STOP THE PLANTING! THE 1985 FARM BILL, CONSERVATION COMPLIANCE, AND AMERICA'S AGRICULTURAL CONSERVATION FAILURE

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"[T]oday's necessity for public action is the outgrowth of yesterday's failure to look more carefully to our land."[1]

I. INTRODUCTION

Riparian planting has disastrous effects on landowners, ecosystems, and economics.[2] Due to the amount of pesticide and fertilizer used in today's agricultural world, agricultural drainage is one of the primary sources of water pollution in the United States.[3] Aside from the apparent ecological harm created by fertilizer and pesticide runoff into adjacent rivers and streams, riparian planting also has dramatic erosion implications. In the United States, approximately 1.73 bil-

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1. Jess Phelps, Note, *A Vision of the New Deal Unfulfilled? Soil and Water Conservation Districts and Land Use Regulation*, 11 DRAKE J. AGRIC. L. 353, 380 (2006).

2. *See* John H. Davidson, *Factory Fields: Agricultural Practices, Polluted Water and Hypoxic Oceans*, 9 GREAT PLAINS NAT. RESOURCES J. 1, 11 (2004).

3. *Id.*

lion tons of sediment is lost from farmland each year.[4] On average, a half foot of soil is lost annually as a result of riverbank erosion.[5] Damage from such erosion has had profound economic consequences—amounting to nearly $1.1 billion in damages over the past decade to infrastructure and farmland in the Midwest alone.[6] While natural erosion from flooding is difficult to prevent, the land's erodibility is heightened when farmers plant their crops "from river bank to river bank" without any buffer between the crop and the waterway.[7]

When topsoil sediment runoff is not filtered by a riparian buffer—a strip of land between a waterway and cropland—loose sediment is allowed easy access to the waterway.[8] Shallow root systems of farm crops are also unable to properly hold soil together, resulting in an increased chance that soil is released from the riverbank into the waterway.[9] The subsequent shrinking or blockage of waterways by this sediment buildup can contribute to catastrophic flooding—such as the flooding seen in the Midwest during 2008.[10] The increased flood propensity—resulting from rivers' diminished water capacity—in turn increases the probability and quantity of future erosion, and fosters an extremely problematic erosion cycle.[11]

Part II of this Note will explain the current system of federal and state conservation programs, particularly in regard to the prevention of soil erosion. Part III of this Note will then address the effectiveness of these soil erosion systems in light of the current and prospective increase in demand on farm commodities. Part IV will address possible solutions to the erosion problem, and whether an adequate answer even exists.

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4. NAT'L RES. CONSERVATION SERV., USDA, 2007 NATIONAL RESOURCES INVENTORY: SOIL EROSION ON CROPLAND 1–2 (2010), http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs143_012269.pdf.

5. Fabienne Bertrand, Fluvial Erosion Measurements of Streambank Using Photo-Electronic Erosion Pins (PEEP) 1 (July 2010) (unpublished M.S. thesis, University of Iowa), *available at* http://ir.uiowa.edu/cgi/viewcontent.cgi?article=1827&context=etd (citing David P. Thoma et al., *Airborne Laser Scanning for Riverbank Erosion Assessment*, 95 REMOTE SENSING OF ENV'T 493 (2005)).

6. THANOS PAPANICOLAOU ET AL., THE EFFECTS OF HEADCUT AND KNICKPOINT PROPAGATION ON BRIDGES IN IOWA 1 (2008).

7. *See* Susan Heathcote, Op-Ed., *Stop Planting Corn River Bank to River Bank*, DES MOINES REG., Aug. 29, 2010, at 4OP.

8. *Id.*

9. G. WALL ET AL., ONTARIO MINISTRY OF AGRICULTURE FOOD AND RURAL AFFAIRS, FACT SHEET: SOIL EROSION—CAUSES AND EFFECTS (1987), *available at* http://www.omafra.gov.on.ca/english/engineer/facts/87-040.htm.

10. *See generally* Stephen A. Nelson, *River Systems & Causes of Flooding*, TULANE U., http://www.tulane.edu/~sanelson/geol204/riversystems.htm (last updated Nov. 3, 2011) (professor's unpublished lecture notes explaining river systems, river types, and causes of flooding).

11. *See id.*

II. THE FARM BILL OF 1985

Historically, the decision to practice soil conservation on farmland has been voluntary.[12] Although the federal government has influenced agricultural conservation practices since the 1930s, this influence was primarily through externalities of governmental policies that were focused elsewhere—such as stabilizing commodity prices by providing incentives for increasing or decreasing acreage planted to crops.[13] Specifically, the first "federally backed" conservation program is often recognized as being passed in the mid-1930s.[14] These conservation subsidies—created as part of the New Deal—were passed to protect the land from erosion,[15] but were practically used as a market supply vehicle: permitting the Government to purchase commodities when they failed to meet the commodity's politically determined "target price."[16] So, while this was a law focused on attacking conservation issues—it did so by enabling the farmer to take land out of production (through subsidies) rather than requiring the farmer to implement his own conservation practice.[17]

In the 1970s, USDA Secretary of Agriculture Earl Butz saw these market regulation tactics as an infringement on the rights of the American farmer, despite their voluntary nature.[18] His solution was to urge every American farmer to plant "fence row to fence row," whether or not they were operating below the target price.[19] The immediate result of this practice was that farmers chose to replant during times of high demand rather than allow the federal government to buyout their land use.[20] Of course, with the subsidy system no longer being used, the conservation externality was eliminated.

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12. Davidson, *supra* note 2, at 26.

13. *See id.*

14. Soil Conservation and Domestic Allotment Act, Pub. L. No. 74-46, 49 Stat. 163 (1935); *see also* William S. Eubanks, II, *A Rotten System: Subsidizing Environmental Degradation and Poor Public Health with Our Nation's Tax Dollars*, 28 STAN. ENVTL. L.J. 213, 240 (2009) (citing Zachary Cain & Stephen Lovejoy, *History and Outlook for Farm Bill Conservation Programs*, CHOICES, 4th Quarter 2004, *available at* http://www.choicesmagazine.org/2004-4/policy/2004-4-09.htm).

15. Soil Conservation and Domestic Allotment Act, Pub. L. No. 74-46, 49 Stat. 163 (1935); Eubanks, *supra* note 14.

16. Davidson, *supra* note 2, at 26; Tom Philpott, *The Butz Stops Here: A Reflection on the Lasting Legacy of 1970s USDA Secretary Earl Butz*, GRIST.ORG, Feb. 7, 2008, http://www.grist.org/article/the-butz-stops-here (explaining the pre-Farm Bill system as providing subsidies when prices begin to fall and eliminating them when prices rise—discouraging and encouraging planting respectively).

17. Davidson, *supra* note 2, at 26.

18. *See* Philpott, *supra* note 16.

19. *Id.*; *see also* Eubanks, *supra* note 14, at 241–42.

20. *See* Philpott, *supra* note 16.

For good or ill, the 1970s "fence row to fence row" policies certainly highlighted the flaw in relying upon the New Deal's agricultural economics policy to also produce desired conservation practices. It was with this flaw in mind that the legislature passed Title XII of the Food Security Act of 1985 (Farm Bill), which increased government involvement in the conservation practices of landowners.[21] Particularly, the Title XII provisions established environmental agriculture programs that made conservation practices an eligibility requirement for the receipt of federal farm benefits.[22]

In the first three Title XII programs, Congress took a marked step away from the voluntary, incentive-based conservation policies of the New Deal by imposing financial penalties—in the form of subsidy revocation—on farmers who fail to meet minimum standards of eco-conduct.[23] The first Title XII conservation creation—often regarded as the "Conservation Compliance" program—requires a farmer to adhere to a soil conservation plan in order to plant commodities on "highly erodible land."[24] "Sodbuster" was the second Title XII mandate,[25] imposing the same subsidy restrictions for failing to "'implement a conservation plan before new [highly erodible land] could be cultivated for the first time.'"[26] Third was the "Swampbuster" provision—which established that farmers who convert wetlands to cropland, without creating adequate soil conserving safeguards, ineligible for the same benefits.[27]

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21. *See* Food Security Act of 1985, Pub L. No. 99-198, §§ 1211–1212, 1221–1222, 1231, 99 Stat. 1504, 1506–1509 (codified as amended in scattered sections of 16 U.S.C.) (focusing particularly on Section 1211, which provides for ineligibility of certain government programs if an agricultural commodity is produced on highly erodible land); *see also* Davidson, *supra* note 2, at 26 (2004) (summarizing the establishment of the Conservation Reserve Program through the 1985 Farm Bill).

22. Food Security Act of 1985 §§ 1211–1212, 1221–1222, 1231; *see also* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-03-418, AGRICULTURAL CONSERVATION: USDA NEEDS TO BETTER ENSURE PROTECTION OF HIGHLY ERODIBLE CROPLAND AND WETLANDS 1 (2003), http://www.gao.gov/new.items/d03418.pdf (explaining the link between the 1985 Farm Bill, farmer conservation activities, and eligibility for federal programs).

23. *See* Food Security Act of 1985 §§ 1211–1212 (stating that those in violation of these provisions are ineligible for price support payments, a storage facility under the Commodity Credit Corporation Charter Act, crop insurance under the Federal Crop Insurance Act, disaster payments under the Agricultural Act of 1949, and any loan from the Farmers Home Administration if the proceeds are deemed to "contribute to excessive erosion of highly erodible land").

24. Food Security Act of 1985 §§ 1211–1212 (requiring that the plan be established by either local Soil Conservation Services or the Secretary of Agriculture, and implemented by 1990).

25. Food Security Act of 1985 §§ 1211–1212.

26. Eubanks, *supra* note 14, at 242–43 (quoting Cain & Lovejoy, *supra* note 14).

27. Food Security Act of 1985 § 1221.

The final construct of the 1985 Farm Bill's Title XII was the Conservation Reserve Program (CRP).[28] Contrary to the aforementioned "subsidy-threatening" programs, the CRP is a completely voluntary program that encourages the farmer to leave a portion of his land fallow.[29] Under the CRP, landowners receive funding from the federal government as compensation for taking a portion of their "highly erodible land" out of production for the time period set forth in the conservation contract.[30] Only certain qualified landowners will be eligible for receipt of compensation under the program, however, because of funding limitations.[31] So, while the subject land must qualify as "highly erodible" to be affected by the Title XII provisions,[32] the CRP is limited to only certain "highly erodible" lands that are awarded a contract.[33] The CRP, therefore, is a contractual program that assists landowners who wish to avoid planting on land that is also subject to the first three Title XII provisions.

The Secretary of Agriculture has statutorily determined soil maps and an erodibility index (EI) from criteria for indicating "highly erodible land."[34] To qualify as "highly erodible" the total erosion on the land in question (calculated pursuant to the index) must be eight times as erodible as the "maximum annual rate of soil erosion that could occur without causing a decline in long-term productivity."[35] In other words, the EI is calculated "by dividing potential erosion . . . by the . . . rate of soil erosion . . . which long term productivity may be adversely affected."[36] This calculation is not completely determinative, however, as in certain situations on-site inspections occur to ensure proper classification as highly erodible or not.[37]

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28. Food Security Act of 1985 § 1231.

29. *See id.* § 1231(a).

30. *Id.*; *see also* Davidson, *supra* note 2, at 26.

31. *See* 7 C.F.R. § 1410.6(a) (2011); Food Security Act of 1985 § 1231(b)–(d).

32. *See* Food Security Act of 1985 §§ 1211, 1231.

33. *See* 7 C.F.R. § 1410.31 (permitting competition in the acceptability of contracts and making the "acceptance or rejection of any offer . . . at the sole discretion of the [Commodity Credit Corporation]").

34. *See* 7 C.F.R. § 12.21(a) (adopting the Universal Soil Loss Equation to determine rainfall and the Wind Erosion Equation to include in this erodibility index).

35. 7 C.F.R. § 12.21(a)–(b) (using rainfall and runoff, the soil's resistance to water erosion, and the slope length and steepness to calculate total water erosion; while using windspeed and surface soil moisture and the soil's resistance to wind erosion to calculate total wind erosion).

36. JASPER WOMACH, CONG. RESEARCH SERV., 97-905 ENR, AGRICULTURE: A GLOSSARY OF TERMS, PROGRAMS AND LAWS, 58 (2007), *available at* http://digital.library.unt.edu/ark:/67531/metacrs379/m1/1/high_res_d/97-905enr_1997Oct01.pdf.

37. 7 C.F.R. § 12.21(c) (requiring an investigation of fields with slope length and steepness values that are characteristic of highly erodible lands, such investigations are required for the final decision).

After qualifying as "highly erodible," another determination is made as to whether the land is eligible for benefits of CRP contracts afforded under Title XII.[38] In a highly competitive process, the Farm Service Agency—on behalf of the Commodity Credit Corporation[39]—provides the CRP benefits according to the land's total score on the "Environmental Benefits Index Formula" (EBI) point system.[40] The EBI evaluates the long term effect that a landowner's conservation proposal will have on the environment, allowing the applicants to be ranked according to their conservational benefits.[41] An EBI rating assigns point values to each application according to six factors: wildlife, water, soil, air, enduring benefits, and cost.[42] Of the EBI's approximate 420 points possible, the erodibility index score alone is allocated 100 points.[43] Thus, the effect planting may have on erosion, and the magnitude of that erosion's negative effect, is a dominant consideration for this EBI formula.

One of the CRP's self-defined primary goals is to protect at-risk riparian farmland from erosion.[44] Under the regulations of the Commodity Credit Corporation (CCC)—the division of the USDA that funds the CRP [45]—riparian buffer proposals are specifically addressed as being eligible for participation in the CRP.[46] In fact, under the CRP's "Continuous Sign-Up Program," farmland that is suitable for a riparian buffer, and meets minimum requirements is immediately accepted into the CRP.[47] More than likely, it has been determined the benefits of incentivizing such buffers to this extent outweigh the cost of providing cost assis-

38. 7 C.F.R. § 1410.31(b).

39. Press Release, Kent Politsch, Farm Serv. Agency, USDA, USDA Announces Conservation Reserve Program General Sign-Up (July 26, 2010), *available at* http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=ner&newstype=newsrel&type=detail&item=nr_20100726_rel_0000.html.

40. 7 C.F.R. § 1410.31; *see also* FARM SERV. AGENCY, USDA, FACT SHEET: CONSERVATION RESERVE PROGRAM SIGN-UP 41 ENVIRONMENTAL BENEFITS INDEX (EBI) (2011), http://www.fsa.usda.gov/Internet/FSA_File/crp_41_ebi.pdf [herinafter FSA FACTSHEET].

41. *See* FSA FACTSHEET, *supra* note 40, at 1.

42. 7 C.F.R. 1410.31(b); *see also* FSA FACTSHEET, *supra* note 40, at 1.

43. FSA FACTSHEET, *supra* note 40, at 1 (the total point number is approximate because the cost consideration is only evaluated after the application is processed and does not give a definite point allocation).

44. *See id.*

45. Food Security Act of 1985, Pub. L. No. 99-198, § 1241, 99 Stat. 1504, 1514 (codified as amended in scattered sections of 26 U.S.C.); 7 C.F.R. § 1410.1.

46. *See* 7 C.F.R. § 1410.6(a)(2), (b).

47. *See id.* §§ 1410.30, 1410.31(b) (requiring, with exceptions, that the land be produced upon within the last year and that the land must be suitable for use as a riparian buffer); Politsch, *supra* note 39.

tance in every case, particularly because their creation fosters a marked decrease in sediment runoff and erosion.[48]

Since 1985, there have been a number of subsequent Farm Bills passed, ameliorating provisions of the original bill. The focus of these amendments, however, was to implement small changes in the Title XII programs while leaving them generally the same.[49]

III. SHORTCOMINGS OF THE FARM BILL POLICIES

The conservation provisions of the 1985 Farm Bill continue to affect a substantial amount of United States cropland with approximately 31.2 million acres currently enrolled in the CRP.[50] Although there has been marked improvement in the area of soil conservation since the passing of the Farm Bill, such progress has stagnated, with many areas remaining in conservational turmoil.

A. *Mandatory Provisions*

There are currently three USDA agencies that administer these compliance programs.[51] Title XII's mandatory provisions are currently enforced through the Natural Resources Conservation Service (NRCS), a division of the USDA that is separate from both the Farm Service Agency (FSA) and the CCC.[52] First, the NRCS randomly selects farm sites and relays the selections to its local offices.[53] The local offices send officials to these sites to determine whether the farm owner is implementing conservation practices that are congruent with the

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48. *See id.* § 1410.6 (providing the requirements for eligible land in the CRP program).

49. *See* ECON. RESEARCH SERV., USDA, 2008 FARM BILL SIDE-BY-SIDE, (2008), http://www.ers.usda.gov/FarmBill/2008/Titles/TitleIIConservation.htm; *see also* ECON. RESEARCH SERV., USDA, 2002 FARM BILL: PROVISIONS AND ECONOMIC IMPLICATIONS (2002), *available at* http://www.ers.usda.gov/Publications/AP/AP022/ (then click "Title II: Conservation"); ECON. RESEARCH SERV., USDA, 1996 FAIR ACT FRAMES FARM POLICY FOR 7 YEARS 4 (1996), http://www.ers.usda.gov/Publications/AgOutlook/AOSupp.pdf.

50. TADLOCK COWEN, CONG. RESEARCH SERV., RS 21613, CONSERVATION RESERVE PROGRAM: STATUS AND CURRENT ISSUES 2 (2010).

51. These offices are the: Natural Resources Conservation Service (NRCS), Farm Service Agency (FSA), and the Commodity Credit Corporation (CCC). *See* 7 C.F.R. § 1410.1(a); NAT. RES. CONSERVATION SERV., USDA, USING FARM BILL PROGRAMS FOR POLLINATOR CONSERVATION 2–3 (2008) (providing a summary of USDA agencies that administer conservation programs).

52. U.S. GEN. ACCOUNTABILITY OFFICE, GAO-03-418, *supra* note 22, at 2.

53. *See id.*

Title XII regulations.[54] One of these practices, for example, is the installation of a "riparian forest buffer" to be placed "adjacent to streams, lakes, ponds, and wetlands . . . [to] intercept . . . materials in surface runoff . . . and increase the resistance of streambanks and shorelines to erosion caused by high water flows . . . ."[55] If, during these "compliance reviews," the NRCS official finds a lack of conformity to federal requirements, the official can either waive the violation—granting one year to correct the violation or face penalties —or refer the owner to the local FSA office.[56] At this level, local FSA officials are to impose penalties unless an appeal is filed; at which time the FSA can then choose whether to enforce or waive the violation.[57] Upon this decision, the local FSA offices then report the results to the FSA—particularly who is ineligible for funding because of Title XII compliance violations.[58] Then, the FSA acts through the CCC to revoke the recommended subsidies for identified farms.[59]

It is apparent, from these investigations' exceedingly complicated procedural structure, that these organizations have to not only be *intra*departmentally efficient, but they also must be *inter*departmentally efficient.[60] The desire for statutory conformity and success, under the present system, requires a high level of intradepartmental efficiency to ensure that each state's local offices fulfill the guidelines set by the federal agency and smooth communication is maintained between the central office and these satellites.[61] On top of this, these different agencies must, at the pinnacle of organization, provide the best environment in order for their work to be relied upon by separate USDA departments.[62] These requirements evince the first problem with the current compliance program: its complexity.

During a GAO government oversight investigation, it was discovered this process does little of what it was created to accomplish.[63] First—concerning the surveys completed by the NRCS offices themselves—the GAO determined that approximately half of the field offices admitted they do not implement "one

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54. *Id.*

55. NAT. RES. CONSERVATION SERV., USDA, RIPARIAN FOREST BUFFER: CONSERVATION PRACTICE JOB SHEET 1 (1997), http://www.unl.edu/nac/jobsheets/ripjob.pdf (describing the benefits and requirements of a proper riparian forest buffer).

56. U.S. GEN. ACCOUNTABILITY OFFICE, GAO-03-418, *supra* note 22, at 2.

57. *Id.* at 2–3.

58. *Id.*

59. *See* Food Security Act of 1985, Pub. L. No. 99-198, § 1241, 99 Stat. 1504, 1514 (codified as amended in scattered sections of 26 U.S.C.).

60. *See* U.S. GEN. ACCOUNTABILITY OFFICE, GAO-03-418, *supra* note 22, at 2.

61. *See id.* at 2.

62. *See id.*

63. *Id.*

or more aspects of the conservation provisions" required by the 1985 Farm Bill.[64] Second, as the tract selection process emphasizes "tracts with little or no potential for noncompliance" lack an efficient automated system to provide tract review, and does not incorporate sufficient review of field office compliance reports.[65] The USDA Inspector General has recognized that the NRCS's Title XII administration policies are deficient and in need of substantial improvement.[66] Due to these administrative limitations, the NRCS is unable to adequately conduct compliance reviews and its prior compliance determinations are unreliable.[67]

Shifting to the FSA, the report showed that from 1993 to 2001, over sixty percent of the NRCS's noncompliance referrals were waived outright by the FSA.[68] During this timeframe, $40.4 million of $59.6 million in subsidies "that were to be denied because of compliance violations . . . w[ere] reinstated . . ."[69] Yet, these waivers often seem arbitrary and lack justification for their issuance.[70]

The current compliance procedure is intended to be a complex machine, with each agency's success dependent on the success of the others.[71] Pairing this dependent complex structure with the inherently demanding nature of making conservation compliance determinations leaves enforcement of Title XII in a precarious position. If a department does not have control of its internal affairs, how can it be expected to adequately effectuate its responsibilities? Furthermore, how can two departments cooperate when neither has a complete grasp on their own operative limitations? As has been established, these limitations have proven extremely burdensome for the enforcement agencies, and the American taxpayer.

During this GAO investigation, findings also indicated that NRCS management has "de-emphasized the conservation compliance provisions . . . shift[ing] its emphasis to providing technical assistance and to enrolling farmers in incentive-based conservation programs that provide cost-share and other financial assistance."[72] States, whose offices choose this flavor of Title XII implementation, are not actually enforcing Title XII's compliance programs. In-

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64. *Id.* at 4 (citing failure to check for wetlands violations, revisit farms that are granted a waiver, and find a violation for failing to implement an important practice).

65. *Id.* at 27.

66. *Id.* at 5–6.

67. *Id.* at 5.

68. *Id.* at 35 (citing waiver in 4948 of a total 8118 cases as grounds for this statistic).

69. *Id.* at 36.

70. *See id.* at 35 (citing interviews, record reviews, and an example where a farmer was given eight waivers by the FSA despite having sixteen violations waived at the NRCS level over the past two years).

71. *See generally id.*

72. *Id.* at 24.

stead, they are experiencing a regression to the implementation practices of the 1930s program; subjecting their citizens to the same limitations that were demonstrated by the Butz-era planting practices.[73] This practice highlights another problem with the current system, which draws partly on the organizational structure of the program: its mutability.

Title XII's compliance provisions were created with the intent to establish and enforce consequences for farmers that harm the environment.[74] In a federally constructed punishment system, it is difficult to justify disparate enforcement practices from state to state or region to region. The compliance provisions, in particular, eliminate federal subsidies based on allegedly objective standards.[75] Experiencing the aforementioned problems, however, calls the adequacy of this punishment into serious question. For example, a farmer's conservation practices could easily result in subsidy revocation in one state—one that enforces conservation compliance rigidly—but be exonerated in another state that "de-emphasizes" such provisions.[76] Because taxpayer monies are dispersed through subsidies, which are intended to be contingent upon meeting federal requirements set to protect those taxpayers, compliance provisions for these practices should not be interpreted differently from state to state.[77] Furthermore, it is a miscarriage of justice to permit *federal* violations to be enforced against a farmer in one state, which would be waived had the farmer lived in another, more lenient state.[78]

The final drawback is the adequacy of punishment imposed on farmers that are found in violation of these requirements. Since the proof of this inadequacy is partly contained in the discussion on the CRP, it will be more fully explained later.

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73. *See generally id.*

74. *See* Cain & Lovejoy, *supra* note 14, at 39–40 (describing the compliance provisions as establishing high penalties to accomplish conservation for conservation's sake, rather than productivity increases or other economic benefits).

75. *See* Food Security Act of 1985, Pub. L. No. 99-198, §§ 1211-1212, 99 Stat. 1404, 1506–07; Food Security Act of 1985, Pub. L. No. 99-198, § 1241, 99 Stat. 1504, 1514 (codified as amended in scattered sections of 26 U.S.C.).

76. *See* U.S. GOV'T. ACCOUNTABILITY OFFICE, GAO-03-418, *supra* note 22, at 16–17.

77. *See id.*

78. *See, e.g.*, *id.* at 16 (illustrating that, from 1993–2001, when NRCS Field Offices found a failure to implement an important conservation practice; Nebraska offices issued violations over ninety-five percent of the time, while Maryland offices failed to do so nearly forty percent of the time; the nationwide average hovers near a mere eighty percent reported).

B. *CRP*

Although the CRP is an honorable venture by the Government to help curb a serious problem, it may be powerless to do so under the current system. It is projected that the demand upon agricultural production will double by the year 2050—*without* considering the demand on the industry if agriculture remains a source of alternative fuel.[79] The inclusion of corn-based ethanol into this estimate, "would require planting more than 55 million additional acres of corn, on top of the 80 million acres" already planted, leaving farmers nowhere to grow except on CRP land.[80] Placing such a premium on farmland, due to the extreme spike in demand, will result in significant increases in price for agricultural commodities, suggesting that CRP land application and enrollment will dwindle.[81] It seems, however, that this has already begun.

An estimated fifteen percent increase in farmland devoted to corn production was realized from 2006 to 2007, with a significant amount being transitioned away from CRP contracted land and into crop production.[82] Increased crop prices, resulting in part from increased demand for ethanol production, and combined with significant advances in agricultural technology have increased production potential on land initially allocated to CRP because of its perceived low profit yield.[83] Over the course of a year, for instance, a "corn futures contract on the Chicago Board of Trade rose from $2.50 per bushel . . . to $4.16 per bushel . . . an increase of more than 66[%]."[84] Prudent business tactics seemingly require a step away from CRP enrollment now that farmers can plant a high revenue crop, at low cost, on this land.[85]

In 2006, the FSA gave landowners with expiring CRP contracts an option to re-enroll or extend (REX) their contracts at varying lengths based upon

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79. FRANCES B. SMITH, CORN BASED ETHANOL: A CASE STUDY IN THE LAW OF UNINTENDED CONSEQUENCES 13 (2007), http://www.circleofblue.org/waternews/wp-content/uploads/2010/08/cei-ethanol-report.pdf.

80. *Id.* (quoting DENNIS AVERY, BIOFUELS, FOOD OR WILDLIFE? THE MASSIVE LAND COSTS OF U.S. ETHANOL 10 (2006), http://www.cei.org/pdf/5532.pdf).

81. Carrie Loawry La Seur & Adam D.K. Abelkop, *Forty Years After NEPA's Enactment, It Is Time for a Comprehensive Farm Bill Environmental Impact Statement*, 4 HARV. L. & POL'Y REV. 201, 206 (2010).

82. Thomas W. Simpson et al., *The New Gold Rush: Fueling Ethanol Production While Protecting Water Quality*, 37 J. ENVTL. QUALITY 318, 319–20 (2008).

83. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-1054, AGRICULTURAL CONSERVATION: FARM PROGRAM PAYMENTS ARE AN IMPORTANT FACTOR IN LANDOWNERS' DECISIONS TO CONVERT GRASSLAND TO CROPLAND 20–21 (2007), http://gao.gov/new.items/d071054.pdf.

84. *Id.*

85. *See id.*

their prior EBI scores.[86] In Iowa, 497,091 contracts were set to expire in 2007.[87] Of these, 139,988 contract—over twenty-eight percent—declined re-enrollment or extension.[88] According to data compiled by the USDA in 2008, REX was declined at an increasing rate for the following years.[89]

Although the declined re-enrollment numbers in Iowa are surprisingly high, this trend of REX rejection exists throughout the country. Nationwide, there were 15,685,540 expiring CRP contracts in 2007.[90] Of these, 2,287,543—or 14.6%—declined REX to maintain CRP coverage.[91] Landowners choosing to decline REX increased by 18% for contracts expiring in 2008, 21% for those expiring in 2009, and 27% for 2010.[92]

The CRP has seen a mass exodus in recent years, and these figures suggest that more troubled times are fast approaching. Those that leave the CRP certainly may have valid reasons to do so, seeing a current and prospective rise in the price of commodities, but this also has vast implications on the effectiveness of the compliance program on the actions of these farmers.

As CRP land must be highly erodible for eligibility,[93] and also must pose a sufficient ecological risk—with respect to erosion—to be awarded a CRP contract,[94] those farmers that choose to leave the CRP and plant on these lands must either implement a conservation system or risk losing the at-risk subsidies of Title XII's compliance requirements.[95] Yet, with the compliance programs facing declining enforcement and significant administrative difficulties, the enforcement of these requirements remains questionable.[96] Current planting along Iowa Rivers demonstrate that the conservation compliance, as applied, has not stopped certain farmers from disregarding these penalties to reap the profits of higher

86. FARM SERVICE AGENCY, USDA, USDA CONSERVATION RESERVE PROGRAM, SUMMARY AND ENROLLMENT STATISTICS 8 (2008), *available at* http://www.fsa.usda.gov/Internet/FSA_File/annualsummary2008.pdf.

87. *Id.* at A-2.

88. *Id.*

89. *See id.* at A-3 to A-4 (showing that of contracts expiring in 2008, over thirty-three percent declined REX, in 2009 38% declined, and in 2010 41% declined).

90. *Id.* at A-2.

91. *Id.*

92. *See id.* at A-3 to A-5.

93. *See* discussion *supra* pp. 495–96.

94. *See* discussion *supra* p. 497.

95. Food Security Act of 1985, Pub. L. No. 99-198, § 1212(a)(2), 99 Stat. 1504, 1506–07.

96. *See* discussion *supra* pp. 501–06; *see also* U.S. GEN. ACCOUNTING OFFICE, GAO-03-418, *supra* note 22 (finding that compliance programs continue to be inadequately enforced).

yield.[97] This highlights the final problem with the CRP and the compliance provisions: adequacy of punishment.

A primary reason for the sea change found in the conservation provisions of the 1985 Farm Bill was the failure of the 1930s policy to adequately incentivize conservation practices.[98] It was shown, quite clearly, during the 1970s that such "incentive based" policies are incapable of truly influencing the actions of independent farmers.[99] Yet, the CRP is precisely that. Although the voluntary program has added bite by giving a "conserve vs. subsidy revocation" ultimatum,[100] it remains a hallmark of the 1930s. Furthermore, a failure for these programs to work in tandem—which is demonstrably present[101] —is a failure to accomplish the intent of Title XII.

It was the compliance programs, however, that signaled the true revolution of the Title XII reforms. Here, punishment was based on conservation alone and accomplished through subsidy revocation.[102] With the departure from the CRP, planting along rivers, and general stagnation under these programs, it is possible that the disincentives of particular subsidy revocation are inadequate in light of the cost of conservation practices and the prospect of increased profit.

IV. STATE SOIL AND WATER CONSERVATION DISTRICTS

Long before the creation of these elaborate Federal conservation programs, President Franklin Delano Roosevelt urged state governments to take a proactive approach to soil erosion control and conservation by adopting the Standard State Soil Conservation Districts Law.[103] In Iowa, as one example, the legislature created 100 Soil and Water Conservation Districts (SWCDs) to create its own method of addressing resource preservation, distinct from Federal programs.[104] While SWCDs are primarily noninvasive entities – effecting change primarily through voluntary contracts with landowners similar to the CRP—SWCDs also have a broad regulatory power.[105]

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97. *See* Heathcote, *supra* note 7.
98. *See supra* part II.
99. Philpott, *supra* note 16.
100. *See* U.S. GOV'T. ACCOUNTABILITY OFFICE, GAO-03-418, *supra* note 22.
101. *See* discussion *supra* pp. 501–510.
102. Food Security Act of 1985, Pub. L. No. 99-198, §§ 1211–1212, 99 Stat. 1504, 1506–07.
103. *See* Phelps, *supra* note 1, at 354.
104. *See* IOWA CODE § 161A.2 (2011).
105. *See id.* §§ 161A.6–7 (explaining the broad powers of the commissioner over the SWCDs).

SWCD Commissioners are empowered to: conduct surveys, investigations, and other research regarding erosion and other conservation issues, which they then publish and distribute to the public; conduct demonstrative conservation projects; implement preventative procedures on state land or private property if given consent by the owner; provide conservation aid to landowners through contract or grant; acquire, maintain, and sell property; provide materials or equipment to landowners within a district; and develop comprehensive land use plans to maximize soil conservation within each district.[106] As the exercise of these powers benefit landowners, the SWCD Commissioners can condition these benefits on some form of contribution by landowners or land tenants.[107] The Commissioners' mandate may range from merely funding an operation to entering a contract, "as to the permanent use of such lands as will tend to prevent or control erosion thereon."[108] These powers are similar to the powers given to the Federal Government in the Farm Bill legislation, in that they impose no duty upon landowners outside of creating a contingent benefit (coupling receipt of government benefits with conservation implementation).[109]

Where the state program takes a noticeable turn, is in the Commissioners' ability to adopt, "ordinances, rules, regulations, orders, contracts, forms, and other documents . . . as it may require in performance of its duties" of conservation.[110] As a result of both external and self-imposed restrictions, exercise of the SWCD regulatory power is quite rare throughout the country.[111]

Utilizing the regulatory power to compel private landowners to implement a conservation scheme has simply been regarded as contrary to the historical concept of the American farmer.[112] In most cases, the focus on traditional, project based conservation tactics has created an almost subconscious limitation on District Commissioners' understanding of the regulatory abilities granted by statute.[113] When contemplating utilization of the regulatory power, the certainty of political backlash will also often deter such action from being taken.[114]

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106. *See id.* § 161A.7(1) (these powers are limited to the confines of monies appropriated to the SWCDs and may only be exercised to further the goal of conservation).

107. *Id.* § 161A.7(2).

108. *Id.*

109. *Compare id.* §161A.7, *with* Food Security Act of 1985, Pub. L. No. 99-198, § 1211, 99 Stat. 1504, 1506.

110. IOWA CODE § 161A.6 (2011).

111. Phelps, *supra* note 1, at 370.

112. *Id.* at 372.

113. *Id.* at 371 (explaining that Commissioners failing to act is oftentimes the sole obstacle to the exercise of regulatory power).

114. *Id.* at 372.

If regulatory power is exercised, however, such action has been upheld at the State level as a valid exercise of power. In *Woodbury County Soil Conservation District v. Ortner*, a SWCD, as an exercise of its regulatory powers under Section 161A.5 of the Iowa Code, put a limit on soil loss for landowners.[115] When the SWCD Commissioners conducted an investigation of two farms within its district, it found a violation of the soil loss regulation.[116] The district ordered that the defendants bring the land into acceptable limits and provided state funds to assist them in doing so.[117] When no remedy was achieved, the district brought an action against the two landowners.[118] The district court held that SWCD regulations were a taking under the fifth and fourteenth amendments to the Constitution of the United States, and thus were unconstitutional.[119]

In a landmark decision on behalf of Iowa SWCDs, the Iowa Supreme Court held that the action taken through these regulations constituted a valid exercise of the state police power, and thus did not constitute a taking.[120] First, the State has a valid interest in preserving its agricultural resources.[121] Second, when a valid state interest exists, and a regulation is in place to properly pursue that interest, any financial burden imposed on landowners must be unreasonable to be invalid.[122] Third, the regulation must not be overbroad, but instead must allow a case by case analysis.[123] Here, the regulatory burden was a mere hardship, and not unreasonable.[124]

The import of *Ortner* is that it grants SWCDs the ability to create reasonable, narrow regulatory schemes with a sufficient nexus to the goal of soil conservation.[125] Although the regulatory power is not often employed, *Ortner* evidences the existence of constitutional methods of doing so.[126] Should Iowan SWCDs, or SWCDs throughout the country, decide to more vigorously address the problem of riparian soil erosion, the ability to exert that regulatory power is significant, and may be the best method currently in place of combating the problem.

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115. Woodbury Cnty. Soil Conservation Dist. v. Ornter, 279 N.W.2d 276, 277 (Iowa 1979) (citing the regulatory authority, which at that time was under IOWA CODE § 467A.44, but is now found under IOWA CODE § 161A.5).

116. *Id.*

117. *Id.* at 277, 279.

118. *Id.* at 277.

119. *Id.*

120. *Id.* at 279.

121. *Id.* at 278.

122. *Id.*

123. *Id.*

124. *Id.* at 279.

125. *See id.*

126. *See id.*

However, the reasonability restriction on SWCDs, imposed by states such as Iowa, may impose too heavy a burden on district regulations. It has long been established that the judiciary branch has the ability to review and overturn legislation it deems unconstitutional.[127] Furthermore, a requisite showing of reasonability is consistent with the history of governmental taking jurisprudence.[128] Yet, eliminating SWCD Commissions' ability to employ broad conservation regulations under the reasonability requirement may thereby eliminate valid regulatory efforts seeking to curb long term, gradual soil erosion.[129] So although SWCD regulation has been constitutionally protected in name, the avenue taken to achieve this protection has, in effect, chilled the exercise of SWCD regulatory power.

V. SOLUTIONS

According to one scholar, reintroducing the regulatory power to SWCD Commissions would be a significant, albeit unlikely, step toward maximizing soil conservation efforts.[130] Another suggests that State power to establish and fund drainage districts, which are empowered to create "levees, ditches, drains, watercourses, or settling basins and the ability to straighten, widen, deepen, or change any natural watercourse," be either used in conjunction with SWCD programs, or reflected in a modified SWCD program, to prevent soil erosion.[131]

Drainage districts in Iowa are authorized to acquire property through various methods.[132] Where a drainage district exercises its power to construct improvements on private land, these districts are also granted an easement over the land on which the improvements were constructed.[133] Therefore, one possible solution is to combine these two state organizations to construct easement protected riparian erosion buffers.[134] If drainage districts worked under the funding and expanded regulatory authorization of the SWCDs to construct these im-

127. *See* Marbury v. Madison, 5 U.S. 137, 177–78 (1803).

128. *See* Ortner, 279 N.W.2d at 279.

129. Jay Halbur, Soil Conservation Reform: A Drainage District Approach to Investing in Our Future, Environmental Regulation of Agriculture, 19–20 (2010) (unpublished thesis, Drake University Law School) (on file with the Drake Journal of Agric. Law).

130. *See* Phelps, *supra* note 1, at 362 (2006) (explaining that land use regulations can aid in conservation and that the intended goal of the Standard State Soil Conservation Districts Law was for District Commissions to embrace the regulatory power to promote conservation).

131. *See* Halbur, *supra* note 129, at 28; *see also* IOWA CODE § 468.1 (2011).

132. IOWA CODE § 468.128 (various methods of acquiring property include: purchase, lease or agreement, and eminent domain).

133. *See id.* § 468.27.

134. *See id.* §§ 468.128, 468.27.

provements on private land, the landowners would be unable to alter such improvements.[135]

It may be argued that this would be an unconstitutional taking of private land.[136] However, if this practice is limited to the construction of buffers in riparian areas, the taking would surely be justified as reasonable to accomplish a public benefit.[137] Furthermore, assistance from the CRP could be used to compensate these landowners for their loss of land, providing the necessary reasonable compensation to allow such action. While the CRP currently is present to provide incentives to refrain from planting on such highly erodible areas, these landowners still have the capacity to step away from their CRP contracts and begin planting on such land.[138] A program such as this, which seeks to permanently eliminate the threat of planting on a highly erodible riparian area, seems to better accomplish the goal of the CRP: to increase soil conservation throughout the United States.

A second solution could be that these organizations—the SWCDs and drainage districts—take a dominant role in the enforcement and administration of a revised federal conservation policy. Central to this revision must be the elimination of the vestiges of the 1930s "conservation" practices, and the urge to fulfill the intent of the Title XII provisions of the 1985 Farm Bill.[139]

One of the main issues with the Farm Bill's compliance provisions was the complexity of the enforcement process.[140] A possible solution to this issue is to streamline this process by delegating the authority to conduct reviews to the SWCD/drainage district programs of each individual state. While a conservation program would remain at the federal level to impose a minimum standard of conservation upon each state, these local bodies would be given the ability to promulgate their own, localized conservation plans, as well as conduct compliance reviews with the local population.

Delegating this power to the states would give each SWCD/drainage district the ability to mold these conservation plans to fit local needs. Furthermore,

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135. *See id.* §§ 468.128, 468.27.

136. U.S. CONST. amend. V (stating "No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without full compensation").

137. *See* Kelo v. City of New London, 545 U.S. 469, 489 (2005) (interpreting the reasonability requirement for a taking as extremely broad).

138. 7 C.F.R. §1410.32(f) (2011) (explaining the procedure for land owners to terminate a CRP contract before the term of the contract expires).

139. *See generally* Philpott, *supra* note 16 (explaining New Deal ideologies); *see generally* Davidson, *supra* note 2, at 25–26 (discussing farm legislation of the 1930s and the changes made by the 1985 Farm Bill).

140. *See* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-03-418, *supra* note 22, at 2, 5.

it would resolve the current problems faced by the complexity of overlapping federal oversight agencies. For example, at this point, the NCRS is the agency that is expected to perform compliance reviews of farm owners and rule on whether such compliance is adequate.[141] Yet, the NCRS does not see their role as one of "enforcement."[142] Utilizing the SWCD/drainage district programs to provide conservation regulation's "enforcement arm" would be an important step toward providing conservation as statutorily desired.[143]

This delegation, however, would not eliminate federal oversight. By maintaining the USDA divisions of the FSA or the NCRS as administrator of this program, investigations of these local programs should still be in place.[144] Objective criteria—similar to that currently in place—could and should remain present to set minimal conservation standards within each state. Then, enforcement of these standards could be implemented through investigations of these state programs by local offices of the administrative federal agency.[145] This would not be nearly as difficult as tasking the local offices to conduct these investigations of individual farm properties—as is current practice—because the federal agency would merely ensure that the locally promulgated criteria remain acceptable according to the federal standards.[146] Enforcement statistics could also be reported during these reviews to ensure that criteria is enforced.

Importantly, the localization of conservation enforcement and criteria construction would truly utilize states as laboratories for conservation practices. When state practices are found to be particularly successful, the oversight agency could recommend such practices be applied interstate, or even suggest that Congress or the Secretary of Agriculture incorporate practices within the federal minimum standards to better accomplish conservation throughout the United States.

It may be necessary to use some form of incentive to entice state and local governments to take on such a role. One possibility of accomplishing this is similar to the passage of a nationwide drinking age. To accomplish this, the federal government made state government's receipt of certain federal highway funds contingent upon their adoption and enforcement of the federal minimum drinking age policy.[147] Making a state's funding—either that of a current agricul-

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141. *Id.* at 2.

142. *Id.* at 44.

143. *See generally id.* at 43 (summary of the Government Accountability Office's recommendations to improve USDA's implementation of the CRP).

144. *Id.*

145. *Id.*

146. *See generally id.* (discussing various issues with the current compliance process).

147. *See* National Minimum Drinking Age Act, 23 U.S.C. § 158 (2006); *see also* South Dakota v. Dole, 483 U.S. 203, 211 (2006) (holding that such legislation is constitutional as long as it is not coercive upon states).

ture or conservation related apportionment, or a newly constructed funding program—contingent upon a state's adoption of this practice would make this concept more feasible. Furthermore, with the public's growing concern regarding the environment, incentivizing such action would likely be seen as a legitimate federal endeavor; especially if such funding would merely be reallocated from the current federal program to create and assist state action.

Some may argue that the localization of the conservation compliance program would introduce variable enforcement practices. The current system's enforcement, however, is already extremely irregular. According to NRCS compliance reviews, state results showed that "the number of waivers and violations issued as a percentage of total compliance reviews ranged from none to as much as fifteen percent during crop years 2000 and 2001."[148] Only a few states had reported violations.[149]

Therefore, at the very least, creating a more localized acting body will maintain the variability in conservation enforcement currently in place. Yet, as has been argued, making the enforcement and promulgation of such rules a local issue will likely result in greater quality, accountability, and enforcement of these rules.[150]

One possible complication created by the localization of enforcement, and the variability between states, is that the subsidies created by the federal government would still be sporadically granted and revoked. This is why the compliance punishment system should be revised as well. Originally, federal crop insurance was a contingent subsidy that may be taken away for compliance violations.[151] Fortunately—as, if such revocation occurs and an area is stricken with a natural disaster such as a severe flood, the federal government steps in by providing disaster insurance to these areas—the 1996 Farm Bill specifically exempted crop insurance from the compliance provisions.[152] Nonetheless, subsidy and loan programs created by the federal government, and revoked by the compliance programs, are intended to not only assist the farmer, but also help the American citizens by this assistance.[153] Although Congress has deemed the conservation interest as overriding—which explains why the receipt of subsidies is now con-

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148. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-03-418, *supra* note 22, at 5.

149. *Id.* at 5.

150. Phelps, *supra* note 1 at 360–64.

151. *See* 7 C.F.R. § 1410.32(f) (2011).

152. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-1054, *supra* note 83, at 9–10.

153. *See* Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104-127, 10 Stat. 888, 982 (1996) (codified as amended at 16 U.S.C. 3811); U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-1054, *supra* note 83, at 9–10; U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-03-418, *supra* note 22, at 37; *see also* Galen E. Boerema, *Turning Straw into Gold: Federal Securitization of Agricultural Commodities*, 83 N.C. L. REV. 691, 692 (2005).

tingent on farmers' implementation of conservation practices—the intended benefit of those subsidies will nonetheless be eliminated by the revocation of such subsidies.[154]

Sufficient penalties for improper conservation practices could be achieved by permitting the local SWCDs/drainage district entities, who would be charged with enforcing their own constructed conservation plans, to also levy and impose fines that would adequately enforce these plans and deter such improper planting. This would place a critical eye over the nation's agricultural conservation while still providing benefits upon farmers deemed necessary by Congress.

While some might argue that this would be an unfair burden on the farmer, this change would also eliminate the contingent subsidy program currently in place. Furthermore, these fines would be coming from state and local governments rather than the federal government—which would likely be seen as a more acceptable practice by the independent landowner. Lastly, imposing these fines would enable greater self-sufficiency of the SWCD/drainage district entities by utilizing such fines to fund their operation. Making the program dependent upon its own imposition of fines would encourage strict enforcement of the current conservation requirements. Any excess funds could be used to then construct improvements on private lands, as explained before, which would move toward program elimination by constructing conservation easements over areas susceptible to erosion.

Curing the problems found in the Farm Bill compliance programs would likely result in a cure of the deficiencies in the CRP as well.[155] Judging by the construction of the Title XII provisions, particularly in light of the history of conservation programs in the United States and Earl Butz's tour de force in the 1970s, the CRP and compliance programs seem to have been intended to work in tandem.[156] Compliance was intended to hold farmers accountable, while the CRP would give farmers financial assistance to reach the necessary, but arguably lofty

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154. *See* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-03-418, *supra* note 22 (showing compliance violations and the amount of benefits denied). When the subsidy is revoked, the conservation efforts stall. *Id.* Conservation advances only if a farmer comes back into compliance, receives the benefits, and regains other federal subsidies. *Id.*

155. *See* Brent Sohngen, *The CRP Program in Ohio: What Will the Future Bring?*, OHIO ENV'T REP., Jan. 2005, *available at* http://aede.osu.edu/people/sohngen.1/OER/OER2(1).htm (citing Carl Zulauf et al., *Conservation Compliance: The Once and Future Farm Environmental Policy Tool*, CHOICES, Fall 2003, *available at* http://www.choicesmagazine.org/2003-4/2003-4-05.htm).

156. *See generally* Philpott, *supra* note 16 (discussing Earl Butz's policy during the 1970s); Food Security Act of 1985, Pub. L. No. 99-198, 99 Stat. 1504 (codified in various sections of 16 U.S.C.).

goals.[157] So, the current exodus experienced by the CRP could easily be attributed to the utter failure of the compliance system.[158]

VI. CONCLUSION

Judging by the rationale for imposing the current conservation regulations, and assuming that Congressional action truly reflects the will and desires of the general public, citizens of the United States continue to show a desire to protect our national natural wonders. If it truly is the will the people—that conservation be a governmental aim—something must be done to treat the issues plaguing the current system. While it is helpful to consider methods of resolving the threat posed to our country's farmland and waterways, it is even more important to recognize the reality of soil erosion and farmland runoff and that these conservational issues are not adequately cured by the country's current safeguards. Hopefully the aforementioned proposals may provide a starting point for future Congressional action to repair this system and create a brighter future for America's farmland.

157. *See* U.S. GEN. ACCOUNTING OFFICE, GAO-03-418, *supra* note 22, at 1.
158. *See id.* at 5.