

# CRS Issue Brief for Congress

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## **Soil and Water Conservation Issues**

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Jeffrey A. Zinn  
Resources, Science, and Industry Division

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## Soil and Water Conservation Issues

### SUMMARY

Soil and water conservation may be prominent farm policy topics in the 109<sup>th</sup> Congress as the Administration continues to implement provisions in the 2002 farm bill (P.L. 107-171) and starts to prepare for the next farm bill. The 2002 farm bill increased spending and expanded the scope of the conservation effort by reauthorizing and amending many conservation programs and enacting new ones, mostly 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 raised 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 have arisen, especially when Members disagree with the Administration's interpretation of the law. Two of the larger controversies have been how to fully fund technical assistance in support of the mandatory programs, and how to implement the Conservation Security Program (CSP). The first was resolved with legislation enacted in late 2004 (P.L. 108-498). The second has remained, however, as Congress has limited funding for the CSP and NRCS has responded to less funds by limiting program eligibility to specified watersheds. Program proponents both seek more funding and oppose this eligibility limitation.

The House and Senate Agriculture Committee's conservation subcommittees both held oversight hearings in 2004. This year, the Senate subcommittee held hearings on endangered species on July 26 and the Conservation Reserve Program on July 27.

Appropriators continue to influence conservation topics through their actions. They recently completed action on FY2006 appropriations with a conference agreement that makes cuts in several mandatory programs. Longer-term cuts continue to be considered in connection with reconciliation and other legislation.

## MOST RECENT DEVELOPMENTS

Impacts from Hurricane Katrina may affect several aspects of the conservation effort. Funding for emergency programs may be substantial, and staff and program resources may be shifted to assist in the clean up. Funds from other programs may also be shifted into the area of impact to help farmers and land owners address conservation needs. The Administration has proposed shifting funds, including \$10 million from an agriculture conservation program, to help pay for hurricane-related disaster relief.

A conference committee has completed action on FY2006 funding for agriculture. The House has approved the committee report (H.Rept. 109-255), and Senate action is anticipated. For conservation, the conference committee included more funds for discretionary conservation programs than was in either the House or the Senate bill, while making cuts to several mandatory programs. Congress also continues to work on reconciliation legislation, and reductions in funding for conservation programs are prominent in recommendations passed by the House and Senate Agriculture Committees. The House version would reduce conservation spending by \$760 million over five years, while the Senate version would reduce conservation spending by \$1,054 million over the same time period.

Agencies at USDA continue to implement conservation programs. Recent announcements include an August 2005 announcement that 110 watershed would be eligible for the Conservation Security Program in FY2006; an August 2005 announcement about extending contracts and reenrollment of more than 28 million acres in the Conservation Reserve Program; an April 2005 announcement soliciting input about future priorities for the Environmental Quality Incentives Program; and a September 2005 announcement of a pilot initiative for conservation planning in nine states.

## 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 control switched in 1994, conservation policy discussions turned to identifying ways to make the conservation compliance and swampbuster programs less intrusive on farmer activities. This switch 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 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. By FY2007, when the current law expires, funding for the overall conservation effort will be much larger. The suite of programs will place a reduced emphasis on land retirement programs and to land producing row crops, and more attention to conservation on other land and to livestock producers. Recognizing this expanding effort, Congress also included a provision in section 2005 of the 2002 law that requires 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. (For more information on the suite of current conservation programs, see CRS Report RL32940, *Agriculture Conservation Programs: A Scorecard*.)

## **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 six-state pilot program to retire small, isolated farmable wetlands into a national program, with an enrollment ceiling of 1 million acres. 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. FSA's summary of participation through September 2005 shows 36.1 million acres were enrolled, with more than 4 million acres in Texas and about 3.5 million acres in Montana and North Dakota. In August 2004, USDA requested comments in response to 10 questions it posed about long-term policy topics related to the CRP. In August 2005, Secretary Johanns announced that USDA will offer opportunities to reenroll or extend contracts involving more than 28 million acres of land where current contracts expire in the next five years; specifics have yet to be announced. Priority for reenrollment will be based on the relative ranking of the land using the Environmental Benefits Index, and whether the land is located in any of five national priority areas. Contracts will be offered in five groups, with the land in the highest ranked group receiving the longest contract extension (10-15 years), while land in the lowest ranked group would receive contract extensions of two years. In addition, rental rates will be updated to reflect local market conditions.

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 Government Accountability Office (GAO) 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 they must follow a conservation plan on any previously enrolled highly erodible land to retain eligibility for many types of farm program payments.

In addition to general signups, FSA has enrolled about 3.1 million acres under several more targeted options. 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 2005, more than 2.25 million acres had been enrolled, with more than 412,000 acres in Iowa. The most common conservation practice is buffer strips along water bodies (these strips are usually called riparian buffers by NRCS). NRCS estimated that almost 1.55 million miles of buffer strips had been enrolled. FSA enrollment data showed that almost 740,000 acres of buffer strips had been enrolled through September 2005.
- 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. For example, 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, 26 states have one or more approved enhancement programs. FSA data show that more than 710,000 acres had been enrolled through September 2005.
- A program to enroll up to 1 million acres of small, isolated farmable wetlands. USDA offers signup bonuses to attract participation. Almost 135,000 acres had been enrolled through September 2005, 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. 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, is 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 these agencies were 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 reached almost 1.63 million acres in January 2005. Permanent easements account for more than 80% of the total, and have been perfected on 1.17 million acres. 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. The Office of Inspector General released an audit report earlier in the year which found that "unwarranted payments" had been made because of lax controls and poor appraisals.

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 taken administratively 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. NRCS has called for public comments about whether these priorities should be altered, and held a national listening session on May 5, 2005 (and state listening sessions) to gather input.

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 September 23, 2004, NRCS announced that it had awarded \$14.5 million to 41 entities. It solicited proposals for FY2005 in March. 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. The first year that funds were available, \$53 million was provided to 17 western states to implement water conservation practices in response to drought conditions; a total of 32 states have received assistance. 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 FY2004, more than \$31 million had been allocated. In FY2004, funds were used to complete irrigation management plans on more than 30,000 acres and apply conservation practices on more than 6,300 acres.

Interest in participating in EQIP continues to far exceed available funds. For FY2004, for example, NRCS reports that it received almost 183,000 applications, but was only able to sign almost 48,000 contracts. The cost of funding the remaining applications is more than \$2.0 billion. On May 23, 2004, USDA announced that it was making \$18.3 million available to fund 1,153 contracts with low income farmers. (For further information on EQIP, see CRS Report RS22040, *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 (CSP) 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 prohibited funding in FY2003, then allowed

only \$41.4 million in FY2004 and \$202 million in FY2005 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, 2004. 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, which closed on May 28. On July 25, it announced that more than 12,500 contracts had been accepted; the largest number (2,040) was in Iowa. 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. On August 25, it announced that land in 110 watersheds in portions of all 50 states would be eligible to enroll in FY2006. (For more information, see CRS Report RS21739, *The Conservation Security Program in the 2002 Farm Bill*; and CRS Report RS21740, *Implementing the Conservation Security Program*.)

## Technical Assistance

NRCS provides technical assistance (TA) at the request of the landowner to conserve and improve natural resources. TA includes professional advice on how to design, install, and maintain land management and structural practices that provide conservation benefits. NRCS combines that advice with knowledge of local conditions. TA is a component of most conservation programs, and NRCS estimates that the cost of providing it in FY2004 amounted to about \$1 billion. Almost \$400 million came from the CCC and the remainder was in the Conservation Operations as a line item.

A subsection of §2701 of the 2002 farm bill provided 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 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 the language in the 2002 farm bill had resolved this issue, 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 account, to be funded through annual appropriations in FY2003, FY2004, and FY2005. Congress rejected this proposal each year. In FY2003 and FY2004, Congress prohibited using any of the discretionary funds from Conservation Operations for technical assistance to implement any mandatory programs. 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. In P.L. 108-498 (S. 2856), enacted December 23, 2004, Congress amended the 1985 farm bill to require that technical assistance for each mandatory program be paid from funds provided for that program annually, and that funding for technical assistance cannot be transferred among the mandatory funded programs, starting in FY2005.

Other actions related to technical assistance may also attract congressional interest. First, GAO released a report in November 2004 titled *USDA Should Improve Its Methods for Estimating Technical Assistance Costs* (GAO-05-58). This assessment may contribute to discussions about the cost of providing technical assistance, which critics state is too high and reduces the amount of money that goes to program participants. Second, in February 2005, NRCS announced new policy guidance for technical assistance that will establish national priorities. For the current year, national priorities center on helping producers comply more easily with environmental regulatory requirements. Third, in September 2005, NRCS announced that it would initiate a new pilot program for conservation planning in 9 states, using a land-owner self assessment process.

## 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, the Economic Research Service, and the Forest Service. Also, 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 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.

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. GAO 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 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 FY2004, almost \$265 million had been obligated to acquire 870 easements on almost 178,000 acres in 37 states. An additional 959 easements are pending on more than 209,000 acres in every state. States where the most funds have been obligated include Maryland (\$17.7 million), Pennsylvania (\$15.8 million), and New Jersey (\$15.5 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 at least five years. Through FY2004, more than 2.8 million acres have been enrolled. In FY2004, 3,012 contracts were signed, affecting about 432,000 acres.

**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. Emergency programs are implemented most years; for example, the FY2004 omnibus appropriations bill provided \$150 million of EWP funds and \$22 million in ECP funds in response widespread wildfires in southern California. Substantial funding can be anticipated this year in the wake of Hurricane Katrina 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 occurrences that drive public interest and concern range from a very large hog farm waste spill in North

Carolina to the *Pfiesteria* outbreak 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.

EPA and USDA announced a final revised rule for managing nutrient wastes from animal feeding operations, as 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 (TMDL) 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 (subsequent amendments limit conservation funding to \$14 million annually);
- 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. The framework discusses how USDA can help

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

The 108<sup>th</sup> Congress did enact legislation (P.L. 108-328) authorizing funding for the New York City Watershed Protection Program through FY2010. This program funds conservation practices on farms in watersheds that provide drinking water to New York City to maintain a level of water quality that precludes the need to build a new water treatment plant.

**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 and \$23.5 million in FY2005.

**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 first national signup, in FY2003, placed more than 240,000 acres under contract. For FY2004, the Department issued an interim final rule on May 11, 2004, that guided enrollment of 283,000 acres under 1,055 contracts; an additional 9,000 applications were processed, including at least one in every state. All the authorized funding will have been spent by the end of FY2005.

**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. USDA and EPA cooperate under a Memorandum of Agreement signed in January 1998. More recently, federal agencies have been discussing how agricultural practices and programs affect global warming, especially by sequestering carbon. On March 23, 2005, USDA announced that NRCS and the National Forest Service would start to track the amount of carbon that farmers would be sequestering. The 2002 farm bill did not amend air quality provisions. (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 to 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*. A final rule and request for FY2005 proposals was published in the January 11, 2005 *FR*.

**Conservation Partnership Initiative.** A call for FY2004 proposals was issued in the July 24, 2004 *FR*, and a call for FY2005 proposals was issued in the December 17, 2004 *FR*.

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

**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*. FSA announced three new initiatives and called for responses to 10 questions about the future of CRP in an August 4, 2004 *FR* announcement.

**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.

**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.

**Farmland Protection Program (FPP).** 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.

**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.

**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. A final rule was published in the November 11, 2004 *FR*.

**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 Funding

**FY2006 Appropriations.** Conservation spending combines discretionary spending in five accounts (all administered by NRCS) and mandatory funding for a dozen programs through the Commodity Credit Corporation. (This excludes two emergency programs that



are almost always funded in supplemental appropriations legislation.) The conference agreement provides more funds for discretionary programs (\$1,004.2 million) than either the Senate-passed bill (\$964.0 million) or the House-passed bill (\$939.8 million). This amount is also a small increase from the FY2005 appropriation (\$991.9 million) and a substantial increase from the Administration's FY2006 request (\$814.4 million). The agreement rejects many of the Administration's proposed reductions from FY2005 funding for discretionary programs. The agreement also reduces funding for selected mandatory conservation programs. With these reductions, overall mandatory funding will decline slightly from \$3.805 billion in FY2005 to \$3.729 billion in FY2006.

**Discretionary Programs.** For the largest program, Conservation Operations, the conference agreement provides \$839.5 million, which is an increase above both the Senate bill (\$819.6 million) and the House bill (\$773.6 million). It is also more than the FY2005 appropriation (\$830.7 million) and much more than the Administration request (\$767.8 million). The reduction requested by the Administration was based on a decision not to fund earmarks, which totaled more than \$122 million in FY2005 and would have saved an estimated \$114.3 million in FY2006. However, the conference agreement rejects this proposal and the committee report identifies numerous earmarks. It requires the Secretary to report to the appropriations committees by July 1, 2006, on any projects or activities earmarked in this bill for which funds have not been obligated. The conference agreement does not allocate any funds to assist producers in meeting regulatory requirements, as called for the Administration request and the House bill.

Among the other discretionary programs, the conference agreement provides \$75 million for Watershed and Flood Prevention Operations, which is \$15 million more than provided in the House and Senate bills and the same as the FY2005 appropriation, but \$75 million more than the Administration had requested. It limits spending on technical assistance to \$30 million of this total. For Watershed Surveys and Planning, the conference agreement provides \$6.1 million, which is less than the House and last year's appropriation (\$7.0 million) but more than the Senate (\$5.1 million). The conference agreement provides \$31.6 million for the Watershed Rehabilitation Program, which is more than the Senate provided (\$27.3 million) and the Administration had requested (\$15.1 million), but less than the House provided (\$47.0 million). The conference agreement provides \$51.3 million for the Resource Conservation and Development Program (RC&D), which is nearly identical to funding in both Chambers (\$51.2 million in the Senate and \$51.4 million in the House). These amounts are substantially more than the Administration request of \$25.6 million.

In one major change from the Administration's request, the conference committee, like both Chambers, includes numerous priority projects using funds from the Watershed and Flood Prevention Operations account, but does not earmark specific amounts. The Administration had asserted that elimination of Watershed and Flood Prevention Operations would allow resources to be redirected to other priority "regulatory challenges." In a second major change from the request, the conference committee, like both Chambers, rejects the Administration's proposed reduction to the RC&D account that would have been based on a change in policy to phase out federal support to RC&D councils after they had received federal funds for 20 years. Of the 375 participating councils, 189 (50%) would have lost funding under this proposal. The conference agreement adopted language from the House committee report stating that changes in funding policy for this program should be based on "effectiveness and performance" rather than on the age of councils.

**Mandatory Programs.** Overall funding for the suite of mandatory conservation programs declines slightly from FY2005. Specific reductions in the conference agreement and in bills passed by both Chambers are listed in **Table 1** on the next page. The conference committee does not place funding or enrollment limits on the largest of these programs, the CRP. This action concurs with the Administration request, and, as a result, program spending is estimated to increase by \$79 million to \$2.021 billion in FY2006. All the mandatory programs have authorized dollar or acreage limits either annually or for the life of the authorization, so changes in funding should be compared with these limits, which can change from year to year. One large reduction from FY2005, for the Grasslands Reserve Program from \$128 million to \$0 in FY2006, reflects the allocation of the entire \$254 million authorized in the FY2002 farm bill by the end of FY2005. The largest reductions are EQIP, authorized at \$1.2 billion but slated to receive \$1.017 billion in FY2006, and the WRP, limited to enrolling 150,000 acres rather than the 250,000 acres authorized.

Among the largest increases from FY2005 are the CRP (up \$79 million) and the CSP (up \$56 million). While the CSP would increase under the request, CBO estimated in its January 2005 baseline that it would grow by \$254 million in FY2006, rather than this smaller amount, so program supporters are likely to view this increase as a significant reduction from the higher estimated level.

The conference agreement also provides \$2.5 million to initiate a new 2 million acre land retirement program authorized in forestry legislation, the Healthy Forest Reserve. This program will be administered by NRCS. The Senate bill would have provided \$5 million to implement it while the House bill did not provide any funding. (For more information on authorized funding levels for the mandatory conservation programs and reductions, see CRS Report RS22243, *Mandatory Funding for Agriculture Conservation Programs*. For a more detailed review of FY2006 appropriations, including a table showing the reductions in mandatory programs from authorized levels, see CRS Report RL32904, *Agriculture and Related Agencies: FY2006 Appropriations*.)

The FY2006 appropriation still may be affected by other actions. The Administration proposed a package of rescissions to partially offset the emergency costs associated with hurricane-related disaster relief on October 28, 2005. These proposed rescissions total \$2.3 billion from "lower-priority federal programs and excess funds" in FY2006 funding. Programs in the Department of Agriculture would contribute \$641 million to this effort, with \$10 million coming from unobligated balances in the Conservation Operations account.

**FY2006 Budget Reconciliation.** The House and Senate Agriculture Committees have completed action on their recommendations for budget reconciliation that would reduce agriculture funding from FY2006 through FY2010. The House recommendations would reduce spending by a total of \$3.7 billion over that time period while the Senate would reduce it by \$3.0 billion. Conservation programs would provide \$760 million (21% of the total) under the House version, and \$1,054 million (35% of the total) under the Senate version. More specifically, the House version would limit authorized spending for the CSP (a savings of \$504 million), eliminate funding for the Agriculture Management Assistance Program (a savings of \$31 million), and both reduce funding for the Watershed Rehabilitation Program and prohibit funds to be carried over from year to year (a savings of \$225 million). The Senate would also limit CSP funding (a savings of \$821 million), reduce authorized acreage in the CRP (a savings of \$129 million), and reduce funding for EQIP (a

savings of \$104 million). For more information on the reconciliation, see CRS Report RS22086, *Agriculture and FY2006 Budget Reconciliation*.

**Table 1. Changes in Mandatory Conservation Programs**

<b>Program</b>	<b>FY2005 Enacted (P.L. 108-447): Allowed Level</b>	<b>FY2006 Authorizatio n under 2002 Farm Bill*</b>	<b>FY2006 House bill: Allowed Level</b>	<b>FY2006 Senate bill: Allowed Level</b>	<b>FY2006 Conference Agreement</b>
Environmental Quality Incentives Program	\$1.017 billion	\$1.200 billion	\$1.052 billion	\$1.017 billion	\$1.017 billion
Conservation Security Program	\$202.4 million	\$331 million	\$245 million	\$331 million	\$259 million
Wildlife Habitat Incentives Program	\$47 million	\$85 million	\$43 million	\$47 million	\$43 million
Wetlands Reserve Program	154,500 acres	250,000 acres	154,500 acres	150,000 acres	150,000 acres
Farm and Ranch Lands Protection Program	\$112 million	\$100 million	\$73.5 million	\$100 million	\$73.5 million
Ground and Surface Water	\$51 million	\$60 million	\$51 million	\$51 million	\$51 million
Small Watershed Rehab. Program	\$0	\$210 million	\$0	\$0	\$0
Ag. Management Assistance	\$0	\$20 million	\$6 million**	\$20 million	\$6 million

\* Figures in the FY2006 authorized column represent how much would be available under current law, including the carryover of unobligated balances from prior years, had no restrictions been placed.

\*\* Under this program, as amended, \$14 million of the total goes to NRCS, and that would not be funded; the remaining \$6 million, which goes to RMA and AMS, would be fully funded.

## 2007 Farm Bill

Many interests are starting to discuss what provisions might be considered for a farm bill in 2007. Coalitions are forming and groups are developing their priorities and positions. Farm bill considerations are in the formative stages in Congress, however, and there is little specific on which to usefully comment at this time. As a possible prelude to farm bill discussions, the Senate Agriculture Committee's Subcommittee on Forestry, Conservation, and Rural Revitalization held hearings on endangered species and on the CRP on July 26 and 27, respectively.

## LEGISLATION

Bills will be listed in this section only after the 109<sup>th</sup> Congress takes some action beyond introduction.

## 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.

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