year. Id. Type 1 wetlands are 18 percent of remaining United States prairie wetlands acreage, totaling nearly one million acres. U.S. Fish & Wildlife Service, "Wetland Resource North Dakota" (unpubl.).

About eighty percent of the remaining wetlands in these three states are in private ownership, according to the National Wetlands Inventory. Twelve percent of the 4.9 million non-federal wetland acres in the prairie potholes of the Dakotas and Minnesota, or about 588,000 acres, have a moderate to high potential for conversion to agriculture. Swampbusting in Perspective, p. 223. Given the vulnerability of these wetlands to conversion, and the high rate of farm program participation in these states, Swampbuster must play a significant role in reducing the rate of prairie wetland loss, and conserving the soil, water, and wildlife resources associated with them.

ARGUMENTS FOR EXEMPTING TEMPORARY WETLANDS ARE NOT PERSUASIVE

The foremost goal of Swampbuster opponents in North Dakota is the elimination of temporary wetlands from the Act. It is said that the statute should not cover small "wet spots" that are "nuisances." Moreover, farmers in North Dakota argue that it is "unacceptable" to eliminate eligibility for agricultural benefits if farmers drain those areas.

First, federal taxpayers all over the country are footing the bill for wetlands conversion in North Dakota. These taxpayers have spoken through their legislators to say

that the farm subsidy program should not be encouraging farmers to bring new land into production at the expense of wetlands.

Second, if these "wet spots" really are just nuisances, then the farmer can freely drain them without loss of benefits by not planting an agricultural commodity on them after they are converted. If the farmer's true intent is just to eliminate "nuisance wet spots," then he can do so without fear of loss of benefits. However, if these "nuisances" are drained and then farmed, the intent of drainage is to increase farmland and that is what Swampbuster was designed to discourage.

Third, if these wetlands are flooded only temporarily each year, the farmer can farm them without loss of benefits as long as he does not destroy their wetland characteristics. Even tilled Type 1 wetlands provide waterfowl values so long as they are not drained. In such areas Swampbuster allows the farmer to farm and the wetlands to stay wetlands so farmers and wildlife can both benefit. When these areas are drained, only the individual farmer benefits at the expense of flood control, groundwater recharge, and wildlife.

Fourth, if the areas are too wet to crop at any time without drainage then one has to wonder how it can be claimed that these areas are not wetlands.

The only thing Swampbuster prevents is the creation of more farmland at the expense of wetlands, which we are fast losing.

TEMPORARY WETLANDS ARE NOW INCLUDED IN SWAMPBUSTER

A review of the Swampbuster provisions of the FSA and the congressional record demonstrates that temporary wetlands are included in Swampbuster's definition of a wetland, and that they were intended to be included.

Swampbuster's Wetlands Definition Includes Type I Wetlands

Swampbuster defines a wetland as

> land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.
>
> 16 USC 3801(a)(16).

This is virtually the same definition of wetlands employed by the U.S. Army Corps of Engineers and the Environmental Protection Agency in administering Section 404 of the Clean Water Act.[9] See 33 CFR 328.3(b)(1987) (Corps definition); 40 CFR 230.3(t)(1986) (EPA definition).

This definition, like the one used in Section 404, focuses on three components: water, hydric soils, and

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[9] Certain wetlands in Alaska are expressly excluded by Swampbuster but are not excluded from the Corps' and EPA's definitions of wetlands. 16 USC 3801(a)(16).

hydrophytic vegetation. See U.S. Army Corps of Engineers, Multiparameter Approach for the Identification and Delineation of Wetlands (1986). The presence of water is obviously the key component for wetlands delineation but it is unrealistic to assume that water must be present year-round to create a wetland. As the House Merchant Marine and Fisheries Committee Swampbuster Report notes: "The single feature that most wetlands share is soil or substrate that is at least periodically saturated with or covered by water." H.R. Rep. No. 99-271, Part 2, 99th Cong., 1st Sess. 16 (1985) [emphasis added]. (This report is significant because the House Committee's version of the wetland definition ultimately became part of Swampbuster.)

This point is also demonstrated by Swampbuster's definitions of "hydric soils" and "hydrophytic vegetation."

The Act defines "hydric soil" as

> soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.
>
> 16 USC 3801(a)(8).

"Hydrophytic vegetation" is defined by Swampbuster to mean

> a plant growing in (A) water; or (B) a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.
>
> 16 USC 3801(a)(9).

According to these definitions, water needs to be present only for a duration sufficient to create "anaerobic conditions" or an oxygen deficiency during all or part of the

growing season. To constitute a wetland the soils must hold water long enough to deprive the plants of oxygen in the root zone during the growing season so that only plants that can tolerate such saturation, the "hydrophytic vegetation," can survive and outcompete species of vegetation that cannot do so. Congress' recognition of this phenomenon is reflected in the House Report: "The water creates severe physiological problems for all plants and animals except those that are adapted for life in water or saturated soil." H.R. Rep. No. 99-271, Part 2, 99th Cong., 1st Sess. 16 (1985); see 40 CFR 230.41(a)(3) (EPA regulation describing "wetlands vegetation").

Type 1 wetlands such as prairie potholes and bottomland hardwoods meet this definition because they are seasonally flooded or saturated during the growing season, although they may be dry during other parts of the year. By literal application of the terms of the statute, Type 1 wetlands are included in Swampbuster. Only by amending Swampbuster can these wetlands be exempted from the Act's protection.

Congress Intended To Include Type I Wetlands

The legislative history demonstrates that Congress fully intended that Type I wetlands be subject to Swampbuster sanctions. The House Merchant Marine and Fisheries Committee Report refers explicitly to "prairie potholes" and, indeed, uses FWS' experience with wetlands in the prairie pothole states as a model for the legislation. H.R. Rep. No. 99-271, Part 2, 99th Cong., 1st Sess. 16 (1985). Congress' recognition that seasonally flooded prairie potholes are wetlands is also reflected in

the express statutory language permitting cultivation of seasonally dry wetlands, when this operation is feasible, without the need for draining. 16 USC 3801(a)(1)(B).[10] As explained by the House Report,

> During the wetter years, these potholes will exhibit true wetland characteristics and will again provide valuable wetland functions and producers who convert these wetlands in such years shall be denied farm program benefits.
>
> Id. at 16-17.

By definition Type 1 wetlands are seasonally flooded or saturated, and not permanently flooded or dry. Congress recognized the importance of protecting these, and all other wetlands, in their most valuable, that is, natural state: "[T]he purpose of the Act [is] to discourage destruction of wetlands as they naturally exist." Id. at 17 [emphasis added].

The law as it stands today includes Type 1 wetlands even though, to some, they may not appear to be wetlands at certain times of the year or during certain years. These wetlands cannot be excluded from Swampbuster without amending the Act, and should not be excluded because of their environmental importance. To exclude these wetlands through the expedient of nonenforcement violates the law as passed by Congress.

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[10] "Wetland shall not be considered converted wetland if production of an agricultural commodity on such land during a crop year--(i) is possible as a result of natural condition, such as drought; and (ii) is not assisted by an action of the producer that destroys natural wetland characteristics."

Swampbuster Does Not Exempt All Wetlands Cultivated Prior to the Act

A second argument put forth to reduce Swampbuster's coverage is that Congress intended to exempt from Swampbuster all wetlands cultivated in any of the 1981-1985 crop years and, as a result, ASCS should determine that any wetland cultivated during those years is a "converted wetland" exempt from Swampbuster. Neither the statute nor the legislative history supports such a broad exemption.

The argument that Congress intended to supply the same broad exemption for wetlands as for highly erodible croplands fails when the language of the Swampbuster and Sodbuster provisions is compared. Section 1211 of the FSA, 16 USC 3811, makes a person ineligible for benefits due to production of an agricultural commodity "on a field on which highly erodible land is predominate." Section 1212(a)(1)(A) of the FSA, which sets forth the exemptions from Sodbuster, provides that no person shall become ineligible for benefits for planting a crop on any highly erodible land:

> that was - (A) cultivated to produce any of the 1981 through 1985 crops of an agricultural commodity....

In contrast, the Swampbuster ineligibility provision, Section 1221 only restricts crop production on "converted wetland", and Section 1222(a)(1) contains only a limited exemption for wetlands whose conversion was commenced prior to the Act. Thus, the Act contains no broad cropping exemption for

Swampbuster, express or implied. Congress certainly demonstrated in Sodbuster the necessity for express language when it wanted to achieve an exemption for previously cropped lands.

Furthermore, a broad exemption for cropped wetlands would not, as some suggest, "equalize" the Sodbuster and Swampbuster provisions. In fact, an exemption for all wetlands cropped between 1981 and 1985 would make Swampbuster substantially more liberal. Land exempted from Sodbuster due to cropping history still becomes subject to a conservation plan by 1990 under the conservation compliance provision of the Act. 16 USC 3812(a)(2). Since there is no comparable allowance for a wetlands conservation plan, an exemption for all cropped wetlands would be a much broader exemption than that provided under Sodbuster. Farm Bill drafters must have recognized this connection between the cropping exemption and the conservation plan, since the House Farm Bill, H.R. 2100, included both a broad exemption for cropped wetlands and a requirement for a wetland conservation plan, and the Conference Committee deleted both of these provisions from the farm bill that ultimately became the law. See, Conf. Rep. No. 441, 99th Cong., 1st Sess. 458-460 (1985).

The statute and the legislative history also make it crystal clear that planting a crop does not, in and of itself, convert a wetland. As discussed previously, a wetland is covered by Swampbuster if, in addition to hydric soil and water conditions, it supports hydrophytic vegetation under "normal circumstances." 16 USC 3801(a)(16). The House

Merchant Marine and Fisheries Committee Report[11] clearly provides that the removal of hydrophytic vegetation through cropping will not disqualify an area as a wetland if it otherwise meets the definition:

> Within the definition of the term wetlands, the term "normal" is intended by the Committee to make clear that areas that are saturated by surface or groundwater but have had wetland vegetation destroyed are nonetheless considered wetlands for the purposes of this Act.
>
> H.R. Rep. No. 99-271, Part 2, 99th Cong., 1st Sess. 16 (1985).

Recognition that cropping history alone does not convert a wetland is also evident from the express exemption for "wetland on which production of an agricultural commodity is possible as a result of a natural condition, such as drought...." 16 USC 3822(a)(4). As the House Merchant Marine and Fisheries Committee Report explains, this exemption was included to cover

> certain areas of the prairie pothole region where production of an agricultural commodity in such potholes is feasible and practicable during certain dry years without altering the wetland characteristics. During the wetter years, these potholes will exhibit true wetland characteristics and will again provide valuable wetland functions and producers who convert these wetlands in such years shall be denied farm program benefits.

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[11]As stated previously in the discussion of Type I Wetlands, the House Report is particularly significant since it is the House Committee's version of the wetland definition which ultimately became part of Swampbuster.

Id. at 17. See, also, S. Rep. No. 99-145 , 99th Cong., 1st Sess. 304 (1985); H.R. Rep. No. 99-271, Part 1, 99th Cong., 1st Sess. 88 (1985).

The House Merchant Marine and Fisheries Committee Report further provides that the exemptions are to be read narrowly, and specifically, that the provision allowing production of agricultural commodities in wetlands during drought does not apply "if diking, filling, drainage, or other artificial means is necessary to continue or initiate agricultural production for the particular area." Id. H.R. Rep. No. 99-271, Part 2, at 17. Congress clearly intended to permit cropping of wetlands where such cropping was made feasible by dry conditions, but not to permit cropping of these wetlands in wet years where such cropping could only occur with the help of drainage activity. Congress expressly provided for a much narrower exemption for previously cropped areas (that are wetlands) than that provided in Sodbuster.

The narrow "natural condition" exemption would be illogical and duplicative if Congress actually intended to grant a blanket exemption for all wetlands cropped between 1981 and 1985, since any wetland cropped in any of those years under natural conditions would then receive a blanket exemption for drainage and crop production thereafter. Such a result is totally inconsistent with the express statutory language, the legislative history, and plain common sense.

In addition, the statutory definition of "converted wetland" confirms that Swampbuster does not exempt wetlands based on cropping history alone. This definition spells out the conditions under which the exemption for converted wetland applies. The law requires that to be considered "converted," a wetland must have been:

> (1) drained or otherwise manipulated prior to the Act;
>
> (2) in order to make crop production possible;
>
> (3) where such production would not otherwise have been possible.
>
> 16 USC 3801(a)(4)(A).

This definition expressly excludes wetlands on which a crop can be produced as a result of a natural condition. 16 USC 3801(a)(4)(B). Consequently, Congress could not possibly have intended to exempt all wetlands with a cropping history regardless of whether crop production was made possible by natural conditions alone or through wetland conversion activity.

The chronology of the legislative history also supports the conclusion that Congress did not intend to exempt all wetlands cropped between 1981 and 1985. The House Bill, H.R. 2100, did include an express exemption for any land cultivated between 1981 and 1985, apparently including wetlands. It also included the narrow "natural condition" exemption which, as explained above, was inconsistent with the broad exemption for cropped wetlands. The Senate Bill, S. 1714, did not contain the same broad exemption for cropped wetlands as it contained for highly erodible croplands. The Conference Committee consciously approved the House and Senate exemption for land cultivated between 1981 and 1985 for Sodbuster, but specifically deleted that cropping exemption for Swampbuster. Conference Rep. No. 99-441. 99th Cong., 1st Sess. 458. 460.

In addition, the Conference Committee chose the Senate bill's format, which provided separate and distinct sets of exemptions for Sodbuster and Swampbuster, over the House version's format, which lumped the two provisions together. Separating the two provisions was a wise decision which recognized the different ecological considerations involved in each.

This sequence of events confirms that Congress considered a broad exemption from Swampbuster for cropped wetlands and rejected that option in favor of carefully defined exemptions for "converted wetlands" and wetlands farmed under natural conditions.

Congressman Daschle, who sponsored the Swampbuster amendment to H.R. 2100, discussed the bill reported by the Conference Committee on the House floor on October 8, 1985. He specifically described a broad Sodbuster exemption for lands put into production between 1981 and 1985, but was noticeably silent with regard to such an exemption for Swampbuster. Cong. Rec. H 8482 (daily ed. October 8, 1985). Instead, in the very next breath, Congressman Daschle explained that he offered Swampbuster to reduce the rapid rate of wetlands conversion to agriculture, that the law was intended to eliminate subsidies for wetland drainage, and that such "bold steps" were necessary. These comments seem consistent with the action taken by the Conference Committee, and inconsistent with an intent to broadly exempt all wetlands cultivated between 1981 and 1985.

The statute and the legislative history do not provide an exemption for wetlands based on cropping history alone.

Congress was wise to restrict the exemption for prior converted wetlands. A broad exemption for all cropped wetlands would result in at least as much new wetland drainage as an exemption for all Type 1 wetlands. FWS estimates that 20 to 30% of the remaining prairie wetlands in North Dakota, some 200,000 to 300,000 acres, would be exempted from Swampbuster if cropping history could be used to exempt a wetland as a converted wetland (Exhibit C). The FWS further estimates that eliminating Type I wetlands would exclude one-third of the wetlands in an eight state region including Indiana, Minnesota and Wisconsin (Exhibit A).

Furthermore, change in the statute or the regulations at this stage in Swampbuster implementation would result in increased drainage. First, a change that broadens an exemption from Swampbuster sends yet another signal to farmers in the prairie pothole states that neither Congress

personnel caution that any wetlands deleted from the Swampbuster definition "will be drained immediately." Id.

Having already lost over 50 percent of the wetland acreage originally existing in the prairie pothole region, additional loss of wetlands, including temporary wetlands, cannot occur without significant adverse effects on wildlife and water resources.

Denial of Benefits under Swampbuster Should Not Be Relaxed

Farmers have argued that the Swampbuster ineligibility provision is too severe and that "inadvertent" wetlands destruction should not result in loss of all benefits. Their argument that "the penalty should fit the crime" is

compliance determination, without the assistance of the ASCS and the SCS, he does so at his own risk. Such a violation is no more "inadvertent" than the taxpayer who elects to interpret the tax code in his favor and is penalized for non-payment of taxes..

Second, if a farmer can demonstrate a good faith effort to get an agency determination and to comply with Swampbuster, the formal USDA appeal process provides a remedy that should avoid any unfair result. SCS sources report that the appeal process has worked well in many parts of the

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[12] Continued mapping such as in the Red River Valley of North Dakota and individual wetlands determinations such as those performed in Minnesota should further remove the likelihood of truly "inadvertent" wetlands destruction.

Similarly, county committee practices to date suggest that any change from the current total ineligibility for annual payments to a graduated and discretionary scheme of withholding benefits will simply be too complex and variable to be properly implemented by ASCS county committees.

Finally, relaxing Swampbuster ineligibility conditions will seriously undermine the deterrent effect of loss of benefits. Farmers could then drain wetlands virtually without risk because, if they are caught, they could claim the wetland drainage was inadvertent. Penalties that only exact a modest fee and require restoration will simply become a cost of doing business with little risk for the farmer unlucky enough to actually be caught in violation.

Other Wetlands at Stake

The prairie potholes are not the only place where millions of acres of wetlands are at risk if Congress turns its back on Swampbuster. The remaining wetlands most vulnerable to agricultural conversion are palustrine (upland, generally fresh water) wetlands in private ownership. According to the 1982 Natural Resources Inventory (NRI) conducted by SCS, approximately 80% of wetlands not federally protected are privately owned. Heimlich & Langner, "Swampbusting in Perspective," 41 Journ. of Soil & Water Conservation (No. 4) 219 (1986) ("Swampbusting in Perspective"). Of the 70.7 million acres of non-federal palustrine wetlands, the 1982 NRI rated 5.1 million acres as having a moderate to high potential for conversion to cropland in 1982. About 85 percent of these high potential wetland conversions could be easily brought into production. Id.

Approximately 16 million acres of wetlands remaining in 1982 would have earned short-term positive returns if converted, assuming 1985 crop prices and subsidy program participation rates. Heimlich & Langner, "Swampbusting: Wetland Conversion and Farm Programs," USDA Ag. Econ. Rep. No. 551 (1986); Swampbusting in Perspective, pp. 220-221. Therefore, the 5.1 million acre estimate of wetlands vulnerable to agricultural conversion actually may represent the low end of the range.

In 1984 FWS identified nine types of wetlands in the United States "that are in greatest jeopardy from a national standpoint." Wetlands Status and Trends, pp. 35-36. According to a USDA economic study, agricultural conversion is a major threat to six of these nine types, including the palustrine wetlands of South Florida, the Nebraska Sandhills and Rainwater Basin, the pocosins of the North Carolina coastal plain, and western riparian wetlands, as well as the prairie potholes and the Lower Mississippi River bottomlands. Swampbusting in Perspective, pp. 223-224.

South Florida's palustrine wetlands provide freshwater run-off which maintains the salinity balance in coastal estuaries supporting 85 percent of Florida's off-shore fishery. Wetlands Status and Trends, pp. 40-41. These wetlands also provide breeding and wintering habitat for many bird species, and support a number of endangered species. Id. Agricultural conversion and projects to protect agricultural land from floods have been major factors in past wetland conversion. Id. Approximately 382,500 wetland acres, about 8.5 percent of the 4.5 million acres of non-federal wetlands in this area, were rated in the 1982 NRI as having a moderate to high potential for conversion. Swampbusting in Perspective, p. 223.

Nebraska's Sandhills and Rainwater Basin areas are migration stopovers critical for waterfowl and sandhill cranes in the Central Flyway. Wetlands Status and Trends, pp. 46-48. Agricultural conversion and irrigation-related wetland losses have concentrated migratory birds in remaining wetlands, resulting in increased disease. Id. About 128,850 wetland acres are estimated to have a moderate to high potential for conversion in this area. Swampbusting in Perspective, p. 223.

The North Carolina pocosin wetlands are principal groundwater recharge areas, and, like the South Florida wetlands, provide fresh water run-off essential to maintaining the salinity balance of the coastal estuaries. These wetlands also provide important wildlife habitat. Wetlands Status and Trends, pp. 49-50. The SCS has estimated that about 380,000 acres of pocosin wetlands in North Carolina have a moderate to high potential for agricultural conversion. However, conversion may be profitable on a much larger acreage due to economies of scale in large-scale wetland conversions. Swampbusting in Perspective, pp. 223.

The western riparian wetlands provide important food and cover for resident and migratory species of fish and wildlife in what are otherwise arid regions. Wetlands Status and Trends, pp. 50-51. These areas have been reduced significantly, in part due to agricultural conversion. Id. About 35,000 wetland acres in this area have a moderate to high conversion potential. Swampbusting in Perspective, pp. 223-224.

We are extremely concerned that any signs of weakness in Swampbuster enforcement in the prairie states will stimulate agricultural conversion in these other important wetland

areas. If Swampbuster is rendered a dead letter in the prairie states there is little reason to believe that it will be any easier to enforce in any other states. This will be especially true if Congress shows a lack of resolve to support existing legislation.

SWAMPBUSTER BENEFITS THE AMERICAN FARMER

Effective enforcement of Swampbuster actually creates a net benefit for farming. Drainage of wetlands may seem like a short term gain for an individual farmer, but this ignores the fact that such drainage merely externalizes the loss of wetlands values, such as flood control, to the entire agricultural community. In times of economic hardship this sort of individual, short term decision-making may be exacerbated by financial pressure to maximize individual yield. Our painful awareness of the long-term overall economic costs of this individual decision-making led to the creation of much of the existing farm subsidy program. Farmers must be stimulated to make decisions (for example to reduce production) that might reduce individual profits but in the aggregate are necessary to preserve the farm economy (by keeping a floor under commodity prices). Similarly, farmers must be discouraged from draining wetlands, a decision that may yield an individual, short-term profit, but that may collectively spell disaster for the entire farming community.

Compensation Is Appropriate for Farmers Who Protect and Restore Wetlands

Farmers in the prairie pothole states believe that they should be compensated for maintaining or restoring wetlands on their property. We recognize the potential environmental benefits of such compensation and support existing and proposed conservation programs.

Existing compensation programs include the Water Bank program, of which North Dakota landowners have been the primary beneficiaries; the FWS waterfowl production area easement purchase program; the FmHA debt restructure easement provision in the Act, 16 USC 3918; state easement programs, such as the "Reinvest in Minnesota" (RIM) program; and state tax credit programs. Some or all of these programs could be expanded to provide additional compensation to farmers conserving wetlands.

S. 2143: Expansion of CRP to Include Wetlands

We also support legislation like S. 2143, which would enable conservation reserve program (CRP) enrollment of certain wetlands with a history of crop production. This legislation provides an opportunity to reverse wetland loss nationally, and in many states to bring natural wetlands back from the brink of extinction. If attached to expanded CRP acreage authority, such as that proposed in S. 1521 and S. 2045, wetland eligibility need not dilute the erosion control objectives of the existing reserve program.

Nevertheless, any wetland reserve must be framed to provide the greatest and most enduring conservation benefits

for each public dollar invested. To this end, four interrelated conditions would conform S. 2143 to the FSA's CRP authority, certain other government conservation programs, and tenets of sound policy.

First, Congress should not enact S. 2143 in tandem with any weakening of Swampbuster. It would be indefensible to spend substantial federal funds toward "renting" wetland protection, only to subsidize a new round of agricultural conversion after CRP contracts expire. This could happen, for example, if Congress simultaneously opened the reserve program to, and created a blanket Swampbuster exemption for, wetlands that were previously cropped but never converted.

Moreover, if S. 2143 becomes law, Swampbuster coverage must be expanded to include ecologically important uplands enrolled in the reserve in association with wetland areas. This is critical given that as much as two-thirds of individual fields enrolled under S. 2143 may be unaffected by the FSA's existing sodbuster, conservation compliance or Swampbuster provisions.

Second, the bill should articulate a preference for restoring converted wetlands. This approach has proved successful within the landmark Reinvest in Minnesota (RIM) program, which limits wetland eligibility to areas that have already been lost to agriculture. This would also be consistent with a leading purpose of the CRP, which is to repair damages that have arisen in part from misplaced policy incentives for cropland expansion.

In this regard, S. 2143 should mandate that natural characteristics be restored on any converted wetland enrolled in the CRP; as with the existing program for erosion control, ample provision could be made for USDA to share in the cost of the physical restoration. As drafted, the bill imposes no such requirement. The CRP conservation plan specifications in 16 USC 3832 are not sufficient; they relate to highly erodible land reclamation and are generally inappropriate for wetland restoration.

Third, S. 2143 should contain an option for easement restrictions proscribing agricultural wetland conversion in perpetuity. This, too, would follow the RIM model, as that state program mandates permanent easements for compensated wetland restoration. Applicable precedent also exists in programs of the U.S. Fish and Wildlife Service that have placed more than one million acres of wetlands under conservation easement.[13]

The permanent easement option recognizes the difficulty of undertaking any agricultural practices, even those less intensive than annual row crop production, without sacrificing natural wetland values. The situation is different for the highly erodible land being enrolled in the CRP, much of which can, with appropriate conservation precautions, be committed to alternative economic pursuits after the CRP expires. For example, ten years of rental payments will likely facilitate an enduring transition to

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[13]Barrett and Livermore, The Conservation Easement in California 4 (1983).

sustainable livestock grazing or tree farming on many fields now enrolled in the reserve.

Fourth, for the sake of fairness and fiscal responsibility, compensation for wetland CRP contracts must be commensurate with locally prevailing land values and rental rates.[14] This will prevent any serious disjunction between the conservation reserve and the RIM program or other state efforts that may imitate the Minnesota example. Perhaps most important, CRP compensation under ten-year contracts must never "out-compete" RIM or other government programs that pay for permanent wetland conservation.

Swampbuster and Private Property

Finally, we wish to emphasize what Swampbuster does not do. It does not prevent farmers from destroying wetlands on their property to increase the amount of land in production. Moreover Swampbuster results in ineligibility for benefits only if a farmer drains a wetland and produces an "agricultural commodity" in the converted wetland. 16 USC 3821.[15] Thus a farmer may safely drain a wetland for any

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[14] This may be partially alleviated by the requirement approved in the omnibus spending bill for FY 89 that bid ceilings for CRP rental payments not exceed prevailing local cropland rental rates.

[15] The Act defines "agricultural commodity" as "any agricultural commodity planted and produced in a State by annual tilling of the soil, including tilling by one-trip planters ...." 16 USC 3801(a)(1)(A).

purpose other than production of agricultural commodities without loss of benefits.

Swampbuster is not a statute where the federal government is telling landowners what they can and cannot do with their private property. Instead, Congress has said to farmers, "You can drain your wetlands if you want, but don't expect the federal taxpayer to pay for it." Of course, we realize that, in many cases, removal of all agricultural subsidies will be a powerful disincentive. But, this disincentive is clearly necessary to allow Congress to ensure that the expenditure of federal tax dollars is consistent with federal policies.

As a result, the farm economy crisis and the sanctity of private property are superficially appealing, but ultimately false issues in the context of Swampbuster.

Allowing Swampbuster's provisions to continue to be ignored represents a shortsighted disregard for the realities of Nature--a Nature that can bring drought and devastating floods as well as abundant, diverse wildlife. Congress must recognize that wetlands can play a major role in banking the dividends of good years and tempering the adversity of bad years brought by the unpredictable forces of Nature.

Effective application of Swampbuster does not mean economic disaster for the American family farm. We reject the notion that a viable farm economy is incompatible with preserving wetlands. Over the years we have worked closely with farmers and farm organizations to show that farms can be economically productive without removing valuable wildlife

habitat. In addition, the critically important services performed by wetlands, including flood control and groundwater recharge, demonstrates that wetlands benefit farmers and all of our society, as well as wildlife.