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An Agricultural Law Research Note

The Conservation Security Program and the Grassland Reserve Program Under the 2002 Farm Bill

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The Farm Security and Rural Investment Act of 2002, commonly referred to as the 2002 Farm Bill, created two new conservation programs, the Conservation Security Program (“CSP”) and the Grassland Reserve Program (“GRP”). The GRP and the CSP represent significant additions to the conservation programs available to farmers and ranchers. Because the regulations implementing the GRP and the CSP have not been issued, this summary covers only the statutory provisions for each program.

The Grassland Reserve Program

The GRP is a voluntary conservation program designed to assist owners in restoring grassland, rangeland, and pastureland, and in conserving virgin grassland through the use of long-term contracts or easements.¹ There are three types of land eligible for enrollment in the GRP:

- 1) grassland, land that contains forbs, or shrubland, as determined by the Secretary;²
- 2) land located in an area with a history of being dominated by grassland, forbs, or shrubland that has potential to serve as animal or plant habitat, if the current use of the land is retained or if it is restored to a natural condition;³ and
- 3) land that is incidental to these two types of land if the Secretary determines that it is necessary to enroll the incidental land for the efficient administration of an agreement or easement.⁴

The maximum amount of acreage that can be enrolled in the GRP is 2,000,000 acres.⁵

Landowners can enroll land in the GRP under ten-, fifteen-, twenty-, or thirty-year rental agreements.⁶ Landowners also have the option of enrolling land under either thirty-year or permanent

1. Pub. L. No. 107-171, tit. II, § 2401, 116 Stat. 134, 258-62 (to be codified at 16 U.S.C.A. §§ 3838n - 3838q).

2. *See id.* § 2401, 116 Stat. 134, 259 (to be codified at § 3838n(c)(1)).

3. *See id.* (to be codified at § 3838n(c)(2)).

4. *See id.* (to be codified at § 3838n(c)(3)).

5. *See id.* § 2401, 116 Stat. 134, 258 (to be codified at 16 U.S.C.A. § 3838n(b)(1)).

6. *See id.* § 2401, 116 Stat. 134, 258-59 (to be codified at 16 U.S.C.A. § 3838n(b)(2)).

easements, or for the maximum duration allowed under state law.⁷ Land enrolled in the GRP must be at least forty contiguous acres, unless the Secretary determines that tracts less than forty contiguous acres should be enrolled to achieve the purposes of the program.⁸

To enroll land through the grant of an easement, the landowner must grant the Secretary an easement in the land, record a deed of restriction pursuant to state law that reflects the easement, provide a written statement of consent to the easement that is signed by anyone holding a security interest or vested interest in the land, provide proof of unencumbered title to the underlying fee interest in the land, and comply with the terms of the easement and restoration agreement.⁹

To enroll land under a rental agreement, the owner or operator of the land must agree to comply with the terms of the rental agreement and agree to suspend “any existing cropland base and allotment history for the land under a program administered by the Secretary.”¹⁰

An easement or rental agreement must allow common grazing practices that are consistent with maintaining grassland, forb, and shrub species common to the locality.¹¹ The agreement must also allow haying, mowing, or harvesting for seed production, subject to restrictions applicable to the nesting season for certain birds in the area.¹² Finally, the agreement must permit fire rehabilitation and the building of fire breaks and fences.¹³ The terms of an easement or rental agreement must prohibit the production of any crop that requires the soil surface to be broken and the carrying out of any other activity that would disturb the surface of the land, unless otherwise allowed by statute or the Secretary.¹⁴ If the terms of an easement, rental, or restoration agreement are violated, the agreement will remain in effect, and the Secretary can require the owner to refund all or part of the funds received by the owner, with interest.¹⁵

Annual payments for land enrolled under a rental agreement cannot be more than seventy-five percent of the grazing value of land covered by the contract.¹⁶ Cost-share payments for eligible land that

7. See *id.* § 2401, 116 Stat. 134, 259 (to be codified at 16 U.S.C.A. § 3838n(b)(2)).

8. See *id.* (to be codified at 16 U.S.C.A. § 3838n(b)(2)(B)).

9. See *id.* § 2401, 116 Stat. 134, 259-60 (to be codified at 16 U.S.C.A. § 3838o(a)(1)).

10. *Id.* § 2401, 116 Stat. 134, 260 (to be codified at 16 U.S.C.A. § 3838o(a)(2)).

11. See *id.* (to be codified at 16 U.S.C.A. § 3838o(b)(1)).

12. See *id.*

13. See *id.*

14. See *id.* (to be codified at 16 U.S.C.A. § 3838o(b)(2)). The terms of a restoration agreement to be used for land under an easement or rental agreement that must be restored will be prescribed by the Secretary. See Pub. L. No. 107-171, § 2401, 116 Stat. 134, 260 (to be codified at 16 U.S.C.A. § 3838o(d)).

15. Pub. L. No. 107-171, tit. II, § 2401, 116 Stat. 134, 261 (to be codified at 16 U.S.C.A. 3838o(e)).

16. See *id.* (to be codified at 16 U.S.C.A. § 3838p(b)(2)).

has never been cultivated cannot exceed ninety percent of the restoration costs.¹⁷ Cost-share payments for restored grassland must not exceed seventy-five percent of those costs.¹⁸

Land enrolled under permanent easements is purchased at fair market value minus the grazing value of the land encumbered by the easement.¹⁹ Land enrolled under a thirty-year easement or for the maximum duration allowed under state law is purchased at thirty percent of the fair market value of the land minus the grazing value of the land while the land is encumbered by the easement.²⁰

The Conservation Security Program

The CSP is a voluntary program designed to provide financial and technical assistance to aid producers in promoting conservation goals, such as the conservation and improvement of soil, water, air, energy, plant and animal life.²¹ The CSP becomes effective beginning with the 2003 fiscal year, continues through the 2007 fiscal year, and will be managed by the NRCS.²² The CSP establishes three levels, or tiers, of conservation contracts under which a producer may participate.²³

Land eligible for the CSP includes cropland, grassland, prairie land, improved pasture land, rangeland, certain tribal lands, and forested land that is an incidental part of an agricultural operation.²⁴ Land enrolled in the Conservation Reserve Program, Wetlands Reserve Program, or the GRP cannot be enrolled in the CSP.²⁵ In addition, land used for crop production “that had not been planted, considered to be planted, or devoted to crop production for at least [four] of the [six] years” preceding the enactment of the CSP, or land “that has been maintained using long-term crop rotation practices, as determined by the Secretary,” cannot be enrolled in the CSP.²⁶

17. *See id.* (to be codified at 16 U.S.C.A. § 3838p(c)).

18. *See id.*

19. *See id.* (to be codified at 16 U.S.C.A. § 3838p(b)(1)(A)(i)).

20. *See id.* (to be codified at 16 U.S.C.A. § 3838p(b)(1)(A)(ii)).

21. Pub. L. No. 107-171, tit. II, § 2001, 116 Stat. 134, 223 (to be codified at 16 U.S.C.A. §§ 3838-3838c). The final rules implementing the CSP have not been written. *See id.* § 2001, 116 Stat. 134, 224 (to be codified at 16 U.S.C.A. § 3838(9) (defining a “producer” as “an owner, operator, landlord, tenant, or sharecropper that . . . shares in the risk of producing any crop or livestock . . . and is entitled to share in the crop or livestock available for marketing from a farm . . . ”)).

22. *See id.* § 2001, 116 Stat. 134, 225 (to be codified at 16 U.S.C.A. § 3838a(a)).

23. *See id.* § 2001, 116 Stat. 134, 226-228 (to be codified at 16 U.S.C.A. § 3838a(d)).

24. *See id.* § 2001, 116 Stat. 134, 225 (to be codified at 16 U.S.C.A. § 3838a(b)(2)).

25. *See id.* § 2001, 116 Stat. 134, 225-26 (to be codified at 16 U.S.C.A. § 3838a(b)(3)).

26. *Id.*

To participate in the CSP, a producer must submit a conservation security plan to be approved by the Secretary.²⁷ The conservation security plan must identify the land and resources to be conserved, the tier in which the producer chose to participate, the particular conservation practices the producer will implement, and a schedule for implementation of these practices.²⁸ Accepted conservation practices include nutrient management, invasive species management, contour farming, controlled rotational grazing, partial field conservation practices, and native grassland and prairie protection and restoration.²⁹

Once the conservation security plan has been approved, the producer must enter into a conservation security contract with the Secretary to implement the conservation security plan.³⁰ The conservation security contract must include a provision providing that the producer will not be considered to be in violation of a conservation security contract for failure to comply due to circumstances beyond the producer's control.³¹ In the contract, the producer must agree to implement the terms of the conservation security plan, maintain and make available records showing that the plan is being implemented, and not to engage in any activities contrary to the purposes of the CSP.³² The producer must also agree that it will refund the appropriate payments or accept adjustments to payments if the Secretary determines that the contract has been violated.³³

There are three tiers of conservation contracts that producers may enter into to participate in the CSP.³⁴ Tier I is the base level of CSP participation, Tier II the second level of participation, and Tier III the highest level of participation. Under each of these contract options, payments are composed of two parts, (1) base payment and (2) average county cost for adopting or maintaining the practice for the 2001 crop year. The base payment is either the average national per-acre rental rate for a specific land use during the 2001 crop year or an appropriately adjusted rate for the 2001 crop year to ensure regional equity.³⁵ The average county cost rate will be determined by the Secretary. The maximum annual payment under Tier I, Tier II, and Tier III is \$20,000.00, \$35,000.00, and \$45,000.00, respectively.³⁶

27. *See id.* § 2001, 116 Stat. 134, 225 (to be codified at 16 U.S.C.A. § 3838a(b)(1)).

28. *See id.* § 2001, 116 Stat. 134, 226 (to be codified at 16 U.S.C.A. § 3838a(c)).

29. *See id.* § 2001, 116 Stat. 134, 227 (to be codified at 16 U.S.C.A. § 3838a(d)(4)).

30. *See id.* *See also, id.* § 2001, 116 Stat. 134, 228 (to be codified at 16 U.S.C.A. § 3838a(e)(1)).

31. Pub. L. No. 107-171, tit. II, § 2001, 116 Stat. 134, 229-30 (to be codified at 16 U.S.C.A. 3838a(f)).

32. *See id.* § 2001, 116 Stat. 134, 230 (to be codified at 16 U.S.C.A. § 3838b).

33. *See id.*

34. *See id.* (to be codified at 16 U.S.C.A. § 3838a(d)(1), (5)).

35. *See id.* (to be codified at 16 U.S.C.A. § 3838c(b)(1)(A)).

36. *See id.* § 2001, 116 Stat. 134, 232 (to be codified at 16 U.S.C.A. § 3838c(b)(2)).

Tier I contracts require the producer to enter into a five-year plan that addresses at least one significant resource of concern for the portion of the agricultural operation enrolled in the CSP.³⁷ Under Tier I, the producer is paid five percent of the base payment and seventy-five percent for the cost of the practice chosen.³⁸ A beginning farmer is paid ninety percent of the practice cost.³⁹

Tier II contracts require the producer to enter into a five- to ten-year plan that addresses one resource of concern for the entire agricultural operation.⁴⁰ The producer is paid ten percent of the base payments and seventy-five percent of the average cost for the practices the producer has chosen.⁴¹ Beginning farmers are paid ninety percent of the practice cost.⁴²

Tier III contracts require the producer to enter into a five- to ten-year plan that applies a resource management system meeting the appropriate nondegradation standard for all resources of concern for the entire agricultural operation.⁴³ The producer is paid fifteen percent of the base payment and seventy-five percent of the average practice costs.⁴⁴ As with Tier I and II, beginning farmers receive ninety percent of average practice costs.⁴⁵

A producer may receive enhanced payments under Tier I, II, or III if it

- 1) implements or maintains multiple conservation practices exceeding minimum requirements for the tier in which the producer is participating;
- 2) addresses local conservation priorities in addition to the resources of concern for the agricultural operation;
- 3) participates in an “on-farm conservation research, demonstration, or pilot project;”
- 4) participates in a watershed or regional resource conservation plan that involves a minimum of seventy-five percent of the producers in a targeted area; or

37. See *id.* § 2001, 116 Stat. 134, 227 (to be codified at 16 U.S.C.A. § 3838a(d)(5)(A)).

38. See *id.* § 2001, 116 Stat. 134, 230 (to be codified at 16 U.S.C.A. § 3838c(b)(1)(C)).

39. See *id.*

40. See *id.* § 2001, 116 Stat. 134, 228 (to be codified at 16 U.S.C.A. § 3838a(d)(5)(B)).

41. See *id.* § 2001, 116 Stat. 134, 231 (to be codified at 16 U.S.C.A. § 3838c(b)(1)(D)).

42. See *id.*

43. See *id.* § 2001, 116 Stat. 134, 228 (to be codified at 16 U.S.C.A. § 3838a(d)(5)(C)). See *id.* § 2001, 116 Stat. 134, 223 (to be codified at 16 U.S.C.A. § 3838(8) (defining “nondegradation standard as “the level of measures required to adequately protect, and prevent degradation of, 1 or more natural resources, as determined by the Secretary in accordance with the quality criteria described” in the NRCS handbooks)).

44. Pub. L. No. 107-171, tit. II, § 2001, 116 Stat. 134, 231 (to be codified at 16 U.S.C.A. § 3838c(b)(1)(E)).

45. See *id.*

5) carries out assessment and evaluation activities that relate to the practices included in the producer's conservation plan.⁴⁶

A producer may request that the Secretary modify its conservation security contract if the proposed modification is consistent with purposes of the CSP.⁴⁷ The Secretary may require a producer to modify a security contract if the Secretary determines that "a change made to the type, size, management, or other aspect of the agricultural operation of the producer" would significantly interfere with the purposes of the CSP if the contract were not modified.⁴⁸ A producer may terminate a conservation security contract without having to refund the payments it has received if the producer is in compliance with the terms of the contract at the time the contract is terminated and the Secretary determines that the termination would not defeat the purposes of the producer's conservation security plan.⁴⁹

A producer has the option of renewing a conservation security contract for at least five years but not more than ten years.⁵⁰ However, a producer may only renew a contract under Tier I if it agrees "to apply additional conservation practices that meet the nondegradation standard on land already enrolled" in the CSP or "to adopt new conservation practices with respect to another portion of the agricultural operation that address resource concerns and meet the nondegradation standard under the terms of the Tier I conservation security contract."⁵¹

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46. *Id.* (to be codified at 16 U.S.C.A. § 3838c(b)(1)(C)(iii)).

47. *See id.* § 2001, 116 Stat. 134, 228 (to be codified at 16 U.S.C.A. § 3838a(e)(2)(A)).

48. *Id.* § 2001, 116 Stat. 134, 228-29 (to be codified at 16 U.S.C.A. § 3838a(e)(2)(B)). *See id.* § 2001, 116 Stat. 134, 229 (to be codified at 16 U.S.C.A. § 3838a(e)(3)(B)(3) (allowing a producer who is required to modify a contract to terminate the contract subject to certain conditions)).

49. Pub. L. No. 107-171, tit. II, § 2001, 116 Stat.134, 229 (to be codified at 16 U.S.C.A. § 3838a(e)(3)).

50. *See id.* § 2001 (to be codified at 16 U.S.C.A. § 3838a(e)(4)).

51. *Id.*

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