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NATIONAL WILDLIFE FEDERATION

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**Statement of the National Wildlife Federation
on the Application of the Food Security Act of 1985,
Title XII, Subtitle C ("Swampbuster")**

**Before the
House Committee on Agriculture**

**Field Hearings
Moorhead, Minnesota**

presented by

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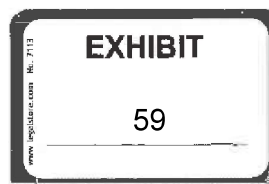
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Submitted on behalf of the following organizations:

**National Wildlife Federation
Fergus Falls Fish and Game Club
Minnesota Conservation Federation
Natural Resources Defense Council
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On behalf of the National Wildlife Federation, the Fergus Falls Fish and Game Club, the Minnesota Conservation Federation, the Natural Resources Defense Council and the Environmental Defense Fund, we submit the following comments on the "Swampbuster" provisions (Title XII, Subtitle C) of the Food Security Act of 1985 for inclusion in the record of the House Committee on Agriculture, during field hearings held June 24, 1988 in Moorhead, Minnesota.

The National Wildlife Federation (NWF), a strong supporter of Swampbuster during passage of the Food Security Act of 1985, today reaffirms its ardent support for the protection of our Nation's wetland resources. The world's largest not-for-profit conservation-education organization, the NWF has over 4.8 million members and supporters, with affiliated organizations in 49 states, the Virgin Islands and Puerto Rico. The NWF and our Minnesota affiliate, the Minnesota Conservation Federation, together with its affiliate, the Fergus Falls Fish and Game Club, collectively represent over 33,000 members and supporters in Minnesota who are concerned about wetlands destruction.

A long-standing supporter of the Food Security Act's conservation provisions, the Natural Resources Defense Council (NRDC) is a national nonprofit corporation with more than 77,000 members and contributors, dedicated to the preservation, enhancement and defense of the world's natural resources. Through several of its programs, the NRDC

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promotes a clean, healthy and productive rural environment across the United States.

The Environmental Defense Fund (EDF) is a national non-profit organization that has been active for over 20 years in the protection of wetlands, wildlife and other environmental resources. The EDF has approximately 50,000 members from all states of the U.S., and maintains offices in seven cities.

INTRODUCTION

On December 23, 1985 Congress took a dramatic and much-needed step, effectively declaring that America's taxpayers would no longer fuel the destruction of wetlands through agricultural subsidies. Congress understood that subsidizing wetlands destruction is inconsistent with well-established national policy to protect our valuable but declining wetlands resources.¹ It simply makes no sense to encourage agricultural conversion of wetlands, especially considering the burdens this policy adds to the national debt.

More than two years have passed since the adoption of "Swampbuster" provisions of the Food Security Act of 1985 (FSA), yet enforcement of these provisions remains largely nonexistent. The pace of agricultural conversion of wetlands has not slowed appreciably since Swampbuster was passed, and

¹ For example, Section 404 of the Clean Water Act, 33 USC 1344; the Emergency Wetlands Resources Act, Pub. L. No. 99-645.

only two producers in the entire United States have lost eligibility for benefits under the Act, to our knowledge. Despite this dismal record, farmers, farm groups and their elected officials are now calling for dramatic reduction of Swampbuster's coverage.

This opposition is strongest in the State of North Dakota, a state in which Swampbuster could potentially protect thousands of acres of valuable wetlands. These wetlands have a truly national and international value as breeding areas for migratory waterfowl, and provide farmers important flood control and groundwater recharge benefits. Yet, agricultural conversion of wetlands in that state has actually increased since Swampbuster's passage, and not one producer in the state has lost program eligibility due to Swampbuster.

The application of Swampbuster is inconsistent and ineffective for two reasons: (1) lack of enthusiasm for enforcement of the law within the U.S. Department of Agriculture (USDA), and (2) political pressure on USDA to refrain from enforcing the Act.

We are concerned that Swampbuster is not working and that, not only farmers, but officials within USDA as well, are attempting to use these hearings, and others that may be contemplated, to reduce Swampbuster's scope without amending the law.

In order for Swampbuster to protect wetlands effectively, it must be implemented in a comprehensive, uniform manner. Indeed, nonexistent enforcement of

Swampbuster will only exacerbate agricultural economic problems because it puts the honest, law-abiding farmer at a competitive disadvantage with the farmer who drains wetlands for crop production and continues to receive subsidies.

The NWF, NRDC and EDF joined other conservation and farm organizations in lobbying vigorously for enactment of Swampbuster because the legislation is needed, makes sense, and is amply justified. We strongly feel that Congress should not second-guess itself until the law has had an opportunity to work.

WHY CONGRESS PASSED SWAMPBUSTER

Congress adopted Swampbuster to address the massive destruction of wetlands resulting from agricultural drainage. In reporting the 1985 Farm Bill the House Committee on Agriculture, recited facts beyond dispute: wetlands are valuable for wildlife habitat, aquaculture, flood control, water purification, groundwater recharge, and recreation. H.R. Rep. No. 99-271, Part I 99th Cong., 1st Sess. 86-87 (1985). The Committee described the problem facing Congress and the Nation:

Currently, wetlands are being destroyed at a rate that is environmentally unacceptable [N]early 14.7 million acres of freshwater wetlands and approximately 500,000 acres of saltwater wetlands have been destroyed from the mid-1950s to the mid-1970s.

Much of the wetlands lost in recent years can be attributable to conversion to agricultural uses. At the present time of surplus agricultural production there is certainly no need for the conversion of more resources into

agricultural production especially when those wetlands resources have such inherent value and provide such practical benefits as discussed above.

Id

The House Committee was well advised to express this concern because in 1984 Congress' Office of Technology Assessment estimated that 80 percent of all freshwater wetland destruction resulted from agricultural conversion. Office of Technology Assessment, *Wetlands: Their Use and Regulation* 108 (1984).

This Subcommittee need not take our word for the need for Swampbuster. The Congress addressed the issue and in 1985 concluded that subsidized agricultural conversion of wetlands is bad fiscal and environmental policy in this day and age of surplus agricultural production, fiscal responsibility, and conservation awareness.

Moreover, nothing has changed about wetlands destruction since Congress passed Swampbuster. The U.S. Fish and Wildlife Service (FWS) has estimated an annual average loss of 458,000 acres of wetlands between 1955 and 1975. U.S. Fish and Wildlife Service, *Wetlands of the United States: Current Status and Recent Trends* 31 (1984) ("Wetlands Status and Trends"). There is no evidence to suggest the trend has slowed. Therefore, the only difference between today and the passage of Swampbuster in 1985 is the loss of an additional 900,000 acres of wetlands.

IMPLEMENTING REGULATIONS FOR SWAMPBUSTER

When Congress enacted Swampbuster in 1985, it directed the Secretary of Agriculture to promulgate regulations by June, 1986. 16USC3844. To meet that deadline, USDA published "interim" regulations, 51 Fed. Reg. 23496 (June 27, 1986), which were then supplemented by field manuals and oral communications to local officials in the Agricultural Stabilization and Conservation Service (ASCS) and the Soil Conservation Service (SCS) charged with administering the law.

Farmers learned early in 1986 that they had to certify any drainage plans on USDA forms (AD-1026) in order to receive federal farm benefits. At the same time, local ASCS and SCS personnel were put in the position of requiring compliance from farmers whom they had previously assisted with voluntary programs. Neither the "regulators" nor the regulated agricultural community were happy in their new roles and gave the law little attention.

Political pressure to weaken the Act was translated into field guidance which interpreted the vague interim rules to exempt significant wetland conversion from the impact of the law. Where the law could not be side-stepped through interpretation, it was simply ignored by local officials and farmers. This open disdain for Swampbuster implementation was, and continues to be, most apparent in the prairie pothole states.

Because the interim rules were viewed as temporary, USDA staff in Washington, D.C. focused immediately on developing

final rules. In the meantime, local ASCS and SCS officials, themselves members of the local agricultural community, were able to enforce or ignore Swampbuster as they saw fit. Consequently, implementation during the 1986 and 1987 growing seasons was extremely variable, and generally lax.

This picture of administrative inertia changed superficially when the Final Rules were published in September, 1987. 52 Fed. Reg. 35194 (Sept. 17, 1987). These rules were the product of considerable inter-agency haggling among ASCS, SCS, FWS, the Office of Management and Budget, and, to some extent, the Environmental Protection Agency (EPA). Conservation groups, including the National Wildlife Federation, supported FWS in pushing for strong final rules. The final rules were detailed and more stringent, and seemed to send a signal that USDA headquarters genuinely intended to implement Swampbuster, that the law was here to stay, and the field representatives and the agricultural community should obey the law.

Since issuance of the final rules, SCS and ASCS seem to have made a concerted effort to provide uniform training to their state-level officials in Swampbuster implementation. We believe this training has reinforced the strong message sent by the final rules. The agencies are relying upon those state officials, in turn, to train county-level staff. The speed and effectiveness of such trickle-down training will be a critical factor in assessing Swampbuster implementation over the next few years.

SWAMPBUSTER IMPLEMENTATION TO DATE

The real test of Swampbuster's effectiveness will come during this growing season and next. The record so far looks dismal. Though ASCS and SCS have not released records or statistics evaluating the program, the available information is disturbing.

Wildlife professionals and local landowners have documented increased wetland drainage throughout North Dakota, South Dakota, and Minnesota in 1987 and 1988. Drainage proponents have admitted that drainage has increased. The agricultural community, at least in the prairie states of the Dakotas and Minnesota, has shown open defiance for Swampbuster rules and implementation.

In North Dakota, 221 potential violations have been reported by the FWS alone, yet not one producer has been denied benefits. In South Dakota, 420 potential violations have been reported, yet no benefits have been withheld. In Minnesota, over 100 potential violations have been reported, yet only one producer has been denied benefits.

It is now 1988, three years since the passage of the Swampbuster provisions which conservationists hoped would provide far-reaching wetland protection. It is abundantly clear that Swampbuster has not been effective in the prairie states of North Dakota, South Dakota, and Minnesota. The administering agencies have proven unwilling to fully implement and enforce the wetland conservation provisions of the Food Security Act of 1985. A more detailed review of Swampbuster implementation follows.

Minnesota

Initially, Swampbuster implementation in Minnesota showed signs of working due to interagency agreements for consultation between the ASCS, SCS, and FWS. However, despite these agreements it is clear that Swampbuster has not been enforced adequately. Over 100 potential Swampbuster violations have been reported by the FWS since the fall of 1987, yet only one producer has been denied benefits (personal communication with Eric Nelson, FWS).² Significantly, the rate of wetland drainage actually increased during that time (Exhibit A).³

Both the SCS and the FWS have acknowledged frustration with Swampbuster implementation. The SCS has indicated that while Minnesota landowners have requested 15,000 wetland determinations through the Form AD-1026, another 15,000 drainage cases which should have been referred to the SCS for determinations were not. Thus, fully one half of the wet areas drained by farmers in Minnesota have never been considered by the SCS for a wetland determination.

In some circumstances, the SCS has attempted to avoid its responsibilities under Swampbuster. The SCS has created

² To our knowledge, only two producers in the United States have been sanctioned under Swampbuster, one in Minnesota and one in Georgia.

³ Exhibits A through C are attached at the end of this testimony.

a concept known as the "zone of influence" to determine on which wetlands conversion "commenced" prior to the Act as the result of a drainage project. Utilizing the zone of influence, the SCS exempts entire categories of wetlands from Swampbuster. In doing so, SCS ignores its legal obligation to determine wetlands on a case-by-case basis. Instead, the agency appears to be making arbitrary determinations based upon area wide presumptions. The result will be an unnecessary and unauthorized loss of wetlands.

The FWS has expressed concern with its relationship with the ASCS. The final rules require the ASCS to consult with the FWS on "commenced" conversion determinations. 7CFR. 12.6(b)(5). Even when the consultation does occur, the FWS characterizes the situation as "continual hair-splitting that accommodates more drainage." (Exhibit B)

Yellow Medicine River Watershed District Ditch 18 typifies the inadequate implementation of Swampbuster in Minnesota. On May 18, 1987, the Minnesota State ASCS committee reversed the county committee determination and granted a commenced conversion exemption to the Ditch 18 drainage project. The USDA regulations require that commencement must consist of actual movement of dirt to manipulate the hydrologic regime in a wetland or a substantial financial obligation to do the same by entering into contracts for work or purchase of construction materials

before passage of the Act.⁴ However, none of these prerequisites to a commenced determination were present. The State ASCS committee acted in blatant disregard of the rules implementing Swampbuster, ASCS rules and regulations, and ASCS Handbook 6-CP. Consequently, numerous wetlands and hundreds of acres of wildlife habitat may be lost.

North Dakota

Swampbuster has been a failure in North Dakota, primarily due to pressure from drainage proponents. In North Dakota, enforcement ranges from ineffective to non-existent, while wetland drainage has escalated. This accelerated drainage has resulted from antagonism of farmers toward Swampbuster. Some farmers are draining wetlands now for fear that someday Swampbuster will be effective in North Dakota.

In November, 1987, North Dakota Congressman Byron Dorgan held meetings in North Dakota to discuss Swampbuster. At these meetings, farmers and farm organizations turned out in large numbers and expressed heated antagonism toward having federal officials (ASCS, SCS, and FWS) "looking over their

⁴ USDA regulations provide, in essence, that "commencement" must consist of activities such as draining, filling, dredging, leveling, or otherwise manipulating wetlands to make it possible to produce agricultural commodities therein. These activities must have actually started before December 23, 1985, or a contract for such work must have been entered or construction supplies purchased by such date. 52 Fed. Reg. 35201 and 35203, to be codified at 7 CFR 12.2(a)(6) and 12.5(d)(1)(vi) and (2)-(3).

shoulders" and having a say in what owners do on their land (even though they are doing it with federal taxpayer's assistance). These groups also expressed frustration over ASCS and SCS delays and inconsistencies in implementation. These frustrations are shared by the conservation community.

A primary goal of the farm groups in North Dakota is to exempt temporary wetlands from Swampbuster sanctions. Position Paper of North Dakota Farmers Union, et al. 1987. Other measures have been proposed which essentially would eliminate Swampbuster sanctions for conversion of prairie potholes. 14. The reaction of ASCS and SCS to this type of pressure has been to ignore or compromise on enforcement on the premise that strict enforcement will result in pressure to amend or repeal the law.

There has, in fact, been virtually no enforcement of Swampbuster in North Dakota. FWS has reported 221 potential violations to local ASCS offices, yet not one individual has been denied benefits.

While FWS alone reported over 150 potential Swampbuster violations in 1986, ASCS acknowledged receipt of only 83 reports from all sources, including neighboring farmers (See Exhibit C). Of at least 23 ASCS county offices which received reports of potential violations, only three made any attempt to field check reported violations. In four counties and at least 15 instances, ASCS contacted farmers with potential violations and were told the work was simply to clean out existing drains. These ASCS county offices did not field check any of these drains, apparently accepting the producer's determination at face value.

No federal farm benefits have been withheld under Swampbuster in North Dakota. In fact farmers in North Dakota collected \$750 million in federal agricultural subsidies in 1987. Where there have been findings of noncompliance in North Dakota, they have not resulted in the withholding of farm benefits. In some cases, the producer has been notified, the drain has been closed, and the crop planted on the wetland has been destroyed.

There are several ASCS determinations which demonstrate that agency's abuse of the commencement exemption.⁵ In two of those cases, the farmers had drained wetlands and planted commodity crops on wetlands after December 23, 1985, the effective date of the statute. In these two cases, ASCS allowed the exemption even though the producers lacked actual documentation that earth moving had started before December 23, 1985 or that a contract to do such work was entered by that date, despite the requirements of USDA regulations. One farmer admitted to ASCS personnel that no dirt was moved, no contract to move dirt was entered, and no substantial funds were committed for such work before December 23, 1985. The ASCS State Director has acknowledged that the county committee's initial determinations that these two farmers met the exemption were improper. Nonetheless, the State Director upheld the exemption and refused to declare the producers ineligible.

⁵ Swampbuster exempts farmers from sanctions for production of commodity crops "on converted wetland if the conversion of such wetland was commenced before December 23, 1985." 16 USC 3822 (a) (1).

Interestingly, on February 19, 1988, the same ASCS county committee denied a second commenced exemption to one of these same two landowners based on the same information. The FWS was consulted in this more recent determination.

An extreme example of improper Swampbuster implementation is the blanket exemption granted for five large drainage district projects in Wells County, North Dakota. Bowing to political pressure, the Deputy Administrator of the ASCS reversed an earlier decision and granted commenced conversion exemptions to these projects without evidence that either earth-moving or a contract for such work occurred prior to December 23, 1985. The exemptions granted violate both the substantive and procedural requirements of the Swampbuster legislation, the implementing rules, and the ASCS Handbook 6-CP.

The exemptions are particularly objectionable because they grant blanket authority to landowners to drain virtually every wetland within the drainage assessment areas. The impact on wetland resources potentially is enormous. Approximately 5,400 acres of wetlands will be drained ultimately according to the project proponents. Moreover, other water resource districts consider the Wells County exemptions a precedent and intend to obtain similar blanket exemptions for their drainage projects.

SCS mapping of the Red River Valley wetlands has helped to resolve farmers' concerns (Exhibit C). Yet, North Dakota ASCS officials continue to side-step the Swampbuster statute and regulations in an effort to accomodate producers at every turn.

The effort to reduce Swampbuster's coverage has focused on the wetland definition, and, in particular, the inclusion of temporary or seasonal wetlands. Three farm groups in North Dakota have expressly advocated elimination of these wetlands from Swampbuster. However, these are some of our most valuable wetlands.

These wetlands are referred to as "Type 1" wetlands because they have been classified in this way in an FWS

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document ("Circular 39").⁶ Circular 39 describes Type 1 wetlands as

Seasonally flooded basins or flats
 The soil is covered with water, or is waterlogged, during variable seasonal periods but usually is well drained during much of the growing season.

FWS, *Wetlands of the United States* 20 (1971) ("Circular 39").

Type 1 wetlands may not always appear to the untrained eye to be wetlands because they are usually flooded only during part of the year. They may be dry during most parts of the year, and all year during dry years. Nonetheless, they meet the definition of "wetland" in Swampbuster and their protection from agricultural conversion was a major reason why the NWF, NRDC and EDF supported the passage of Swampbuster.

Opponents of Swampbuster have concentrated their efforts on temporary wetlands. They are attempting to eliminate Swampbuster protection for these wetlands through either: 1) an exemption for Type I wetlands, or 2) an exemption for all wetlands that have been cropped previously. Whether based on cropping history or classification as Type I wetlands, both of these strategies have the same goal:

⁶ Circular 39 is an FWS publication entitled "Wetlands of the United States" first issued in 1956 and republished in 1971. Circular 39 has been updated by FWS' "Classification of Wetlands and Deepwater Habitats of the United States," published in 1979. Despite its venerability, the classification concepts in Circular 39 remain valid.

exemption of a significant portion of our Nation's wetlands from protection under Swampbuster.

Swampbuster explicitly does include temporary wetlands as demonstrated by a review of the law and Congress' actions during enactment of Swampbuster. ~~See pages 26-27 below.~~ Furthermore, we strongly feel that Swampbuster should continue to include these wetlands. First, temporary wetlands provide critical habitat for waterfowl, as well as providing groundwater recharge and flood control. Second, the destruction of these wetlands by agricultural practices continues at an alarming rate. Finally, if temporary wetlands are exempted, not only will 20 to 30 percent of the remaining prairie potholes no longer be protected by Swampbuster, but implementation of Swampbuster for all wetlands in the prairie potholes region and throughout the country will be severely handicapped.

THE VALUE OF WETLANDS

Temporary wetlands were included in Swampbuster for good reason. They are extremely valuable. Indeed, of all the wetlands in the country, the northern plains prairie potholes, of which over 18% are temporary wetlands, are perhaps the most deserving of federal protection for their role in waterfowl production as well as a variety of important hydrological functions.

Waterfowl Production

Prairie potholes represent America's duck factory:

"Prairie potholes are the most valuable inland marshes for waterfowl production in North America." *Wetlands Status and Trends*, p. 42. While the Prairie Pothole Region comprises only 10% of North America's waterfowl breeding area, it produces 50% or more of the continent's ducks. ¹⁷ About 87% of the ducks bred in the lower 48 states breed in the Dakotas, Minnesota, and Montana. Wittmier, "Prairie Potholes: Can We Save Them From The Plow?", *50 Outdoor America* (No. 4), p. 9 (1985) ("Can We Save Potholes?"). Over 93% of the waterfowl produced in North Dakota come from privately owned wetlands. During 1967-69 North Dakota averaged 1.6 million breeding pair of ducks. Waterfowl production in one South Dakota study area averaged 140 ducks per square mile per year. Stewart & Kanrud, "Breeding Waterfowl Populations in the Prairie Pothole Region of North Dakota," *76 Condor* (No. 1) 70 (1974). When drought strikes Canadian breeding areas, the United States and especially North Dakota areas can be crucial to maintaining the continental waterfowl population.

The seasonal variability of pothole inundation is one of the prime reasons why these wetlands are so important to waterfowl. Smaller, shallower potholes are important to breeding pairs because these wetlands thaw early in the spring and provide abundant invertebrates and aquatic plant food. The large number of these small, isolated wetlands also facilitates waterfowl production by permitting breeding pairs to disperse and claim territory, and by reducing the

¹⁷ Part of the pothole region is located in Canada where it is under the same pressure from agricultural conversion.

risk of disease which is increased when waterfowl are concentrated on shrinking habitat. M. at 43; Can We Save Potholes?, p. 9.

Type 1 wetlands are especially critical because they tend to be smaller than other potholes and studies have shown that the number of individual wetlands is more important to duck production than the total number of wetland acreage. Linder & Hubbard, "Wetland Values in the Prairie Pothole Region of North America," in Proceedings of Great Plains Agricultural Council (1982). One study found that temporary wetlands, including Type 1 wetlands, composed 35 percent of the wetlands in North Dakota but supported over 57 percent of the breeding population of ducks. U.S. Fish & Wildlife Service, "Use of Shallow Wetlands by Breeding Waterfowl" (unpubl.). During years when there is plenty of water, nearly two-thirds of the breeding population uses these temporary wetlands, including wetlands that have been tilled but not converted in previous years. M. Although these wetlands may hold water for only a short time each year that period is critical to migrating ducks for resting stops and for courtship and egg-laying. U.S. Fish & Wildlife Service, "Wetland Resource North Dakota" (unpubl.).

Although it may seem more convenient to humans to ask or expect the ducks to use more permanently flooded, larger wetlands for all stages of breeding, the ducks simply have not evolved that way. Whether we like it or not, destruction of these Type 1 wetlands means further losses in already declining duck populations. That is inconsistent with the statute because wildlife protection was an express purpose of Swampbuster. H.R. Rep. No. 99-271, 99th Cong., 1st Sess. 87 (1985).

These ducks belong to the Nation. Waterfowl banded in North Dakota, for example, have been recovered in 46 states,

10 Canadian provinces and territories and 23 other countries. Wetlands Status and Trends, p. 1. As recognized by Justice Oliver Wendell Holmes over a half-century ago, these are "birds that yesterday had not arrived, tomorrow may be in another State and in a week a thousand miles away." *Missouri v. Holland*, 252 U.S. 416, 434 (1920).

These birds are money in the bank. In 1980 an estimated \$638 million was spent by hunters pursuing migratory birds. U.S. Fish & Wildlife Service, 1980 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, p.70. Moreover, they are highly valued by the 2 million or so duck hunters found in every state of the Union.

But these birds are in trouble. Duck populations have crashed to their lowest levels in recorded history. The reason, according to FWS, is simple: loss of habitat. U.S. Fish & Wildlife Service, *A National Waterfowl Management Plan for the United States* 5 (1982). The loss of habitat in the United States precipitating this decline is directly attributable to the agricultural conversion of the highly productive prairie pothole wetlands.⁸

Therefore, pothole conversion in the Dakotas is far from a parochial problem. As Justice Holmes observed, no single state can save our duck populations. However, failure to enforce Swampbuster in just two states, North and South Dakota, can have dramatic impacts on continental waterfowl populations. Only Congress can effectively represent the interest of the entire Nation in preventing federal tax

⁸ Protection of waterfowl wintering habitat is also critical.

dollars from fueling the destruction of prairie potholes. The language employed in Swampbuster and the legislative history defining wetlands could not be any clearer, and the importance of maintaining these seasonal wetlands could not be more critical. Type 1 wetlands can only be read out of the Act by interpretive sleight of hand.

Soil and Water Conservation.

Wildlife is far from being the only or even the most important reason for protecting prairie potholes. Indeed, prairie potholes play a major role in maintaining the viability of agriculture by preventing flooding and recharging groundwater supplies.

Groundwater Recharge

The prairie potholes of the Dakotas are important in recharging groundwater aquifers in this region. Hubbard & Linder, "Spring Runoff Retention in Prairie Pothole Wetlands," 41 Journ. of Soil and Water Conservation (No. 2) 122 (1986). One study in Northeastern South Dakota has estimated that 213 wetlands produced a total minimum recharge of about 12 acre-feet in a 1602-acre area. This volume could irrigate 160 acres with 1.4 inches of water, or supply water for 1,699 head of cattle for 1 year. *Id.*

Because prairie wetlands are hydraulically connected with the water table, their drainage should eventually result in declines in water table elevation. *Id.* The reverse is true

if wetlands are saved. Thus prairie potholes are really savings banks for groundwater when drought strikes, as it often has in the Dakotas, with vicious effects on agriculture. Braa, et al., "Stream Flow Changes in the Southern Red River Valley of North Dakota," 38 North Dakota Farm Research Bimonthly Bull. (No. 5) 11 (1981) ("Stream Flow Changes in Red River Valley").

Flood Control

Flooding is a substantial problem in the Dakotas and can often lead to total destruction of crops and bridges, damage to homes and businesses, and erosion of valuable soils. In Enderlin, North Dakota, major sections of the town have been abandoned to repeated flooding, a phenomenon that has developed in only the last 25 years. Stream Flow Changes in Red River Valley, p. 11. While climate plays a major role in the timing and degree of flooding, potholes reduce flood flows. Drainage of wetlands that would otherwise store excess water is a factor that has aggravated unprecedented flooding in the Southern Red River Valley in North Dakota. Id.; Ludden, et al., "Water Storage Capacity of Natural Wetland Depressions in the Devils Lake Basin of North Dakota," 38 Journ. of Soil and Water Conservation (No. 1) 45 (1983).

Prairie pothole wetlands store spring snow melt and storm runoff and thereby moderate flooding in the Dakotas. The 213 small wetlands in the 1602-acre South Dakota study area discussed above retained a minimum of 158.7 acre-feet of water during the spring thaw. Drainage of these wetlands would contribute to flooding at lower elevations in the watershed under certain conditions. Id. Prairie potholes in

the Devils Lake Basin of North Dakota have a maximum storage capacity of 657,000 acre-feet, and retain 72% of the total runoff of a 2 year event. These potholes would retain about 41% of the total runoff of a 100 year event. Ladd, et al. "Water Storage Capacity of Natural Wetland Depressions in the Devils Lake Basin of North Dakota," 38 *Journal of Soil and Water Conservation* (No. D-45) (1983). Drainage of these wetlands could significantly affect flooding in the Devils Lake Basin.

In South Dakota the flood control value of wetlands was recognized when, on December 8, 1987, Governor George S. Mickelson endorsed a proposal by NMF's Prairie Wetland Resources Center for the restoration of over 26,000 acres of drained wetlands to alleviate flooding from Lake Thompson-- flooding which probably resulted from the destruction of these same wetlands. Floodwater runoff raised the lake each year and caused serious local flooding.

WETLAND LOSSES

Congress was well advised to ensure that temporary wetlands were included in Swampbuster because these wetlands remain significantly threatened by this conversion. Originally, the prairie pothole region of the Dakotas and Minnesota had 17 million acres of prairie wetlands. According to FWS's National Wetlands Inventory, only 5.3 million acres remain today. North and South Dakota have lost 60 percent and 35 percent of their prairie wetlands, respectively. Most of this destruction was caused by conversion to farming. *Wetland Status and Trends*, p. 42. Prairie pothole destruction continues today at the rate of 33,000 acres per