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OVERSIGHT NEEDED TO GET CONSERVATION COMPLIANCE RIGHT

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INTRODUCTION

Ever since they were first signed into law by then-President Ronald Reagan in 1985, the so-called “conservation compliance” provisions of America’s agricultural support programs have stood as prime examples of what a conservative, market-based approach to environmental policy might entail.¹ Like Reagan’s other great conservation achievement—the Coastal Barrier Resources Act—conservation compliance confronts an environmental problem by reducing the footprint of government and ensuring recipients of government aid are accountable to taxpayers.

This approach shows promise both as a means to steward the environment and to limit taxpayer exposure to risk. However, inconsistent enforcement of the provisions have limited

1. Wildlife Management Institute, “Conservation Compliance: A Key Component of the Farm Bill,” *Outdoor News Bulletin*, Accessed online April 11, 2015. http://www.wildlifemanagementinstitute.org/index.php?option=com_content&view=article&id=584:conservation-compliance-a-key-component-of-the-farm-bill&catid=34:ONB%20Articles&Itemid=54

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their effectiveness. This paper will describe the principles behind conservation compliance, its benefits and explore appropriate implementation strategies as new regulations are promulgated. It argues that proper implementation of conservation compliance should be a leading environmental priority for the Republican-controlled Congress.

HOW CONSERVATION COMPLIANCE WORKS

The closely related programs that fall under the banner of conservation compliance are efforts at wetlands preservation (popularly known as “swampbuster”) and erosion prevention (popularly known as “sodsaver”).

In order for farm owners to be eligible for premium support, they must ensure they will not plant or produce any agricultural commodity on converted wetlands, nor may they convert wetlands to make production of an agricultural commodity possible. While farmers are permitted to plant and produce commodities on highly erodible land, to be eligible for premium subsidies, they must follow a conservation plan approved by the U.S. Natural Resources Conservation Service.

In 1996, more than a decade after conservation compliance first was required, Congress severed the link between compliance measures and access to federal agricultural assistance. Under the farm bill passed that year by Congress and signed by then-President Bill Clinton, farmers whose crop insurance premiums were subsidized by the U.S. Department of Agriculture no longer would be required to submit to conservation compliance, provided they did not participate in the much-lamented and now-defunct “direct payments” program.

The effect of this shortsighted decision has been to inflate dramatically federal subsidies for crop insurance by removing basic environmental accountability previously attached to “easy” money. The result has been a system in which the federal government subsidized environmentally harmful decisions at taxpayer expense.

Recent research by the Environmental Working Group shows that overly subsidized crop insurance policies “are greasing the wheels of conversion to row crops.”² Taxpayers cover too much of the hazard of plowing and planting on fragile land. Re-attaching the conservation *quid pro quo* to premium subsidies will slow wetland conversion and protect millions of acres of fragile land.

In the most recent farm bill – the Agricultural Act of 2014, signed by President Barack Obama in February 2014 – the provisions are, thankfully, once again linked to crop insurance premium supports, albeit to a crop insurance program that is much expanded in both reach and expense.³

To be compliant under the rules, farmers must submit a completed AD-1026 form to the USDA’s Farm Service Agency, detailing their conservation plan. While the plans may vary by farm as well as by region, there are a number of optional practices producers can easily adopt without harming their bottom line. Farmowners are able to tailor their operations, doing what fits best while also preserving land.

In the event that a farmer does not come into compliance during the one-year grace period, and does not meet any of the conditions for other exemptions, the FSA could then determine the farmer should lose benefits, including the crop insurance premium subsidy.

The USDA sets out four major objectives for conservation compliance:

1. Reduce soil erosion on the nation’s cropland;
2. Protect the nation’s long-term capability to produce food and fiber;
3. Reduce sedimentation and improve water quality; and
4. Preserve and protect the nation’s wetlands.⁴

2. Craig Cox and Soren Rundquist, “Going, Going, Gone!: Millions of Acres of Wetlands and Fragile Land Go Under the Plow,” Environmental Working Group, July 23, 2013. <http://www.ewg.org/research/going-going-gone>

3. Bill Tomson, “Farm bill signed; USDA on the clock,” *Politico*, Feb. 8, 2014. <http://www.politico.com/story/2014/02/farm-bill-usda-103270.html>

4. U.S. Department of Agriculture, “Highly Erodible Land and Wetland Conservation Compliance Provisions,” Farm Bill Forum Comment Summary & Background, Accessed online April 11, 2015. http://www.usda.gov/documents/HIGHLY_ERODIBLE_LAND_AND_WETLAND_CONSERVATION_COMPLIANCE.pdf

Swampbuster provisions are the simpler and more straightforward of the two conservation compliance programs. It requires that wetlands drained after 1985 be considered forever ineligible for most agricultural subsidy programs. Sod-saver, on the other hand, requires farmers to come up with soil conservation plans if they chose to farm in erosion-prone areas and want subsidies to do it. Farmers can use almost any means they want to conserve soil. While the USDA does sometimes audit performance under the law, most farmers are never actually audited, limiting the effectiveness of the conservation standards.

Unlike many other environmental regulations, conservation compliance is *not* mandatory on anyone. Farmers remain free to drain wetlands on their own and even to get subsidies for wetlands that they’ve farmed for a long period of time. But they can’t get a subsidy if they want to destroy wetlands today. They likewise remain free to take actions that cause some types of soil erosion, so long as they do so without subsidies. However, soil erosion sufficiently significant to cause water pollution is likely to result in various kinds of regulatory sanctions, and many wetlands are protected under other environmental rules.

By constraining subsidies, conservation compliance goes a long way toward preserving wetlands and preventing soil erosion. Wetlands can be considered “public goods” that provide significant benefits to people besides their owners. They can absorb storm surge, filter water of certain contaminants and provide wildlife habitat. When they’re destroyed, flooding in other areas often increases. This alone can impose significant economic cost.⁵ Likewise, wide-scale soil erosion is a form of pollution that does significant damage to the ecosystems of rivers, lakes and fisheries. Left intact, top-soil serves as a vital part of the water cycle, by absorbing flood and ordinary rain water.⁶

While the environmental benefits of conservation compliance are significant, maintaining the program should be considered just as crucial to those who want a smaller and less intrusive government. During the most recent farm bill debate, the provisions received significant support from Republicans. One champion of the proposal, Rep. Jeff Fortenberry, R-Neb., put it well:

As farm policy shifts and new reforms take shape, it is critical that sound conservation and land management practices remain coupled with the policies that help provide certainty for farmers and manage their

5. Office of Water, “Economic Benefits of Wetlands,” U.S. Environmental Protection Agency, May 2006. <http://water.epa.gov/type/wetlands/outreach/upload/EconomicBenefits.pdf>

6. World Wildlife Federation, “Threats: Soil Erosion and Degradation,” Accessed online April 11, 2015. <http://www.worldwildlife.org/threats/soil-erosion-and-degradation>

risks. Nearly 30 years ago, Congress included conservation compliance measures in the farm bill that have helped reduce soil erosion, protect the environment and improve water quality for both rural and urban places.⁷

As we have argued elsewhere, reducing and ultimately ending subsidies for crop insurance would be almost impossible without conservation compliance.⁸ Highly erosion-prone areas and natural wetlands (which, by definition, flood with frequency) are among the least suitable areas to plant crops. If subsidized crop insurance is offered in such areas, the program quickly would become full of policies that almost no private insurer operating under conventional conditions would ever agree to write. This would make privatizing the program very difficult, if not impossible, from a practical perspective.

Many free-marketers will ask about the extent to which farmers would behave in a beneficial fashion if no agricultural subsidies or market controls existed at all and farmers had to pay the full cost of their own decisions. The outcome depends on the program in question. Erosion destroys the long-term value of land and farmers with long-term interests in preserving their land presumably would do everything possible to avoid it. That doesn't mean ending agricultural supports would end all erosion, as there may well be large short-term profits to be reaped. Tort claims and nuisance actions against farmers might further discourage irresponsible agricultural practices, but it remains likely that some government role in preventing such harms would be necessary.

The absence of swampbuster likely would make little difference. If destroying privately owned wetlands would produce a profit-making crop in a reliable fashion, existing laws offer farmers incentive to turn down the subsidies and simply drain the wetlands.

In short, therefore, conservation compliance is a proven program with a long conservative pedigree. It benefits the environment, will make it easier to phase out certain subsidies and has effects similar to those that would exist in a market without any major subsidies or price controls. Implementing conservation compliance in a proper fashion should therefore be an important goal for Congress as it monitors the Obama administration's implementation of the farm bill. Several principles can help guide this.

7. Press release, "Fortenberry Urges Farm Bill Conference to Keep Conservation Measures," Office of U.S. Rep. Jeff Fortenberry, Nov. 21, 2013. <http://fortenberry.house.gov/news-releases/fortenberry-urges-farm-bill-conference-to-keep-conservation-measures/>

8. Eli Lehrer, "Conservation Compliance: The obscure environmental provision key to protecting taxpayers and privatizing crop insurance," R Street Institute, October 2012. <http://www.rstreet.org/policy-study/conservation-compliance-the-obscure-environmental-provision-key-to-protecting-taxpayers-and-privatizing-crop-insurance>

BALANCING PROPERTY RIGHTS AND TAXPAYER ACCOUNTABILITY

Conservation compliance must be implemented in a manner that respects the rights of property owners, while also establishing accountability standards to protect taxpayers. Like many other federal programs, certain eligibility criteria should be met in order for the recipient to receive government-backed crop insurance.

Conservatives often have pushed for accountability measures on welfare programs. In fact, they have been a cornerstone of conservative policymaking, whether linking work requirements to Temporary Assistance for Needy Families testing or insisting on accountability standards for education funding or even means-testing entitlement programs.

It is inconsistent to require certain recipients of federal aid to uphold certain accountability standards, while allowing others a free pass. As with other public spending, recipients of agricultural support should be accountable to established criteria in order to receive taxpayer funding.

Farmers are better stewards of their land than the government. But unfortunately, government policies like crop insurance supports have changed the incentive structure for farmers and agribusiness. Instead of issuing a blank check, conservation compliance is an effective way to demand accountability. It does not interfere with property owners' rights, as it applies only to those who choose voluntarily to seek government support.

Before conservation compliance standards and crop insurance subsidies were relinked, farmers were enticed to expand by record-high prices for many agricultural commodities. They planted corn, soy and other row crops across vast swaths of previously uncultivated land. While the short-term gains may have benefited their bottom line, the long-term consequences of this policy cannot be ignored. Conservation compliance standards limit the perverse incentives to make poor environmental decisions created by the promise of free taxpayer funding. With this *quid pro quo* re-established, farmers will be able to preserve the long-term economic value of their property by decreasing the loss of soil and wetlands.

While the adoption of a conservation compliance plan often requires farmers to change their crop rotation, the USDA finds "research on the farm costs of conservation compliance indicates that the majority of Highly Erodible Land can be brought into compliance without significant economic burden."⁹

9. Keith Wiebe and Noel Gollehon. "Agricultural Resources and Environmental Indicators, 2006 edition," U.S. Department of Agriculture, July 2006. <http://www.ers.usda.gov/media/871561/arei6-3.pdf>

If a farmer does not receive federal crop insurance subsidies, then there is no reason for the government to require conservation compliance. It is a simple question of accountability to taxpayers from those who receive taxpayer-financed benefits.

REAL ENFORCEMENT

Without proper enforcement, conservation compliance measures will be toothless, wasting taxpayer funding, jeopardizing the goal of environmental conservation and leading to an inconsistent system that penalizes some farmers while failing to hold others accountable. This would essentially defeat the purpose of the program.

One does not have to look far to see how inconsistent enforcement standards have been. The USDA's own Office of Inspector General found that "from 1991 to 2008, compliance with conservation accountability standards varied from region to region, many farms were out of compliance (up to 20 percent in the 1995 OIG report), and millions in taxpayer dollars could have been saved if subsidies were appropriately withheld for risky production practices."¹⁰

Instead of continuing this flawed approach, where a number of participating farms failed to meet the conservation compliance measures, steps must be taken to properly enforce the plans to "achieve measurable public benefits."¹¹ The letter of the law should be followed in order to save the taxpayers money and to preserve highly erodible land and wetlands.

New GPS mapping technology has enabled farmers and regulators to measure and adjust to environmental consequences with increased precision, in ways that were unavailable as recently as a few years ago. Armed with this knowledge, the National Resources Conservation Service should step up their inspections for soil erosion and runoff, while the Farm Services Agency should actually use their power to enforce penalties.¹² Additionally, local officials should be well-trained and properly equipped with adequate resources and tools to ensure the program's requirements are fulfilled.

In the past, funding has not been properly allocated at the local and regional level. As Taxpayers for Common Sense President Ryan Alexander put it in comments to the USDA, "adequate resources must also be provided to local officials for monitoring and enforcement efforts, and staff members

must be well-trained to ensure consistent enforcement from county to county and state to state."¹³

LOCAL KNOWLEDGE AND FLEXIBILITY

The Environmental Working Group's 2013 study "Going, Going, Gone!" used helpful maps and data to illustrate environmentally sensitive lands across the country. The report reveals the striking correlation between counties that are "hotspots for conversion of wetlands, wetland buffers and highly erodible cropland and those with highest average payouts from crop insurance."¹⁴ With this information readily available, implementation of conservation compliance should be formulated to address the unique situations faced by different regions and counties.

Proper enforcement needs to incorporate flexible rules that reflect environmental differences between regions. Reflecting the real landscape might mean standards that differ slightly not only county-by-county, but property-by-property. If only a small portion of a farm's land is classified as "highly erodible," that acreage may require a different conservation plan than the rest of the property under evaluation.

Conservation practices should be evaluated holistically to ensure that those which receive public benefit are much more stringently scrutinized for potential negative impacts. For instance, installing stream buffers to conserve soil and water could be zeroed out if they are covered in excess agricultural residue left over from flooding or heavy rains. Public benefits of conservation practices may also be reduced when drainage tile is installed on farmland, increasing the rate at which water flows from farmland to nearby waterways. Considering these factors will ensure that these provisions not only achieve their stated outcomes, but also reduce long-term liabilities of agricultural runoff.

Since many farmers already utilize a number of conservation measures and have familiarity with the land, it is essential that enforcement leverage this parochial knowledge to conserve the land. Relying on local knowledge should not be an excuse to avoid enforcement, but it can be a major aid in finding the right bottom-up approach.

A GOAL TO PRIVATIZE

Conservative policymakers regularly operate with the presumption that private entities are almost always more efficient than the government. When applicable, conservative

10. Ryan Alexander, "TCS Comments to USDA on New Income Entitlement Programs," Taxpayers for Common Sense, Aug. 28, 2014. <http://www.taxpayer.net/library/article/tcs-comments-to-usda-on-new-income-entitlement-programs>

11. <http://www.taxpayer.net/library/article/tcs-comments-to-usda-on-new-income-entitlement-programs>

12. Keith Wiebe and Noel Gollehon. "Agricultural Resources and Environmental Indicators, 2006 edition," U.S. Department of Agriculture, July 2006. <http://www.ers.usda.gov/media/871561/arei6-3.pdf>

13. Ryan Alexander, "TCS Comments to USDA on New Income Entitlement Programs," Taxpayers for Common Sense, Aug. 28, 2014. <http://www.taxpayer.net/library/article/tcs-comments-to-usda-on-new-income-entitlement-programs>

14. Craig Cox and Soren Rundquist, "Going, Going, Gone! Millions of Acres of Wetlands and Fragile Land Go Under the Plow," Environmental Working Group, July 23, 2013. <http://www.ewg.org/research/going-going-gone>

policymakers look for ways to move programs out from under the umbrella of government action. As such, the federal crop insurance program and conservation compliance measures should be administered with an eye toward privatization.

Reconnecting conservation compliance to crop insurance is a crucial first step toward the privatization of the entire program. If properly implemented, this market-based reform will make the current program smaller and return the crop insurance market to a system that reflects the free market. Relinking this relationship can limit the moral hazard the federal crop insurance program has created, potentially setting the stage for full privatization.

Establishing this accountability mechanism goes a long way toward replicating the underwriting and rating processes private insurers already use. No one would suggest that reattaching the conservation compliance to crop insurance would immediately result in privatization, but it is an essential first step toward that goal.

CONCLUSION

Relinking conservation compliance requirements to access to federal crop insurance subsidies shows great promise to restore accountability and preserve sensitive land. Taxpayers should not subsidize the conversion of sensitive wetlands and prairies to crop production. Proper enforcement and monitoring of this provision should also be a priority, to ensure that taxpayers do not subsidize risky planting decisions.

Public accountability is a cornerstone of conservatism. Whether it is working to end crony capitalism on Wall Street, reducing the power of public employee unions, eliminating earmarks or increasing oversight of government contractors, conservatives traditionally have made it a top priority to eliminate examples of waste, fraud and abuse that hurt taxpayers. Conservative lawmakers should not exempt agriculture policy from that rubric.

ABOUT THE AUTHOR

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Immediately before joining R Street, Nathan served as the legislative and coalitions associate for GenOpp, a D.C.-based millennial advocacy organization. In this role, Nathan worked regularly with congressional leaders and staff on issues of particular importance to young Americans. He also managed GenOpp's "Free the Brews" project, a nationwide campaign highlighting the tax and regulatory barriers facing small microbreweries.

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