An Agricultural Law Research Article

State Initiatives to Supplement the Conservation Reserve Program

by

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ARTICLE

STATE INITIATIVES TO SUPPLEMENT THE CONSERVATION RESERVE PROGRAM*

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I. INTRODUCTION

In 1985, Congress enacted the Conservation Reserve Program [hereinafter CRP] which set the ambitious goal of contracting with the nation's agricultural landowners to retire 45 million acres of highly erodible and margi-

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nal cropland from production for ten years.[1] The nation will soon be entering the third year of the five year sign up phase of the CRP, and agriculture's response has been enthusiastic. Nationwide, more than 22.9 million acres have been retired as landowners have recognized the generous economic aspects of the program.[2] In Iowa, over 1.4 million acres of the 11 million acres believed eligible have been placed in the CRP, making Iowa the fourth highest state in terms of participation.[3] The CRP has now come to be widely regarded as the most significant new program enacted by the 1985 Food Security Act, and more importantly, perhaps the single most significant soil conservation program in the history of federal soil erosion control efforts.[4]

Clearly, the popularity of the CRP means it is destined to play a major role over the next ten years in addressing the national policy goals of soil and water conservation, crop surplus reduction, and supplementation of national farm income. Lawmakers in Congress are already considering ways to expand the reach of the program. For example, Senator Nunn from Georgia has introduced legislation to expand the size of the reserve to 65 million acres and increase the economic opportunities for participants.[5] The true historical significance of the CRP, rather than being merely the sheer number of acres retired or the level of federal payments, may instead be the extent to which the states and the nation act to capture the potential the CRP holds for initiating long-term adjustments in policies concerning agricultural production, land management and rural economic development. The potential is especially significant for Iowa, which is just beginning to recover from the most serious agricultural financial crisis in two generations and must think seriously about the future of its agricultural resources and their relation to the state.

The purpose of this Article is to identify the potential that the CRP offers the state to identify, study, and implement alternative agricultural

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1. Erodible Land and Wetland Conservation and Reserve Program, Pub. L. No. 99-198, §§ 1201, 1231-44, 89 Stat. 1354 (1985) (codified at 16 U.S.C. §§ 3801, 3831-3844 (Supp. III 1985)). Regulations for the CRP were promulgated on February 11, 1987. 52 Fed. Reg. 4265 (1985) (to be codified at 7 C.F.R. Part 704).

2. *CRP Acreage Nears 23 Million Mark*, J. SOIL & WATER CONSERVATION 339 (Sept.-Oct. 1987).

3. *One Million More Iowa Acres Idled*, Des Moines Register, Mar. 14, 1987, at A9. The 1.4 million acres amounts to over four percent of the state's approximately 34 million acres of farmland.

4. While soil conservationists generally praise the program, there have been some concerns over its economic effectiveness. *See* Stoddard, *Implementing the Conservation Title of the Food Security Act: The Unfinished Agenda*, J. SOIL & WATER CONSERVATION 93-94 Mar.-Apr. 1987), Dicks, *More Benefits With Fewer Acres Please*, J. SOIL & WATER CONSERVATION 170-73 (May-June 1987).

5. Nunn, *Each Dollar Buys Double in Conservation Reserve*, Des Moines Register, August 4, 1987, at B6. *See also Conservation Reserve Incentives Proposed*, ALTERNATIVE AGRIC. NEWS 3 (Oct. 1987).

policies; and to begin a long-term reorientation of state policies towards agriculture. State policy makers are presently faced with addressing the convergence of three basic goals of Iowa public policy:

> 1) the traditional, active public involvement and concern over soil and water conservation and preservation of the basic resources that give us our agricultural strength and quality of life;
> 2) the emerging recognition of opportunities to reorient agricultural production to seek alternative profitable forms and methods of production and marketing, while developing sustainable, low input, environmentally beneficial production systems; and
> 3) the increasing recognition of the contributions that tourism, outdoor recreation and a quality natural environment make to economic development in the state.

The article will suggest how the CRP offers the state a variety of opportunities to develop state initiated and designed efforts which address each of these three interrelated concerns. By developing programs and policies which supplement the existence of the CRP and are targeted to these opportunities, the state may be able to utilize the substantial financial incentives offered by the federal government to implement important state policy goals. While state programs to supplement the CRP may not be able to reach all land, they may provide the chance to demonstrate innovative resourceful state leadership on agricultural and resource issues.

II. Three Converging State Policies

A great deal of public policy making in Iowa focuses on the question of what the future of our state will be. Lawmakers, business people, farmers, and all the state's citizens share common concerns that the Iowa of the future be a state with a strong productive economy, a healthy natural environment, and an enjoyable quality of life. Much of the state's treasury and lawmakers' time is spent in developing and implementing policies that make that future possible. Three policies are of particular importance as related to agriculture, the natural environment, and our rural economy.

A. *Soil Conservation*

The state of Iowa has long been a leader in soil conservation initiatives, as evidenced by the strong system of local soil conservation districts,[6] the innovation of using state cost-sharing monies for soil and water conservation practices, and the widespread farmer participation in federal soil conservation programs. More importantly, Iowa leads the nation in the existence of a strong state soil conservation law which makes it the duty of each landowner

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6. Iowa was one of the earliest states to adopt the model law creating the system of locally controlled soil and water conservation districts. These districts, as well as the innovative state soil conservation law are established in Iowa Code § 467A (1987).

to protect and preserve the soil.[7] The law, which has been praised and held constitutional by the Iowa Supreme Court,[8] requires that public cost sharing be available to assist landowners in protecting their soil.[9] Iowa has traditionally shown a similarly strong concern for protecting other important natural resources. Just this year the state adopted a ground water quality control law[10] which many feel may serve as a model for state action across the nation.

Iowa's soil and water conservation efforts are limited by several restraints. These include the need for further education about and demonstration of the costs and cures of soil erosion, in order to heighten public awareness of both the dangers of such erosion and the need for conservation; and the perennial problem of obtaining the substantial short-term financing which is needed for programs and practices to address today's problems, but which yields primarily long-term benefits. For these reasons, if no other, the CRP has been an important, widely-embraced program in the state.

B. *Finding Sustainable Alternative Agricultural Systems*

Iowa's agricultural resources place it among the most productive states in the nation. But, as recent economic developments of declining land values, decreasing producer returns, and substantial financial stress on the farm demonstrate, Iowa's productive capability does not ensure a prosperous farm economy. In addition, continuing resource concerns such as soil loss and ground water contamination pose threats to long-term sustainable agricultural production. While signs such as the stabilization of farmland values may indicate that the Iowa agricultural economy is improving, events of recent years will undoubtedly leave indelible effects on those producers who remain. This experience should make all involved with agricultural policy in the state more willing to consider what the future of our agricultural system may be or should be.

Important questions are now being asked, and significant efforts are underway in the state which deal with such issues. Research and experimentation with alternative crops which can be grown profitably in Iowa have been going on at the state's universities and on farms throughout the state in recent years, as individuals have sought the keys to a more profitable and stable future. If interest in materials and programs on "alternative agriculture" is any measure, Iowa farmers are more willing today to consider new

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7. IOWA CODE § 467A (1987).

8. *See* Woodbury County Soil Conservation Dist. v. Ortner, 279 N.W.2d 276, 279 (Iowa 1979); *see, e.g.*, Stone, *Farmers May Be Forced to Curb Erosion of Soil*, Des Moines Register, Nov. 14, 1986, at A13.

9. IOWA CODE § 467A.48 (1987).

10. H.F. 631, 1987 Iowa Legis. Serv. (5) 475 (West) (to be codified as Groundwater Protection, IOWA CODE § 455E).

ways of doing new things than ever before.[11] These efforts are also complimented by the extensive work of the various commodity promotion organizations to develop new products from Iowa produce and new ways of marketing that produce, which have created significant economic opportunities.

Important research has also begun on alternative methods of agricultural production which may result in more economical and environmentally safe ways of producing food.[12] State-funded research has been under way for a number of years at Iowa State University to identify and test the potential that alternative crops may have for adaptation in Iowa. The creation of the Leopold Center for Sustainable Agriculture, to be located at I.S.U. to research low input, environmentally sound production methods as part of the 1987 Groundwater Quality Act, is a major statement of the state's commitment to developing a sustainable agricultural system.[13]

While it is early in the process, Iowa's agriculture may be on the verge of a reorientation which could lead to an agricultural system that maintains high productivity and profitability, with extensive opportunities for family structured agriculture, while sustaining our soil and water resources. Clearly, though, there are uncertainties to be faced and many institutional and societal restraints to such change. The understandable reluctance of producers to try new production methods or crops until the effectiveness of such practices and the markets for such products are established is one major re-

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11. In 1986, the Iowa-based national farm magazine SUCCESSFUL FARMING sponsored a three day conference in Des Moines entitled ADAPT—"Agricultural Diversification Adds Profits Today." More than 5,000 farmers from throughout the nation attended. A second conference was scheduled for Kansas City in early December of 1987. *See* Perkins, *ADAPT Session to Offer 100 Ideas to Fuel Farm Profits*, Des Moines Register, Nov. 23, 1986; *5000 Farmers Rally Here for ADAPT 100*, Des Moines Register, Dec. 3, 1986.

12. An excellent example of such programs is the Iowa Natural Heritage Foundation's Resourceful Farmers Program which has enlisted 185 Iowa farmers to engage in statewide demonstrations of alternative agricultural practices. *See Farming With Less: State Program Seeks to Cut Work, Costs*, IOWA FARMER TODAY, Aug. 8, 1987; *Resourceful Farmers Demonstrate Profitable Conservation Methods*, IOWA FARMER TODAY, Sept. 12, 1987.

13. Sections 230(1) and (2) of the Act provide:

> 1. For the purposes of this section, "sustainable agriculture" means the appropriate use of crop and livestock systems and agricultural inputs supporting those activities which maintain economic and social viability while preserving the high productivity and quality of Iowa's land.
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> 2. The Leopold center for sustainable agriculture is established in the Iowa agricultural and home economics experiment station at Iowa State University of science and technology. The center shall conduct and sponsor research to identify and reduce negative environmental and socio-economic impacts of agricultural practices. The center also shall research and assist in developing emerging alternative practices that are consistent with a sustainable agriculture. The center shall develop in association with the Iowa cooperative extension service in agriculture and home economics an educational framework to inform the agricultural community and the general public of its findings.

1987 Iowa Legis. Serv. (5) (507) (West) (to be codified at IOWA CODE § 266.38(1)-(2)).

straint. This means that widespread, practical demonstrations of alternative crops and production methods will be necessary. In addition, because many of the alternative agricultural practices may have substantial start-up costs (different machinery, for example) or may involve crops with delayed economic returns, there are also significant financial needs which must be met in order to facilitate widespread consideration and adoption of the changes that research indicates merit acceptance.

C. *Contribution of Iowa's Natural Heritage to Economic Development*

Rural Iowans have traditionally enjoyed a stable economy based on the state's abundant agricultural resources of land and people, and on a perceived economically invulnerable farm sector. Events of recent years, when coupled with longer term societal trends, have placed the rural social and economic structure of Iowa under considerable pressure as the farm financial crisis has reverberated from main street to the factory line. Iowans have always enjoyed a high quality of life due to our educational system, cultural opportunities, and the natural surroundings of fresh air, water, and a well-managed park and recreation system. In recent years, there has been a growing recognition and appreciation of the role that a quality and enjoyable outdoor environment can play in the economic development of rural Iowa, both in our towns and on our farms. Outdoor recreation activities such as boating, fishing, hunting, and hiking bring thousands of people into rural Iowa. Tourism and other recreation activities add many more, and all of these visitors spend money during their visits and thus generate economic benefits for the rural economy.

The state legislature has recognized the importance of recreation opportunities to the state's citizens. In 1987 the Iowa Legislature passed House File 620[14] which sets as a goal for the state that, by the year 2000, at least ten percent of the land in the state be under some form of "public open space protection."[15] The resolution was a result of the Legislature's recognition that Iowa ranks forty-ninth in the nation in the amount of land under public ownership, but that outdoor recreation and other natural use activities are a major contributor to the quality of life of the state's citizens.[16] The legislative action has set a goal for the state to engage in aggressive expansion of state land acquisition and management efforts. The major tasks now before the state are first, to identify the legal tools to accomplish this goal

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14. 1987 Iowa Legis. Serv. (4) 279 (West) (to be codified at IOWA CODE § 111E.1-.4). *See* Fogarty, *House Votes to Require 10% of Land to Be Public*, Des Moines Register, Apr. 2, 1987. The bill is silent as to how the ten percent goal is to be accomplished.

15. 1987 Iowa Legis. Serv. (4) 279, 280 (West) (to be codified at IOWA CODE § 111E.1 (5)(c)).

16. *See Good Life Is Good Business*, Des Moines Register, June 26, 1987, and Fogarty, *Triple Tourism Spending, Iowa Committee Suggests*, Des Moines Register, Oct. 27, 1987, at A13.

with the least disruption of the private land tenure system and, second, to develop sources of financing and other mechanisms to achieve the goal of public open space management.

III. The CRP and Iowa Participation

The concept behind enactment of the CRP was to develop a program for long-term land retirement of marginal and erodible cropland, a program which would integrate production control programs with soil conservation needs. Congress set an initial goal of contracting for 45 million acres of CRP ground over a five-year contract period.[17] After the fifth bidding session, completed in July of 1987, over 22.9 million acres of eligible cropland had been retired nationwide, a significant achievement.

To participate in the CRP, landowners must agree to retire their ground from crop production for not less than ten years, nor more than fifteen years, during which time an approved conservation plan for cover crops, including trees, must be established and maintained.[18] For the land to be eligible to be placed in the CRP, it must meet the Soil Conservation Service [hereinafter S.C.S.] test as being erodible.[19] In exchange for signing a binding contract to retire the land for ten to fifteen years, the landowner receives an annual rental payment at the bid price (currently \$70-\$95/acre in Iowa)[20] and federal cost sharing of up to half the cost of establishing the conservation cover on the ground.[21] The program is administered by the United States Department of Agriculture through the Agricultural Stabilization and Conservation Service [hereinafter A.S.C.S.] and the S.C.S. with the assistance of other interested and affected federal and state agencies.[22]

IV. The Potential to Develop State Programs to Supplement the CRP

The CRP was designed primarily to accomplish three goals: the retirement of marginal and erodible land to reduce soil erosion, the reduction of commodity surpluses through extensive cropland retirement, and the infusion of capital into agriculture by providing landowners a land management alternative. As implemented, the CRP is providing visible evidence of achieving each goal. For example, more than 21 million acres of erodible cropland have been removed from production with annual soil savings esti-

17. 16 U.S.C. § 3831(b) (Supp. III 1985).

18. *Id.* at §§ 3831(e), 3832.

19. *Id.* at § 3801(a)(7)(A).

20. CRP payments in Iowa vary from a maximum of \$95 to \$70, depending upon in which of four "pools" a county is located. *See Tentative County Enrollment in Conservation Reserve Program*, Des Moines Register, Aug. 19, 1987, at B8 (chart).

21. 16 U.S.C. at § 3833.

22. *Id.* at § 3842; 7 C.F.R. § 704.3 (1987).

mated at more than twenty tons per acre or more than 420 million tons per year nationally. In terms of payments, in 1987 Iowa farmers received more than $79 million in annual rental payments and more than $122 million in the one-time base reduction signup bonus.[23] In addition, the CRP has had the somewhat unexpected but welcome effect of contributing to the stabilization, and even increase, of land prices in some Iowa counties with more erodible and less productive land.[24]

It is the theme of this article that, with initiative and foresight, the CRP has the potential to be much more than a supply management and land retirement program. The remainder of the article is a discussion of various ways the CRP can be used to assist the state in furtherance of the three policy goals discussed above. That discussion can be summarized as follows: the CRP offers the state a major and perhaps once in a lifetime planning opportunity to redirect a portion of Iowa's agricultural system and achieve the goals of:

> 1) retiring marginal, erodible, and environmentally sensitive land from annual crop production;
> 2) increasing state land management and control of significant natural resource lands, both directly and indirectly;
> 3) initiating the development of alternative cropping systems, notably wood production, orchard crops, and high-yield energy crops; and alternative rural land uses such as fee hunting and recreation trails, which can result in increased land returns; and
> 4) enhancing the flow of available federal economic assistance to Iowa farmers.

In order to achieve these goals, the state will need to develop programs which:

> 1) encourage landowner participation in the CRP, by providing additional incentives both to new CRP participants and those already enrolled in the program;
> 2) extend the effectiveness and economic benefits of the CRP beyond the original ten-year period, plan for a transition to the post-CRP era by encouraging land management changes which will limit returning marginal land to annual crop production, and develop supplemental programs to identify and adopt profitable alternative production systems;
> 3) employ the CRP in support of other significant state natural resource protection and agricultural programs—for example, in addressing the groundwater quality problems presented by agricultural drainage wells, and the siltation of lakes and rivers; and
> 4) utilize the CRP to support state efforts to expand public management

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23. *See* Muhm, *Iowa Leads CRP Payments List*, Des Moines Register, Mar. 22, 1987, at A14.

24. *See* Perkins, *Conservation Reserve Payments Give Boost to Sales of Farmland*, Des Moines Register, Mar. 8, 1987, at A18; Muhm, *Farm Values Rise Statewide for the First Time in 6 Years*, Des Moines Register, Sept. 23, 1987.

and ownership of natural resource lands, through direct CRP-financed public land acquisition from cooperating CRP participants, and in the development of recreation, wildlife and other natural resource values on CRP land.

Each of these areas of opportunity presents challenges to state policy makers to develop the programs needed to capture the ancillary benefits available from the CRP. An initial blueprint of possible programs is discussed below.

V. Maximizing Landowner Participation in CRP

One initial state goal should be the implementation of a promotional and educational campaign to encourage landowner participation in the CRP when that action is in the economic best interest of the landowner. USDA data indicate that, given present CRP eligibility guidelines, more than 11 million acres of Iowa cropland is eligible for CRP entry.[25] Increased CRP participation will generate direct benefits to the state, including producer receipt of federal payments and reduction in soil erosion due to retirement of marginal cropland, and will result in indirect benefits due to commodity price increases resulting from surplus reduction. In addition, a high level of state participation will provide flexibility to pursue other related policy options such as those identified in this article.

The goal of maximizing participant benefits from CRP participation should not end once a landowner has entered the program, but should extend to identifying opportunities to increase the benefits received during the CRP periods. In order to enhance landowner participation, the state should explore the feasibility and need for creating additional economic incentives to landowners to enter the program. Proposals which may be feasible to encourage enrollment include:

1) providing additional state cost sharing for establishing conservation practices, especially those practices which have substantial initial costs, such as timber and wood production or those which will yield substantial post-CRP public benefits, such as reconversion of wetlands to marshes; and

2) the provision of supplemental annual payments to landowners, during the CRP period, to increase the attractiveness of CRP participation. This may be appropriate only for those lands that are identified as environmentally sensitive or which are given a high priority under other related supplemental state programs.

The state may wish to develop a system of identifying sensitive lands

25. It must be recognized that while 11 million acres are eligible, this land is heavily concentrated in the southern half of the state. A program restriction that no more than twenty-five percent of the cropland in each county can be retired limits the total amount of land that could be retired in Iowa to less than 11 million acres.

which can be targeted for entry in the CRP and for the receipt of supplemental payments. The Iowa Department of Natural Resources recently conducted one such inventory when it reviewed properties held by the Farmers Home Administration [hereinafter FmHA] to consider which lands the state should consider acquiring as public lands. Such an inventory of CRP eligible or participating land could identify lands adjacent to existing public lands, lands on priority lists for future acquisitions, and lands that are causing significant resource problems, such as erodible land in the watershed of public lakes or flood control projects.

Proposals which may be appropriate to consider for increasing the economic benefits to landowners enrolled in the CRP could include research and development on allowable economic uses which can be made on the property during the CRP period. The CRP program severely restricts the right of landowners to make economic use of their property during the contract period, which is understandable given the land-retirement-through-governmental-rental structure of the program. Landowners are specifically restricted from harvesting crops or grazing land under a CRP contract, as well as being restrained from the commercial sale or harvest of nursery stock or Christmas trees.[26] But those restraints do not mean there are not other possible economic activities that can be considered for CRP land.

Perhaps the most notable of these alternative economic uses would be landowner payments received for recreational use of the property—in particular, access for hunting. The CRP rules specifically allow such use under the theory that charging recreational fees "does not constitute harvesting or selling of forage from land subject to the CRP contract."[27] Several alternatives exist for developing methods of increasing landowner returns from recreational use of CRP land. Private systems of fee hunting and charging for hunter access, such as the successful Corning, Iowa-based Pheasants Galore program, under which hunters pay a fee to use private land and may stay in bed and breakfast facilities provided by the farmer, are one option.[28]

A number of other midwestern states have implemented wildlife management programs which compliment the CRP.[29] For example, Missouri offers CRP participants a financial incentive of an additional twenty-five percent cost sharing for establishing wildlife habitat on their property, a program which Maryland is considering adopting. The Missouri program is funded through the 1984 constitutional amendment that established a 0.1

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26. *See* 16 U.S.C. § 3832(a)(7)-(8) (Supp. III 1985).

27. *See* 52 Fed. Reg. 4268 (1987). *See also* 7 C.F.R. § 704.11 (1987) (entitled Obligations of the Participant).

28. *Corning Farmers Earn Income Providing Housing and Land for Pheasant Hunters*, Iowa Farm Bureau Spokesman, Sept. 12, 1987.

29. States Augment the Wildlife Benefits of the Federal CRP, *Conservation Focus*, National Association of State Departments of Agriculture, Research Foundation Farmland Project (Oct. 1987).

percent retail sales tax to fund soil and water conservation programs. Colorado and Idaho have also developed supplemental cost sharing programs to encourage CRP participants to establish tall grasses for prairie chicken and pheasant nesting cover. The states use revenues from the sale of fishing and hunting licenses and the sale of prints of duck stamps, respectively, to fund the programs. South Dakota and North Dakota are assisting wildlife habitat indirectly by supplying state funds to help cost share the planting and the establishment of seed plots and the restoration of wetlands on CRP acres. Illinois is using the 1983 Forestry Development Act to match the federal fifty percent cost share on CRP tree planting costs. All of these programs offer examples for the state to consider.

Another option is a publicly coordinated system which combines enhanced producer returns as well as an increased inventory of wildlife habitat lands open to public access. Oklahoma officials are presently working on a system under which hunters will purchase a special CRP land access permit from the local A.S.C.S. office, which will give them the right to hunt on participating CRP property.[30] The owners of participating CRP land will receive an annual payment of $3.00 per acre, to be paid out of revenue from the sale of access stamps. Any public program using CRP land for public recreation will have to address the central concerns of landowners as to who ultimately controls access to and the use of the property, and who has liability for recreation uses. These questions, while serious, are not so much obstacles to such programs as they are issues to be addressed in designing any successful program.

Enhancement of wildlife numbers is one of the important benefits to be gained from CRP participation. Already, wildlife officials are indicating that Iowa will experience a substantial increase in pheasant and quail numbers, and thus an improvement in hunting opportunities, due to the CRP.[31] Recently the USDA altered CRP rules to improve opportunities for farmers to establish wildlife food plots as part of their conservation plan. Even if the state does not consider the adoption of some form of direct public involvement in a CRP hunter access program, the CRP related wildlife benefits will still mean substantial general economic activity for the rural economy as additional hunters spend more days in the field. Nonresident hunters alone generated $13.5 million in economic activity in rural Iowa in 1986.[32] As a result, the state should consider ways to enhance CRP participants' wildlife habitat improvement action. For example, the state could work with private groups such as Pheasants Forever to make available seeds to plant wildlife

30. *Oklahoma Proposes Hunting Program on CRP Land*, J. Soil & Water Conservation 177-78 (May-June 1987).

31. Stone, *State Raises Hunting Limit on Pheasants*, Des Moines Register, Sept. 4, 1987, at 15, col. 2.

32. Kollings, *Out of State Hunters Profit Iowa*, Des Moines Sunday Register, Oct. 4, 1987, at 2D, col. 1.

food plots on CRP land.[33] The state could also consider paying the inspection fee the A.S.C.S. charges CRP participants who delay clipping conservation cover in order to increase the nesting opportunities for upland game birds.

A second very important opportunity to enhance landowner economic benefits from CRP participation is the research and promotion of establishing alternative long-term crops for CRP property. Crops that could be planted during the CRP period and harvested after the contract expires could provide important economic opportunities. While the program regulations specifically restrict the sale of Christmas trees or nursery stock from CRP land, many other alternatives may be available. These include:

> 1) establishing plantations of fast-growing, high yielding hybrid poplars and other trees that can be harvested for use in energy production. Important research on such crops is under way at Iowa State University on fast-growing alternative tree crops which can be harvested annually or on short-term rotations.[34]
> 2) planting orchards of traditional fruit and nut trees, which will offer post-CRP marketing opportunities.[35]
> 3) planting traditional timber crops, for use in longer-term production of hardwoods.

Any such activities would need to be undertaken in conformity with CRP program guidelines for allowable conservation practices, and with the advice and consent of soil conservation officials. While such practices may have high initial establishment costs (for example, approximately $300 per acre to plant hardwoods) approved practices would be eligible for fifty percent federal cost sharing.

In the CRP law, Congress established a goal that, where feasible, one-eighth of CRP land should be planted to trees.[36] In the Southeast, significant state efforts have encouraged use of the CRP program to establish large scale pine plantations for use as pulpwood. In Iowa, however, only 3,500

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33. *CRP Rules Update*, Farm Futures, Oct. 1987, at 19; *Set Aside Habitat*, Des Moines Sunday Register, June 14, 1987; Stone, *Farm Program May Help Wildlife*, Des Moines Register, Feb. 1, 1987, at 2D, col. 1; Stone, *Seed Companies Helping to Provide Wildlife Food and Cover*, Des Moines Register, Apr. 2, 1987, at 35, col. 1.

34. For example, Professor McNabb of the Iowa State University College of Agriculture, Department of Forestry has conducted research on poplar production for energy use for a number of years.

35. *See, e.g.*, Muhm, *Does Fruited Plain Hold the Key?*, Des Moines Register, Aug. 8, 1987, at 5S, col. 2. *See also* Fruhling, *Iowans Told Food Crops Offer Prospect of Profits*, Des Moines Register, Nov. 19, 1986, at 6S, col. 3; Fruhling, *Troubled Farmers Look to Cabbage Patch for Help*, Des Moines Register, Feb. 15, 1987, at 1F, col. 1.

36. The statute provides: "To the extent practicable, not less than one eighth of the number of acres of land that is placed in the conservation reserve under this subchapter in each of the 1986 through 1990 crop years shall be devoted to trees." 16 U.S.C. § 3832(c) (Supp. III 1985).

acres, or well under 1 percent of CRP land, has been devoted to tree planting. Federal officials are currently considering providing additional benefits, such as increased cost sharing, and requiring that all CRP contracts require tree planting to forward the Congressional goal.[37]

If the one-eighth goal of Congress was enforced, Iowans would have to plant trees on more than 175,000 acres of CRP property. Iowa presently has only 1.5 million acres of its original 7 million acres of timber land left. It may seem unreasonable to require trees to be planted on one-eighth of CRP land in Iowa, but clearly the tree planting component has been underemphasized. The state should consider programs to increase the amount of CRP land devoted to trees, through measures such as state cost sharing of a portion of the initial cost, to be used with existing federal cost sharing, and supplemental state benefits to encourage establishment of trees on present CRP land. State-designed initiatives to encourage tree planting can be used to forward a variety of important goals including:

1) increasing the amount of timber land in the state;
2) creating opportunities for developing alternative agricultural crops, for horticulture and silvicultural uses; and
3) limiting the potential for marginal and erodible land to return to row-crop production at the end of the CRP program.

Whether it is through recreational use, planting long-term crops with post-CRP harvest potential, or other related activities, there exist both ways that CRP land can be used for economic advantages, and opportunities to use the CRP period as a federally-financed transition period to bring new crops or land uses into existence.

One restraint on increasing landowner participation in the CRP program is the requirement set forth in section 1231(d) of the 1985 Food Security Act which limits the amount of cropland that can be placed into contract in any one county to twenty-five percent.[38] The Secretary can waive the limitations if he determines that "such action would not adversely affect the local economy of such county."[39] Presently four Iowa counties, Wayne, Decatur, Ringgold and Taylor, are already nearing the twenty-five percent limit.[40] While the limitation may prevent additional CRP entry in these

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37. Stone, *Federal Programs Help Trees Once Again Cover What Was Once Cropland*, Des Moines Sunday Register, May 5, 1987, at 7D, col.5; and *Trees: A Crop That's Growing More Popular*, WALLACES FARMER, Sept. 26, 1987, at 74. *See also Tree Planting Urged on CRP Land*, J. SOIL & WATER CONSERVATION 255 (July-Aug. 1987).

38. Food Security Act of 1985, Pub. L. No. 99-198, § 1231(d), 99 Stat. 1354 (1985) (codified at 16 U.S.C. § 3831(d) (Supp. III 1985)). The purpose of the restriction is to limit the economic impact that land retirement may have on a local economy, as a result of reduced purchasing and marketing activity.

39. *Id.*

40. Muhm, *CRP Nears Limit in Four Counties*, Des Moines Register, July 11, 1987, at 65, col. 4.

counties, the twenty-five percent limitation could serve as a goal for additional CRP enrollment in other areas.

VI. Using the CRP to Support Related State Programs

The second method by which the CRP can be valuable to Iowa is by using it in conjunction with other significant state natural resource related programs. For example, under the groundwater quality control law (H.F. 631) enacted in 1987, the state is studying the important question of how to deal with the problems created by agricultural drainage wells and naturally occurring sink holes which lead surface contaminants directly to aquifers.[41] Any program that requires either the closure of such wells or significant land use changes on surrounding cropland will have real economic costs for whoever bears that responsibility, and may result in significant amounts of land, perhaps over 70,000 acres, which cannot be row-cropped.

The state has not decided what approach to take in addressing drainage wells—for example, whether to regulate the wells out of existence, in which case the landowners will bear the cost through loss of cropland, or alternatively, whether to have the state acquire the land or an interest in it or pay for alternative surface drainage, in which case the public will bear all or a portion of the costs. Pilot efforts are now underway to determine which alternatives are the most effective, efficient and equitable. For example, the Iowa Natural Heritage Foundation is conducting pilot research on using existing economic incentives for the voluntary closure of such wells through conservation easements.[42] Clearly, the CRP has excellent potential for use in this effort and in any program state officials might develop. If the drainage well or sinkhole cropland is eligible to be placed in the CRP, at least ten years' worth of federal payments can be earned and applied to costs of reduced crop production or land acquisition, and alternative nonpolluting management practices can be put in place on the land. By entering the land in the CRP, the costs of dealing with drainage wells will be reduced, whether the state ultimately regulates the wells closed or provides financial incentives to the affected landowners to remedy the problem.

One present limitation on the use of the CRP to assist in the drainage well program may be the eligibility of the land under current standards for erodible cropland. It should be noted the the CRP law provides that: "The Secretary may include in the program established under this subchapter lands that are not highly erodible lands but that pose an off-farm environmental threat . . . ."[43] This section creates the opportunity for state officials

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41. *See* § 303 of H.F. 631, Agricultural Drainage Wells, 1987 Iowa Legis. Serv. (5) 475, 511 (West) (to be codified at Iowa Code § 159.29).

42. *See* Section 301 of H.F. 631, 1987 Iowa Legis. Serv. (5) 475, 510 (West) (to be codified at Iowa Code § 108.11) (authorizing the use of conservation easements on lands drained by such wells or sinkholes).

43. 16 U.S.C. § 3831(c)(2) (Supp. III 1985).

to request the Secretary to expand the use of the CRP to address the drainage well issue if land eligibility becomes a problem.

There are other examples of existing state programs for which the CRP can be used to provide assistance. As noted in the introduction, the state has set a goal of increasing the amount of land under public open space management to enhance the quality of life in the state and provide additional public opportunities to use the outdoors. As a result, the state is faced with the need to identify and acquire lands that have significant natural, historic, scenic and recreation value. In addition, the state has the continuing responsibility to protect existing investments in public land resources by preventing siltation of lakes and rivers and by protecting scenic views and resource uses adjacent to public lands. The state should consider how the CRP can be used to assist the state in these efforts, either through permanent forms of public protection, such as those discussed in section VIII, *infra*, or through interim protection of public values.

One way this could be done is for the state, through the Department of Natural Resources and the County Conservation Boards, to conduct a survey of private lands that are adjacent to existing or proposed public land resources, such as those next to state forests, upstream of state lakes or protected scenic streams, or land identified for potential acquisition by governmental units. This inventory, as discussed in section IV, *supra*, could identify environmentally sensitive lands which the state would like to see protected. For identified lands which are already in the CRP, the owners could be made aware of other state programs developed to provide further protection or additional benefits for conservation use. For lands not in the CRP but eligible, landowners could be encouraged to enroll in the CRP and perhaps be given additional state funded signup bonuses for enrolling. By targeting CRP enrollment on identified environmentally sensitive lands, the state could reduce certain maintenance costs—for example, siltation of public lakes such as that experienced at Lake Red Rock and Union Grove Lake.[44] It could also act to protect the land from land-use changes that would prevent its use as a public resource if it were to be acquired by the public in the future, such as land being acquired for the Loess Hills Pioneer State Forest.[45]

VII. Plan Now for the Transition to a Post-CRP Era

While ten years sounds like a long time in the course of the state's future or in the use of our agricultural land, the period is not that long. Soil conservationists at the national level are already asking what type of soil

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44. *See Dam Is a Giant Silt Trap*, Des Moines Register, July 6, 1987, at 12A, col. 1; *Futile Dredging of Lake*, Des Moines Register, Sept. 1, 1987, at 8A, col. 1.

45. *State Buys Loess Hills Farm to Create Forest*, Des Moines Sunday Register, May 17, 1987, at 7B, col. 5.

conservation policies we will have in place at the end of the CRP to ensure that the program will not be just a one-time program of limited conservation value (but of high federal payments to landowners, perhaps not unlike the soil bank of the 1960s)[46] but instead will be successful in providing substantial lasting conservation values to the public. Without such protections, the end of the CRP could result in several dangers, including significant erosion from newly cropped marginal land, reduced crop prices through new land production, and disruption of non-crop uses developed during the CRP period.

There are several aspects of the CRP which will affect the post-CRP use of property. For example, as noted above, the CRP program is to include a tree planting component on at least one-eighth of the property enrolled.[47] One result of tree planting will be that the land will be much less likely to be converted to row-crop production at the end of the CRP contract period. In addition to tree planting, S.C.S. officials have also encouraged other long-term conservation activities on CRP land, such as marshland and wetland reconstruction, that will limit the possibility of returning the land to cropland.

Perhaps the most significant restraint on post-CRP cropping of CRP ground will be the conservation cross-compliance provision of the 1985 farm bill.[48] Under this law, all landowners who farm highly erodible cropland and who want to continue to participate in federal commodity price and income support programs must adopt a conservation plan for their land by 1990 and the plan must be fully implemented by 1995.[49] Under the plan, the soil loss from the property must be below established soil-loss limits.[50] If a plan is not adopted, or if the soil loss limits are not met, then federal farm program benefits are not available.[51]

The effect of cross-compliance on CRP participation will be that if the land placed in the CRP also meets the highly erodible standard of the cross-compliance provision, which the major portion will, then before the CRP ground can be returned to production of federally supported crops, erosion control and conservation practices will have to be adopted. The effect of applying cross-compliance to CRP, a factor perhaps not recognized by landowners at the time of signup, is that the CRP property may never come back into row-crop production, but instead, may be limited to a less intensive use such as haying, grazing or tree production. Interestingly, it may be

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46. Anthan, *Conservation Takes Its Lumps*, Des Moines Sunday Register, Sept. 27, 1987, at J1, col. 1.

47. *See supra* note 28.

48. *See* 16 U.S.C. §§ 3811-12 (Supp. III 1985). *See also Farmers Await Books on Erosion Compliance Rules*, IOWA FARMER TODAY, Sept. 26, 1987.

49. 16 U.S.C. § 3812 (a)(2) (Supp. III 1985).

50. *Id.* at § 3812(b)(3).

51. *See id.* at § 3811.

possible to use the potential of future restriction on the ability to crop erodible land, due to cross-compliance, as an incentive to encourage landowners to enroll erodible land in the CRP now in order to obtain program benefits and to consider related state programs developed to complement the CRP.

The state should begin planning now for programs that will both ease the transition and extend the important values of the CRP program—soil conservation, surplus reduction and landowner benefits—to the post-CRP period. There are a variety of programs the state could consider, depending on the importance given to extending CRP benefits, and the funding available. Such programs could include:

> 1) Creation of a supplemental state conservation reserve program, which could give landowners the option of extending conservation uses for an additional period, *e.g.* ten years, in exchange for additional payments. This could be done either through a contract, as is the case with the CRP, or through the use of conservation easements whereby the public obtains a legal interest in the land. The extension could be paid for through direct supplemental payments, as well as by tax deductions or other incentives, such as, the payment of state inheritance taxes through a donation of an easement to the state.[52] Because of the cost of such a program, the state may want to limit the use of land identified as environmentally sensitive or otherwise significant.
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> 2) Encouraging landowner adoption of land uses that limit the return of CRP property to row-crop production. As noted in section V, *supra*, one possible state use of the CRP is to encourage agricultural uses that will create products to market after the CRP period, such as timber, orchards, high yield energy crops or wildlife habitat.[53] To the extent that such programs are successful, it is unlikely that the land will return to pre-CRP uses.
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> 3) Researching and identifying other alternative land uses that might provide post-CRP opportunities—for example, crops that require harvesting of the land but which are less erosion-prone than row crops. Increased expansion of the grazing industry and new markets for hay and forage products will create post-CRP opportunities as would the development of markets for native grass production. All of these various approaches should provide opportunities to extend CRP benefits beyond the original contract period.

At least one state has developed an innovative state-funded program designed to complement the CRP and to address specific state needs. In 1986, the state of Minnesota adopted an exciting resource protection program called Re Invest in Minnesota (RIM) which is essentially a state-run program similar to the CRP, but which was designed to complement, not

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52. *See* IOWA CODE § 450.6 (1987).

53. Stone, *Iowans Turn Cropland into Marshes for Wildlife*, Des Moines Register, Sept. 20, 1987, at 3D, col. 1.

compete with, the CRP.[54] Under the program, Minnesota has targeted more than $35 million in the last two years to acquire long-term or perpetual conservation easements on marginal farmland, whereby the land will be retired from crop production and conservation uses will be established. In 1986, easements were written on more than 21,000 acres of marginal land, and several other fish and wildlife enhancement projects were begun. RIM is a state-financed, locally-administeredprogram which uses local conservation officials to identify eligible land and to encourage landowner participation. Iowa officials should consider the precedent and performance of the Minnesota program when considering enacting programs to supplement the CRP.

VIII. Utilizing the CRP to Fund Public Acquisition of Natural Lands

One of the most important ways that the CRP may contribute to state programs is through the potential for public land acquisition, which is the most direct way to ensure public open-space protection. Under the terms of the CRP, the landowner contracts to retire the land for ten years and to establish and maintain conservation practices on the property in exchange for annual rental payments and fifty percent cost sharing of the conservation practice costs. In addition, in 1987, new CRP participants received a substantial one-time bonus for participation, which was in exchange for reducing the corn acreage base for purposes of other federal programs.

In some parts of the state, the CRP program has provided a much-needed foundation to the land market for eligible cropland, because the CRP payments represent a form of guaranteed annual income. The level of annual CRP payments has meant that, in some cases, total annual CRP payments will be greater than the market value of the land as cropland at the time of signup. As a result, landowner participation and interest in the CRP has increased. In addition, considerable demand for CRP land as an investment has developed. While the law restricts land from being acquired in order to place it into the CRP, there are no comparable restrictions on the transfer of participating land, other than that the new owner must agree to comply with the terms of the land retirement contract (or the original owner must refund all benefits and pay liquidated damages).[55]

Evidence of investor interest in CRP land is found in the October 11, 1987, *Des Moines Sunday Register* want ads under "Farms for Sale," where there were twenty-three Iowa farms (totaling over 6,000 acres) listed for sale, in which all or part of the land was presently in the CRP program. As one realtor's ad said, "moderate downpayment, let the CRP make the pay-

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54. Minn. Stat. Ann. § 40.40 (West 1987) (Reinvest in Minnesota Resources Act of 1986, as amended). *See also* Minnesota Department of Agriculture, A Report on the RIM Reserve Program (Jan. 1987).

55. 16 U.S.C. § 3832(a)(6) (Supp. III 1985); 7 C.F.R. § 704.21 (1987).

ments."[56] Clearly, the opportunity to use the CRP to obtain federal financing of farmland acquisition has been recognized by the marketplace. The question is when and how the government will seize this opportunity.

The ability to transfer CRP lands means that first, present owners can essentially cash-out their future CRP payments by selling the CRP land at a discounted present value and second, that investors purchasing CRP land can look to the annual CRP rental payments to help retire the acquisition cost. Depending on a purchaser's cost of money and the purchase price for land, the CRP payments may pay for most or all of the cost of the property, meaning that after ten years, the USDA will have essentially purchased part or all of the farm for the investor. It is the possibility of this type of low-cost acquisition which has sparked great interest in the market for CRP property. It is also this feature which makes the CRP program and this type of acquisition a potentially significant program for state involvement.

There are presently no restrictions on a state or other public entity owning or acquiring CRP land, other than the $50,000 limitation on CRP payments.[57] The payment limitation restraint can be minimized by utilizing local county conservation boards as the legal entities to acquire the property for the public.[58] Therefore, acquisition of CRP land, in part using federal CRP payments to finance the acquisition, may have the potential of being an important component in the state's future efforts to reach the goal of expanding public open-space land protection activities by the year 2000, as set out in House File 620.[59]

For the state to implement such a program, it would need to develop methods to:

> 1) Use the Department of Natural Resource and local conservation agencies to identify which CRP properties the state should acquire, such as through the inventory of sensitive lands, discussed above. This may include the development of lists of targeted properties, such as those adjacent to existing state parks or forests which are planned for expansion, important wildlife habitat areas, or eroding crop land in the watersheds of major lakes or flood control systems.
> 2) Initiate and complete the acquisition of the property from landowners. This will require consideration of available alternatives—for example, whether to rely on voluntary sales by landowners or to consider developing a statutory right of first refusal on the part of the state if targeted CRP property is placed on the market.

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56. Des Moines Sunday Register, Oct. 11, 1987, § J (Farm Classifieds, G-705), at 3, col. 1.
57. 7 C.F.R. § 704.16(c) (1987).
58. Iowa's unique system of county conservation boards was established in 1955. County conservation boards presently manage over 1,200 recreational areas with over 90,000 acres of land. *See County Parks Provide a Variety of Activities*, IOWA FARM BUREAU SPOKESMAN (July 25, 1987).
59. *See supra* notes 14-16 and accompanying text.

3) Finance the up-front acquisition costs of property and amortize those costs with future CRP payments.

The last step, obtaining initial financing, may be the most difficult for the state to address. Possible sources of funds include earmarking wildlife habitat stamp revenues or other related funds for such use, appropriating new funds specifically for that purpose, or utilizing the Wildlife Habitat Bond program.[60] While the initial financing requirements of such a program may be significant, depending on the magnitude, the self-financing nature of using CRP payments to amortize a substantial portion of land acquisition cost means the financial need is basically one of shifting the use of funds over time, as opposed to direct expenditures. The effect of the transaction would be to finance all or a portion of the state's land acquisition costs through annual federal CRP rental payments.

IX. Conclusion

This article has reviewed the nature of the CRP and the significant ways that it relates to important state policies. A variety of methods have been suggested to develop state programs which can complement and supplement the CRP. These programs give the state the opportunity to use the CRP to assist adoption of significant long-term land management and agricultural policies. The state should not hesitate to consider this range of possibilities to use federal CRP financing to advance important state goals.

The author does not mean to imply that the CRP program has the potential to unilaterally result in a reshaping of Iowa agriculture. Such a restructuring is not necessary, or perhaps even feasible, and the CRP alone could surely not provide the mechanics for such a change. Instead, the understanding should be that the 1.4 million acres of Iowa farmland currently in the CRP and the millions of acres eligible for entry can be viewed as a perfect opportunity for developing innovative state efforts which can test the potential for new agricultural and natural resource use programs and which can demonstrate workable alternatives for Iowa's future. It will be the state's ability to use the CRP opportunity to identify new ideas, experiment with alternative production systems and search for economic advantages that will determine whether the CRP will be remembered only as the "soil bank" of the 1980s or, instead, as the impetus toward a sustainable agriculture and a high quality, economically healthy rural environment for Iowa.

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60. *See* Iowa Code § 110.50-.56 (1987).