistance

NRCS provides technical assistance at the request of the landowner to conserve and improve natural resources. Technical assistance includes professional advice on how to design, install, and maintain land management and structural practices that provide conservation benefits. Technical assistance is a component of most conservation programs, and NRCS estimates that the cost of providing it in FY2004 amounts to about \$1 billion from NRCS and almost \$400,000 million from the CCC. Almost three-quarters of the NRCS total is 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 §2701 of the 2002 farm bill provides that technical assistance in support of each mandatory program come from the funding provided by the CCC for that program. However, the Office of Management and Budget, supported subsequently by the Department of Justice, issued an opinion in late 2002 that technical assistance funding for mandatory programs remains limited under a cap that has been placed in §11 of the CCC charter under prior law. Many in Congress had thought that it had resolved this issue through language it included in the 2002 farm bill, and they were supported in this conclusion by a GAO opinion. The Administration repeatedly proposed to address this limit in appropriations by creating a new farm bill technical assistance line item.

Congress rejected this proposal in both FY2003 and FY2004, and the House has again for FY2005. Further, Congress has prohibited using any of the discretionary funds from Conservation Operations for technical assistance to implement any mandatory programs. Additional language stating that the 2002 farm bill already provides technical assistance funding from the CCC for each program through FY2007 was added as an amendment to the farm bill in §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. This prohibition, combined with a retention of the cap on CCC funds that can be spent on administrative expenses, meant that some of the mandatory programs donated funding for technical assistance to other programs, thereby leaving less money available to implement their activities. The largest donors in FY2003 were EQIP (\$107.9 million) and the Farmland Protection Program (\$27.6 million).

For FY2004, the conference committee includes language with each of the five discretionary NRCS accounts that prohibits using these funds to pay for technical assistance in support of the mandatory conservation programs. As a result, NRCS had to again donate funding from some mandatory programs to others for technical assistance. The House adopted an amendment to the FY2005 appropriations (H.R. 4766), similar to free-standing legislation (H.R. 1907), which prohibits using other mandatory programs to fund TA for CRP or WRP. This amendment goes beyond H.R. 1907 by also prohibiting transfer of funds for TA between these two programs.

Selected Other Conservation Activities

Federal conservation efforts include many additional activities and programs. The list below includes only selected conservation activities in USDA that are administered by NRCS

and FSA. Other USDA agencies who make significant contributions to the conservation effort include the Agricultural Research Service (conducts research on numerous conservation topics); the Economic Research Service (provides economic analysis of many conservation topics and led the effort to develop the Environmental Benefits Index used to compare CRP bids); and the Forest Service (conducts research on forest and tree topics and administers programs to enhance timber stands on private lands). None of the many conservation programs that have been authorized but are not being implemented are 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, and other purposes. A 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.

Conservation Compliance and Sodbuster. Under conservation compliance and sodbuster provisions, established in the 1985 farm bill, producers who cultivate highly erodible land (HEL) 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. A smaller penalty can be imposed on producers once every five years if circumstances warrant. Producers who cultivate highly erodible land using an approved conservation plan are not subject to conservation compliance. Section 2002 of the 2002 farm bill, in the only amendment to these provisions, prohibits USDA from delegating authority to other parties to make highly erodible land determinations. Any person who had HEL enrolled in the CRP has two years after a contract expires to be fully in compliance (or longer if the Secretary determines that two years is insufficient).

According to 1997 data compiled by NRCS, 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. Critics, primarily from the environmental community, have contended that USDA staff has not vigorously enforced these requirements. The General Accounting Office issued a report critical of the implementation effort 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 at times.

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 375 areas encompassing more than 85% of the counties in the country have been designated. This total includes 7 that were accepted from 28 applications during the summer of 2003. Section 2504 of the 2002 farm bill permanently reauthorizes the program, and makes numerous technical amendments.

Farmland Protection Program (FPP). (USDA now calls it the Farm and Ranch Lands Protection Program.) The 1996 farm bill authorized USDA to assist state and local governments to acquire easements to limit conversion of agricultural lands to nonagricultural uses. Section 2503 of the 2002 farm bill greatly increases 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 is subject to conservation compliance. Certain private nonprofit organizations can compete for these funds. Eligible lands must be subject to a pending offer. Through FY2003, almost \$177 million had been obligated. Easements have been acquired on almost 105,000 acres in 37 states and are pending on an additional 201,000 acres in every state. States where the most funds have been obligated include Pennsylvania (\$11.7 million), Maryland (\$11.2 million), and California (\$10.1 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 allocated 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 who protect and restore essential plant and animal habitat under agreements of 15 years or longer. About 14,500 agreements have helped improve and protect more than 2.3 million acres since the program began.

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. Proposed rules for the EWP were issued in the November 19, 2003, *Federal Register*, with comments to be submitted by January 20, 2004. The FY2004 omnibus appropriations bill provides \$150 million of EWP funds and \$12 million in ECP funds to address resource problems stemming from the widespread wildfires in southern California; NRCS announced on November 20, 2003, that it had already provided \$480,000 to address these problems. On August 11, 2004, FSA released \$2.7 million in ECP to address hurricane damage.

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 hypoxic conditions creating a large “dead zone” in the central Gulf of Mexico and in several estuaries. 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. On February 27, 2004, NRCS released its *National Animal Agriculture Conservation Framework*, which it describes as a blueprint for assisting livestock and poultry producers with their voluntary efforts to deal with environmental issues. (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 farm bill 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 chronically 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.

In addition, USDA released a draft framework for addressing animal agriculture conservation on September 9, 2003. Many, but not all, aspects of animal agriculture conservation are tied to water quality concerns. The framework discusses how USDA can

help producers meet environmental regulatory requirements and promote new opportunities while sharing knowledge and increasing accountability.

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 \$23.4 million for FY2004.

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, with Texas receiving \$7.8 million, three times the next largest state allotment. More than 240,000 acres were placed under contract. For FY2004, the Department issued an interim final rule on May 11, 2004, that will guide the spending of approximately \$70 million.

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 increased 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 testified at a global warming hearing held by the Senate Environment and Public Works Committee on July 8, 2003. The 2002 farm bill did not amend air quality provisions. On April 9, 2003, USDA announced that it had appointed new task force members, who met in late May. In the April 29, 2004 *FR*, USDA issued a call for nominations of new members by June 14. (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 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 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 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.

Agricultural Management Assistance Program. August 28, 2002 *FR* contains proposed rule, and April 9, 2003 *FR* contains a final rule. The FY2004 appropriations legislation amended the 2002 farm bill by allocating these funds among three purposes in 2004 and thereafter, and on February 23, 2004, USDA announced the FY2004 allocations for conservation to eligible states.

Conservation Innovation Grants. An interim final rule and request for proposals was published in the March 29, 2004 *FR*.

Conservation Reserve Program. A general signup, held between May 5 and June 13, 2003, was administered under an interim final rule, published in the May 8, 2003 *FR*. The final rule was published in the May 14, 2004 *FR*.

Conservation Security Program. February 18, 2003 *FR* contains advance notice of proposed rule making, with request for comments by March 20, 2003. January 2, 2004 *FR* contains a proposed rule. The May 4 *FR* contains a notice describing the criteria used to select eligible watersheds. An interim final rule was published in the June 21, 2004 *FR* to guide the FY2004 sign up.

Technical Assistance Service Providers. On November 7, 2002, a “summit” is hosted by USDA in Washington to receive public input. November 21, 2002 *FR* contains interim final rule, with comments to be submitted by February 19, 2003. Comments were requested by June 23, 2003, on an interim final rule establishing payment rates for technical service providers and USDA policy for subcontracting in the March 24, 2003 *FR*. NRCS announced payment rates for providers, by state, on August 6, 2003, and revised rates on October 27, 2004.

Environmental Quality Incentive Program (EQIP). July 24, 2002 *FR* contains notice providing additional \$275 million for FY2002. February 10, 2003 *FR* contains notice of proposed rules and requests comments by March 12, 2003. May 30, 2003 *FR* contains final rule. On March 29, 2004, USDA released an interim final rule for the new Conservation Innovation Grants component of EQIP, enacted in 2002, and made \$15 million available to fund proposals, which had to be submitted by May 28, 2004.

Farmland Protection Program. May 30, 2002 *FR* notice requests proposals for FY2002, due August 15, 2002. October 28, 2002 *FR* contains proposed rule, with comments to be submitted by December 30, 2002. May 16, 2003 *FR* contains final rule. March 17, 2004 *FR* contains request for proposals, to be submitted by May 16, 2004. (*Note:* NRCS is now calling this the Farm and Ranch Land Protection Program.)

Grasslands Reserve Program. June 13, 2003 *FR* contains a notice of availability of funds that will apply to the 2003 signup only, which started on June 30, 2003. A September 24, 2003 press release announced that a total of \$49.7 million had been released to all 50 states, funding only a very small portion of the \$1.7 billion that had been requested. The May 11, 2004 *FR* contains an interim final rule.

Conservation of Private Grazing Lands Program. June 29, 2002 *FR* contains proposed rule. November 12, 2003 *FR* contains final rule.

Resource Conservation and Development Program. Some action under discretionary authority but no additional rule making.

Small Watershed Rehabilitation Program. Some action under discretionary authority but no additional rule making.

Wetland Reserve Program. June 7, 2002 *FR* contains final notice of amendment to existing rule.

Wildlife Habitat Incentive Program. July 24, 2002 *FR* contains final rule providing additional cost share assistance to participants with agreements exceeding 15 years.

Conservation Appropriations

Conservation spending combines discretionary spending, which has totaled more than \$1 billion annually in recent years in five accounts and mandatory funding through the Commodity Credit Corporation, which is estimated to total just under \$3 billion in budget authority in FY2004, according to the December 2003 Congressional Budget Office baseline. The NRCS administers all the discretionary conservation programs.

Discretionary Programs. The FY2005 request from the Administration totaled \$909 million for discretionary spending. It included creation of a new sixth account to fund technical assistance to support the Conservation Reserve and Wetland Reserve Programs. This total was a reduction of \$267 million from the FY2004 total. More specifically, the Administration requested \$710.4 million for Conservation Operations, \$5.0 million for Watershed Surveys and Planning, \$40.2 million for Watershed and Flood Prevention

Operations, \$10.1 million for Watershed Rehabilitation, and \$50.7 million for the Resource Conservation and Development Program. For the new Farm Bill Technical Assistance account, the Administration requested \$92.0 million. The request also sought to eliminate funding for all earmarks in the FY2004 appropriation, which totaled \$141 million.

The FY2005 Consolidated Appropriations Act (H.R. 4818), to receive final congressional action in December, provides a total of \$999.2 million for the five enacted accounts and rejects the proposal to create a sixth account. Conservation Operations is the only account funded at an amount that is not between the levels in the House and Senate versions of this legislation. It provides \$837.4 million, which is \$8.5 million less than in the House bill and \$16.7 million less than in the Senate bill. The bill funds numerous earmarks. Each of the discretionary programs is prohibited from funding technical assistance in support of the mandatory programs.

Mandatory Programs. For the mandatory programs, funding levels (or acreage enrollment limits) are specified in the 2002 farm bill. Total outlays for these programs are estimated to grow from \$2.92 billion in FY2004 to \$2.99 billion in FY2005, barring action by Congress. However, the Administration requested reductions in FY2005 that would save \$448 million. H.R. 4818 reduces spending from authorized levels by a total of \$400 million in six programs: Environmental Quality Incentives Program (-\$183 million); Wetland Reserve Program (154,500 acres, which is estimated to save \$150 million); Wildlife Habitat Incentives Program (-\$38 million); Farmland Protection Program (-\$13 million); Ground and Surface Water Program (-\$9 million), and Conservation Security Program (-\$7 million). Many of the mandatory programs, including some of those with funding reductions, will actually increase from FY2004 levels because higher funding levels were authorized in the 2002 farm bill.

LEGISLATION

Relatively few bills addressing conservation topics have been introduced in the 108th Congress. They will be included in the list below only after Congress takes some action following introduction.

P.L. 108-328 (H.R. 2771, Fossella)

Amends the Safe Drinking Water Act to reauthorize the New York City Watershed Protection Program through 2010. Introduced July 17, 2003; referred to Committee on Energy and Commerce; reported to House, April 28, 2004 (H.Rept. 108-476). Passed House by voice vote, May 5, 2004. Passed Senate by unanimous consent, September 30, 2004. Signed into law, October 16, 2004.

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.

S. 1425 (Clinton)

Amends the Safe Drinking Water Act to reauthorize the New York City Watershed Protection Program through 2004. Introduced July 17, 2003; referred to Committee on Environment and Public Works; reported to Senate November 20, 2003 (S.Rept. 108-205).

CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

U.S. Congress. Senate. Committee on Agriculture. *Conservation*. Hearings. 107th 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. 107th Congress, 1st session. July 31, 2001. 86p. S. Hrg. 107-828.

—*Oversight of Conservation Programs of the 2002 Farm Bill*. Hearings. 108th Congress, 2nd session. May 11, 2004. 155p. S. Hrg. 108-564.