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**WORKING PAPER: Conservation in the
113th Congress**

By Lori Sanders

With no major storm events and few environmental catastrophes in the United States in 2013 or thus far in 2014, it's been easy for policymakers to lose a sense of urgency for legislation that protects America's resources against the threats of hurricanes, environmental degradation and climate change. Indeed, last year served as a reminder that the doomsday threats from environmentalists are sometimes overblown, and that costly environmental protection programs should be weighed carefully against alternate uses for scarce taxpayer resources, particularly in rough economic times.

But not all pro-environmental legislation is costly, and in fact, some of the best environmental protections Congress could support would save money. The reason is simple – many federal programs currently stimulate environmental destruction by subsidizing development in risky and environmentally sensitive areas. Whether it's subsidies to farm on marginal lands or to build in flood plains, the federal government

does more than its fair share of environmental damage through the tacit approval subsidies provide to farmers, homeowners and business owners seeking to live and work in areas best left undeveloped.

In an age of tough budgets, sequester deals, and government shutdowns, finding savings by reducing harmful subsidies should be an appealing path. But on that front, the 113th Congress has been a failure. Only one bill that includes these types of protection has made it through to the president's desk, and numerous attempts were made to undo other landmark bills that did realize savings from conservation. Three notable policies have come under attack – first, conservation compliance in the 2013 Farm Bill; second, the Coastal Barrier Resources Act; and third, reforms to the National Flood Insurance Program passed as part of the Biggert-Waters Flood Insurance Reform and Modernization Act of 2012.

Conservation Compliance

Ever since the first Farm Bill in 1933, the myriad supports for agricultural producers have encouraged expanded production, causing countless acres to be plowed under, particularly to plant the most highly subsidized row crops such as corn. As a result, Congress created conservation

compliance requirements in the early 1980s, mandating that farmers who wish to receive federal subsidies must demonstrate basic conservation techniques before they can break in risk-prone land.

Conservation compliance requirements apply to two types of lands: wetlands and "highly erodible" lands, a term that generally applies to prairies. Wetlands are categorized as lands that are composed primarily of wet soil that supports wetland crops, while highly erodible grasslands are designated based on an erodibility index. The U.S. Agriculture Department helps provide a wetland or highly erodible land designation. For wetlands, producers cannot plant crops on converted wetlands (with some exceptions) or convert new wetlands to croplands. For highly erodible lands, producers must put a conservation plan in place to reduce soil erosion.

Originally, federal crop insurance subsidies required conservation compliance, but the two programs were detached in 1996 in order to expand crop insurance participation. Conservation compliance was linked to the new direct payments program instead, leaving some farmers free to farm how and where they want on the taxpayer's dime, without regard to the environmental consequences. It has been estimated that, since its inception in 1985, conservation compliance has saved \$1 billion – not a large savings, but helpful nonetheless.

It's worth considering, however, the secondary costs associated with the degradation of wetlands and highly erodible

lands. Not only do draining wetlands and plowing grasslands damage important wildlife habitats, but both practices also harm America's water supply by destroying wetland buffers that keep farm chemicals out of water systems, increasing water rates for local payers. According to the Environmental Working Group, from 2008 to 2012, 1.9 million acres of wetlands were drained, and 5.3 million acres of highly erodible grasslands went under the plow. More than 50 percent of America's waterfowl rely on the wetlands under conservation, and a number of species on the verge of Endangered Species Act designation reside on the highly erodible grasslands.

Destroying these environments hurts local hunting economies. Importantly, once these lands have been destroyed, it is incredibly hard to get the land back. According to the Environmental Working Group – in their 2013 report "Going, Going, Gone" – conservation compliance requirements attached to direct payments have reduced this destruction by 40 percent, painting a stark picture of what would happen if conservation compliance were to be completely detached from farm subsidies.

The direct payments program, which was rife with negative unintended consequences, was finally ended in both the House and Senate draft 2013 Farm Bills. A beefed up crop insurance program fills the void for many farmers who otherwise would have lost federal support, making crop insurance subsidies the primary safety net for American farmers and agribusinesses.

This change made reattaching conservation compliance to crop insurance more important than ever. Unfortunately, only the Senate draft included the provision. Though an effort was made to amend the House bill to require conservation compliance, the amendment was withdrawn on the House floor due to last-minute politicking. Even though the House amendment enjoyed broad bipartisan support, opponents of the measure mobilized an intense political fight, eventually forcing both of the amendment's bipartisan sponsors to back down.

The two main arguments against conservation compliance, in the end, don't hold up to scrutiny. First, conservation compliance's detractors claim that requiring farmers to follow conservation steps on their land equates to a violation of property rights. The federal government, they hold, has no right to tell farmers where they can and cannot farm or what steps must be taken to farm on certain lands. But this accusation misses the mark – conservation compliance does not force a farmer to follow conservation techniques on his land. Rather, it stipulates what must be done in order for a farmer to receive federal subsidies. If a farmer or agribusiness wishes to plant without taking the necessary steps to conserve, it is perfectly legal, but subsidies will be withheld.

Given the track record for wetland and grassland devastation by those who receive farm subsidies, requiring conservation compliance helps keep federal dollars from subsidizing destructive activity. Without

conservation compliance, taxpayer dollars will continue to pay for environmental destruction that taxpayers will then be forced to pay yet more to clean up. Rather than violating property rights, conservation compliance does what all taxpayers want – ensures that tax dollars are spent wisely.

The second challenge levied against conservation compliance involves crop insurance, specifically – namely, opponents claim that requiring conservation compliance would cause larger farms to drop out of the Federal Crop Insurance Program, watering down the risk pool for everyone else and driving up premiums. However, recent analysis by economist Bruce Babcock of Iowa State University determined that even if far more stringent requirements than conservation compliance were applied to crop insurance, the effect on participation would be minimal.

Applying conservation requirements to crop insurance puts a reasonable brake on what is ultimately an incredibly generous subsidy program, in which taxpayers pick up 62 percent of all premium costs as well as covering large losses and paying administrative costs for insurance companies. When weighing any potential threat to the crop insurance pool, Congress should keep in mind the very real land loss that has occurred already and decide whether the purpose of the program is to subsidize all farming no matter the cost, or to ensure an adequate safety net is available to farmers who wish to participate.

Despite the setback in the House, the final Farm Bill package included conservation compliance. However, the haggling necessary for this one minimal change to crop insurance is disheartening.

With many farmers already in compliance and the very real costs associated with removing compliance requirements, both parties should have jumped at the opportunity to save money and protect the nation's environmental resources. Yet despite everything, special interests came dangerously close to winning the fight, setting a dangerous precedent for the other environmental fights to come.

Coastal Development

Despite the small and hard-fought victory restricting careless agricultural development on America's interior plains and wetlands, the fight against subsidized business and housing development on the country's coastlines is far from over. Over the past 30 years, the most successful legislative tool for ending reckless coastal development has been the Coastal Barrier Resources Act (CBRA), a 1982 law designed to end federal subsidies to development in sensitive coastal regions. Alas, every year, the CBRA comes under fresh attack as congressmen perpetually seek to exempt parts of their district from the law.

Currently, 3.1 million acres of coastline are part of the Coastal Barrier Resources System (CBRS), which is overseen by a division of the U.S. Fish and Wildlife Services (FWS). The system includes 21 states and two

territories. Property that lies within the CBRS is unable to receive a number of federal subsidies, including access to the National Flood Insurance Program (NFIP) and money to renourish beaches after storm events. The NFIP and beach renourishment programs provide incentives for developers to build ever closer to the coast. This development has the effect of eroding important storm buffers, creating costly liabilities for FEMA and other agencies when communities are hit by extreme weather events and putting lives in harm's way.

Much like the conservation compliance program, the CBRA in no way prohibits individuals, local communities or states from choosing to develop land with their own money. The CBRA operates under the theory that, if forced to internalize the costs associated with developing coastal areas, few would choose to do so. This disincentive thus helps to protect lives and keep coastal barriers intact. For the most part, this presumption has been borne out. Most CBRS zones remain in their natural state, limiting the damage from hurricanes and other storms. Yet the zones have only been expanded once since passage, in 1990, when an additional 1.9 million acres of "otherwise protected areas" – mostly, national, state and local areas that include coastal barriers and that already were held for conservation or recreation – were added.

Although it is hard to estimate, research has concluded the creation of the CBRS has saved \$1.3 billion over the past three decades. Expanding the CBRS again would

reap higher savings down the road, but adding major amounts of acreage would require an act of Congress, and no congressmen currently are clamoring to have parts of their district become ineligible for federal subsidies. Most of the changes to CBRS, then, come from adjustments to map lines as FWS tinkers at the margins to ensure borders are adjusted as coastlines naturally change.

Beyond the difficulty of expanding the CBRS map, the biggest problem with the system right now is the maps themselves. When the zones were established, mapping technology was worlds behind today's capabilities. When looking at a CBRS map, the lines on the edge can represent more than 100 feet, making it incredibly difficult for property owners at these borders to know if they are eligible for subsidies. This leads to numerous challenges each year, as property owners contest their designations. In some tragic cases, an owner believes he or she is eligible for federal flood insurance and other programs only to find out post-disaster that their land is technically in the CBRS.

The CBRS division of FWS is incredibly small. Thus, claims have begun to backlog, with some property owners waiting years for resolution to a claim. This type of bureaucratic morass undoubtedly breeds ill-will against the law, and in some cases, encourages communities to ask their congressman to seek a wholesale exemption for large swaths of land. In 2006, Congress authorized FWS to update the maps, but then failed to appropriate any funding to

cover the costs, which are estimated at between \$12 million and \$15 million. Currently, FWS attempts to update the maps as claims are handled, but with 857 separate zones in the CBRS, this strategy is less than optimal.

The benefits of remapping should be obvious. The costs of the backlog to property owners unsure of what to do with their land, as well as FWS' staff time as claims pile up, quickly become significant. In addition, when legislation is introduced to remove areas, FWS staff must prepare to answer the legislation, often through testimony, explaining why an area should or should not become exempt. This further delays answers to individual claims. Without new maps, this cycle will continue, and the problem will never be resolved.

In the 113th Congress, nine bills have been introduced to remove parts of Florida, Rhode Island and North Carolina from the CBRS. Several of these bills seek to remove entire plots from the CBRS rather than simply adjusting borders. And despite their claims of dedication to fiscal responsibility, four Republican legislators introduced seven of the bills.

On April 8, the Natural Resource Committee's Subcommittee on Fisheries, Wildlife, Oceans, and Insular Areas held a hearing to examine the legislation, and each bill still sits in committee. But despite the fact that the bills aren't moving forward, trying to shrink the CBRS is the exact opposite of the direction Congress should take. Opening up large areas to federal

subsidy encourages environmentally destructive behavior and puts lives at risk.

National Flood Insurance Program

Though Congress has for now held off on removing some parts of the CBRIS, it regrettably did go forward with gutting one of the most important pieces of legislation aimed at protecting America's coastline, the Biggert-Waters Flood Insurance Reform and Modernization Act of 2012. Biggert-Waters marked a major breakthrough in the way flood insurance is offered, encouraging smarter living and business arrangements in floodplains while putting the program on the path to fiscal sustainability. Unfortunately, the act's success was short-lived.

The National Flood Insurance Program (NFIP) was established in 1968 so that property owners with holdings in floodplains could purchase insurance against flood damage from the federal government. To participate in the program, communities must agree to enforce floodplain management standards to mitigate against damages. The NFIP then partners with private insurers, who market and service policies bought by individual property owners, while the NFIP itself covers all damages.

Congress initially meant for NFIP to be self-sustaining, but the program is currently \$25 billion in debt to the Treasury, due to high levels of payouts and inadequate premium payments on the part of property holders. Premium rates are set according to the riskiness of the area, but nearly a fifth of all

participants are undercharged relative to the amount of risk their properties face.

While Treasury loans money to the program to cover the losses, making the program "costless" for the taxpayer, in truth the money must be repaid somehow, and at the end of the day must come from the taxpayer.

Infuriatingly, a disproportionate number of properties served by the NFIP are among the highest in value. Biggert-Waters looked to bring fiscal sanity to the program by phasing out "subsidies" for business properties, vacation home and properties that have suffered severe repetitive losses, and over a longer term, phasing out all other subsidies when a property is sold.

NFIP's debt isn't the programs most pressing problem, however. By offering below-market rates for flood insurance, the federal government has encouraged coastal development in risky areas and kept families and businesses in harm's way. If anything, the federal government should be helping individuals move from dangerous areas, particularly for the subset of properties that experience repetitive losses. Instead, local communities have allowed development to flourish, and those living in floodplains have incentive to stay rather than relocate.

After a series of large storm events and exploding debt for NFIP, Congress finally acted. Biggert-Waters represented a compromise, keeping NFIP in place but raising premiums to market rates either upon the sale of the property or after a gradual phase-in. Additionally, Biggert-Waters

required new flood mapping to ensure the rates charged truly reflect the risk of the property, given that floodplains change over time. The goal was two-fold: first, to place the program on stable fiscal footing and second, to encourage current and future property owners to fully internalize the costs associated with floodplain properties as they make decisions regarding living arrangements. The reform gained broad bipartisan support, passing on a vote of 402-18, and was championed by both environmental groups and fiscally conservative activists as a step in the right direction.

By 2014, these changes proved too much to bear. Despite the reformers' admirable goals, when the increased premiums started coming due, congressmen found themselves unable to ignore their constituents' calls for continued subsidy. In what serves as a textbook example of the public choice problem of "concentrated benefits and diffuse costs," Congress stepped in with the Homeowner Flood Insurance Affordability Act of 2014.

The bill unraveled just about all of the important changes from Biggert-Waters. First, the automatic rate increase associated with home sales was abolished, including a retroactive change for the homes sold between Biggert-Waters and the new act. Second, it increased the subsidies going to older homes rather than having them move toward market rates and capped how quickly rising rates can increase. Third, and perhaps most regrettably, the bill stripped FEMA of its mandate to update the flood maps.

Without updated maps, NFIP can never move customers to true risk-based rates, and those wishing to purchase homes in floodplains will never be able to make informed decisions about the risk they are putting on their families. Ironically, it was the Republican-led House that incorporated this piece into the bill, cementing subsidies for their constituents while ensuring continued fiscal insolvency for the program.

The fight over the changes to Biggert-Waters was swift and angry. Partly due to ineffective messaging on the part of FEMA, and partly due to a misinformation campaign on the part of those in favor of higher NFIP subsidies, homeowners with NFIP policies received wildly inaccurate information about what to expect in flood insurance premium increases. Local papers reported increases of \$25,000 or more, and many feared receiving bills for tens of thousands of dollars, despite the fact that most NFIP properties pay less than \$5,000. Despite the fact that a flood insurance premium bill for \$25,000 would mean a home is completely destroyed every ten years, homeowners in floodplains began to call their congressmen in earnest, pleading for relief.

The environmental and conservative groups that previously supported Biggert-Waters passage campaigned vociferously against the new bill, offering many alternatives to gutting the reforms that would address any true affordability issues. But Congress didn't listen. Rather than seek out a compromise to both protect the NFIP's balance sheet and help those truly in need, congressmen of both parties indiscriminately rolled back

reform, securing subsidies for many of America's most expensive homes and leaving the taxpayer on the hook.

In the end, however, this vote will come back to haunt many who took it, particularly those on the right. The NFIP is incredibly close to its borrowing limit, and will be unable to make payments in the case of another large storm. With 2014's hurricane season about to begin June 1, many congressman will likely regret making these changes when the bill comes due and the NFIP is seeking to borrow more from the taxpayers to repay thousands of citizens whose lives were destroyed by living in a storm's path. The politics of reform may be hard for conservative congressmen with NFIP properties in their districts, but voting against storm relief is even harder. The politically easy vote of today will undoubtedly put many in an incredibly tough spot soon enough.

Conclusion

From Congress' treatment of the three programs discussed above, it's clear to see the legislative branch lacks dedication to find savings or eliminate federal spending programs that contribute to environmental degradation. While the effort to incorporate conservation compliance into the Farm Bill ultimately was successful, the attention paid to the naysayers and the failure to hold the line on Biggert-Waters implies Congress is still too interested in pleasing special interests to support sound legislation.

This is unfortunate, both for the nation's pocketbook and for the environment. The long-term savings associated with supporting these environmentally friendly efforts are incredibly important, as are the lives that are saved by encouraging smarter behavior and more effective environmental stewardship. In this age of increased partisanship, Congress may be unable to pass anything controversial, but saving money while saving the environment should have value both for the reddest members of the tea party and the bluest democrats. And for those more concerned about the effects on the vulnerable, it's important to remember that it's that very population which stands to suffer most when storms come through or water prices rise after wetlands degradation.

Perhaps the next time someone is stuck on a roof above a flood or one of the nation's waterfowl becomes extinct, Congress will finally pay attention to the way federal policy is costing lives.

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