

February 13, 2023

ISSUE BRIEFING:

RE: Conservation Programs are Being Used to Achieve Biden's 30x30 Initiative

Overview:

The Biden Administration is seeking to permanently protect 30 percent of the United States' land and oceans by 2030, through the 30x30 program initiated on January 27, 2021, by Presidential Executive Order #14008. It is being implemented on private lands by encouraging landowners to enroll in conservation programs they already trust and utilize, through conservation easements in perpetuity, and through direct federal acquisition.

Recently, the Biden Administration has dramatically increased the money offered for the conservation programs as an enticement through the passage of the Inflation Reduction Act (IRA). Along with the increased monies, *the language defining the purpose for existing conservation funds have changed*. According to a USDA press release issued February 13, 2023, the first distribution of \$850 million will begin in the spring of 2023.

Proponents of 30x30 in the United States believe private lands must be a significant part of the protected areas in America for two primary reasons. First, they find that only one percent of the 12 percent of lands permanently protected today are private lands, and yet two-thirds of the conversion from natural to developed areas are occurring on private lands.

Second, they seek to preserve lands of high biodiversity and productivity, which are largely those which have been privately owned, and therefore properly managed. While proponents are also advocating further restrictions on those lands managed by the federal government, creating a federal nexus to private land is critical for them to be positioned to eventually exercise the centralized control they seek over all of America's land, and therefore our food supply.

Repurposing Conservation Programs:

The U.S. House Select Committee on the Climate Crisis released a report in 2020¹ that set forth the policy changes that must be advanced in order to achieve the 30x30 goal. A series of steps were outlined in order to move privately owned lands under the international definition of what qualifies as permanently protected. These are:

1. Increase funding for, and enrollment of private acreages in, existing conservation programs such as the Conservation Reserve Program (CRP), Environmental Quality Incentives Program (EQIP) Agriculture Conservation Easement Program (ACEP), and Wetland Reserve Program (WEP);
2. Change the propose for the conservation programs to prioritize mitigating the climate crisis; and,
3. Move lands enrolled in the conservation programs into conservation easements held in perpetuity.

In 2021 we saw the U.S. Department of Agriculture (USDA) implement the first step and expand the Conservation Programs by increasing the funds available to landowners, paying more per acre to entice more enrollments, and expanding the type of acreages that qualified under the programs.

In August of 2022, we saw Congress implement the second step by changing the priority of the funds for conservation programs. The Inflation Reduction Act (HR 5376) authorized an additional \$20 Billion for the conservation programs. Prior to this Act, the purpose for the conservation funds was to encourage good stewardship practices that improved agriculture production as directed by the Farm Bills and Food Safety Act of 1985. However, the purpose for the additional funds under the *Inflation Reduction Act* changed the prioritization to mitigating climate change, limiting livestock emissions and controlling agriculture production.

Comparing the Old and New Conservation Program Language:

The language change for the conservation program EQIP provides a good example of how the purpose for these programs was changed. The language passed in the 2018 Farm Bill for the EQIP program is as follows:

SEC. 2302. PURPOSES OF ENVIRONMENTAL QUALITY INCENTIVES PROGRAM. Section 1240 of the Food Security Act of 1985 (16 U.S.C. 3839aa) is amended by striking paragraph (4) and inserting the following: “(4) assisting producers to make beneficial, cost-effective changes to production systems, including addressing identified, new, or expected resource concerns related to organic production, grazing management, fuels management, forest management, nutrient management associated with crops and livestock, pest management, irrigation management, adapting to, and mitigating against, increasing weather volatility, drought resiliency measures, or other practices on agricultural and forested land.”. (Farm Bill, PUBLIC LAW 115–334—DEC. 20, 2018)

The language passed that applies to the \$20 Billion in new funding for EQIP in the Inflation Reduction Act of 2022 now reads:

SEC. 15002 (a)(1)(B) Environmental Quality Incentives Program: (II) with the Secretary prioritizing proposals that utilize diet and feed management to reduce enteric methane emissions from ruminants; (iii) the funds shall be available for 1 or more agricultural conservation practices or enhancements that the Secretary determines directly improve soil carbon or reduce nitrogen losses or greenhouse gas emissions, or capture or sequester greenhouse gas emissions, associated with agricultural production; and (iv) the Secretary shall prioritize projects and activities that mitigate or address climate change through the management of agricultural production, including by reducing or avoiding greenhouse gas emissions; (Inflation Reduction Act, HR 5376 117th Congress)

Similar language changes were made to each of the conservation programs. Unfortunately, very few landowners and policy makers are aware of the switch, making them vulnerable to signing onto programs already trusted without being aware the new priorities will make it easier for federal agencies to restrict use of their private land.

Creating the Federal Nexus to Private Lands Through Conservation Programs:

Enrollment in these programs creates a “federal nexus” on the private lands, opening the door to additional federal regulations, through provisions such as the Endangered Species Act Section 7 consultation requirement.

The Endangered Species Act (ESA) requires all Federal agencies to consult with the Secretary of Interior for any action that may jeopardize an endangered or threatened species or result in the destruction or modification of its critical habitat that is “authorized, funded, or carried out” by the agency (16 U.S.C.A § 1536(a)(2))². The federally funded conservation programs qualify as an action subject to this process. Existing case law does not limit the scope of this provision, therefore giving the U.S. Fish and Wildlife Service unrestrained discretion as to how broadly this can be applied.

This new purpose defined in the Inflation Reduction Act for lands enrolled in the conservation programs is even more concerning since the more recent federal endangered and threatened listing determinations have been made using “climate change” as a basis for the decision. The new conservation language joins these two actions together, now with explicit authorization from Congress. This will make it easier to require additional ESA consultations on private lands.

If carried out, it will increase the economic burdens on landowners and give more control to the federal government over the production of America’s food, fiber, minerals and energy. It will also make challenging these actions on behalf of landowners more difficult in court.

Proposed Response:

1. Make policy makers, agriculture associations and others aware of the 30x30 proponents objective to make the new conservation program language the permanent language applying to all conservation program funds in the 2023 Farm Bill. Recommend retaining the existing 2018 Farm Bill language.
2. Limit the application of the ESA provision by excluding conservation programs from the ESA Interagency Cooperation Provision (16 U.S.C.A § 1536(a)(2)). This could be accomplished by adding language to agency appropriation bills and/or the Farm Bill of 2023, expressly limiting the agencies ability to use the conservation funding to reach the Administration’s unauthorized 30x30 goal.
3. Call on the Secretaries of Agriculture and Interior to issue policy identifying the specific programs that qualify under the ESA provision, and specifically list whether or not the program is subject to the consultation provision in the pre-enrollment information and contracts signed by landowners. This will help property owners make a better informed decision.
4. Call on the Secretary of Agriculture to disclose to potential enrollees in writing the specific purpose for those funds appropriated under the IRA. The change in language should be made clear to applicants by disclosing the previous and new language.
5. Limit Conservation Easements to a term of 30 year or less, allowing the next generation the opportunity to decide the best use of the land. This can be done at the State and Federal level.

6. Require all conservation easements to be approved by the counties in which they reside to ensure the purpose of the easements do not conflict with local comprehensive plans, and do not eliminate necessary tax revenue local governments rely upon in order to provide required services. The Nebraska Statue provides a good model for this approach.

Endnotes:

"Solving the Climate Crisis," House Select Committee on the Climate Crisis, June 2020

² (16 U.S.C.A § 1536(a)(2), popularly known as § 7): Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

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