

# **SUGGESTIONS TO STATES INTERESTED IN DEVELOPING CONSERVATION RESERVE ENHANCEMENT PROGRAMS**

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The Conservation Reserve Enhancement Program allows states to submit comprehensive plans to combine state funds and state programs with the Conservation Reserve Program of the United States Department of Agriculture to solve a particular natural resource problem. An "Enhancement Program" uses targeted retirement of agricultural land and planting of natural vegetation on that land to help clean up rivers or bays or to recover endangered species. To date, the USDA has approved a program to restore 100,000 acres of buffers and wetlands around the Chesapeake Bay, and has stated it will approve soon roughly 200,000 acre programs each for the Illinois River and the Minnesota River that focus on frequently flooded lands.

EDF has assisted all of the states that have so far submitted Enhancement Programs in the preparation of those proposals. Based on this experience, this paper offers other states suggestions on the issues they will want to address if they choose to pursue a program of their own.

## **I. BACKGROUND**

Basic Description of CRP and CREP. - The CRP program enrolls 36.4 million acres of land in conservation contracts of ten to fifteen years. CRP pays an annual rental rate based on the rental value of the land. CRP also pays 50% of the costs of establishing grasses or trees on the land, and up to 75% of the costs of restoring the hydrology of wetlands. It normally enrolls land through a national bidding program, conducted at set times, that ranks bids based on a set of necessarily simplified environmental criteria, such as how erodible the land is or the general wildlife value of a certain type of grass.

Enhancement Programs are a sub-program of the CRP. Enhancement Programs set forth criteria for enrolling land in a particular area based on location, characteristics and the kinds of conservation practices that, based on site-specific science, can be demonstrated to be of unusually high environmental value. State agencies submit the plans. The primary benefit of such a program is that landowners who meet these criteria can enroll in CRP automatically and therefore without participating in the bidding process. States are expected to contribute at least 20% of the overall costs of the program and to produce a result that is of greater environmental value than could be achieved by CRP alone. Typically that occurs because state funds will pay to extend the period of conservation beyond fifteen years and to subsidize the non-federal costs of planting and restoration. Both the longer conservation and the more complete repayment of restoration costs can allow landowners to perform more sophisticated restoration.

Relationship to Continuous Enrollment Program: The Enhancement Program is really a subset of another CRP sub-program entitled the Continuous Enrollment Program. Like the Enhancement Program, the Continuous Enrollment program allows landowners to enroll land automatically in CRP at any time. The Continuous Enrollment program is limited to set practices, including buffer zones and small wetlands. The Enhancement Program essentially allows states to custom-design the Continuous Enrollment program in ways that take advantage of the CRP's statutory and regulatory authority. Thus, different kinds of land with different kinds of conservation practices could be automatically enrolled through an Enhancement Program.

Enhancement Programs Must Comply With the Regulations of CRP: CRP applies only to the restoration of cropland or riparian pasture land. It cannot pay to preserve existing natural habitat. It cannot pay for land that is already legally committed to conservation. CRP will pay for 50% only of conservation practices related to the land in question (75% of the cost of restoring hydrology). This 50% cost share may include fencing, and even remote watering facilities for cattle, but it does not include a range of other good conservation practices on the farm. Once put in CRP, the land cannot be used for economic purposes (except for possible emergency haying and grazing) for the life of the CRP contract.

One of the benefits of Enhancement Programs is that they provide a mechanism by which USDA can evaluate whether to deviate from some standard program policies. But regulatory and statutory rules must still be respected. One of the opportunities with Enhancement Programs is for states to develop coordinated efforts to combine multiple programs to address a problem comprehensively.

## II. KEY QUESTIONS STATES WILL WANT TO ANSWER WHEN DEVELOPING ENHANCEMENT PROGRAMS

1. What natural resource problem will the Enhancement Program address? Obviously, this is the first question. It probably is not enough to say, "the water quality problems" within the state. But it would be appropriate to address streams with impaired salmon populations, or streams that feed a polluted estuary if the Enhancement Program will significantly address the estuary's problems. Enhancement Programs are also not necessarily limited to water quality problems. They could also address declines in particular habitat types or try to provide habitat for particular endangered species.

2. What lands and how many acres should the Enhancement Program target? An Enhancement Program, like CRP itself, can only use federal funds to retire croplands or riparian pasture lands. Within that context, an Enhancement Program can theoretically enroll any lands so long as the state can demonstrate that retirement of those lands would serve the highest environmental value. States will also generally prefer to focus on less productive farmland if only for financial reasons and the likely greater interest of landowners. States should decide which lands to enroll based on environmental considerations, and the lands need not be the same as those that could be enrolled through the continuous enrollment process. For example, even though Maryland's program focuses on buffer strips, normally within 150 feet of a stream, Maryland will also enroll highly erodible land to within 1000 feet of the streams. Minnesota and Illinois also proposed to enroll

highly floodprone land because of its great environmental significance for the Minnesota and Illinois Rivers and the high human and economic costs associated with repetitive flooding in some areas.

States must also decide how many acres of different land types to target. USDA has yet to issue guidance on maximum acreage levels. Based on the experience of the Minnesota and Illinois River plans, it now appears likely that USDA will agree to proposals at least up to 200,000 acres, but require a USDA review when enrollments exceed 100,000 before further enrollments may proceed. That, of course, does not mean that states should automatically apply for any particular number of acres.

States so far have attempted to choose an acreage figure that is both high enough to make a significant contribution to an environmental problem and low enough that its attainment is realistic. For example, Minnesota generally established acreage goals roughly equal to 50% of the floodprone land along the Minnesota River, a challenging percentage but one state officials believed was realistic. States enrolling primarily buffer zones have attempted to estimate the number of acres of land in crop production within a fixed width of streams in a watershed, and to choose a realistic percentage of those unbuffered areas for enrollment.

3. What conservation practices will the Enhancement Program employ? CRP permits a broad range of forms of restoration. Traditionally, the intensity of restoration efforts on CRP land has been low by comparison with other environmental restoration programs (or, for example, wetland mitigation projects typically undertaken to compensate for wetland permits) probably because the federal government only pays 50% of the costs of that restoration. Landowners, who normally must pay the other 50% themselves, are understandably reluctant to pay for expensive plantings, careful control of exotic species, or complicated efforts to restore the hydrology of wetlands. But if the state is willing to pay most or all of the non-federal half of the cost of restoration, the potential for more intensive practices may exist.

So far, states have proposed practices that build on and arguably fit the definition of CRP practices but often have a twist. For example, Maryland contemplated the problem of how to filter pollutants out of farm runoff that moves through a series of ditches. Because the ditches in some areas are quite sizeable and would carry water directly through any buffer, buffer zones alone will not filter this drainage water. Maryland therefore proposed to construct wetland round the outlets of drainage ditches. Minnesota also proposed to engage in intensive efforts to restore native prairie that requires intense site preparation, controlled burns and individual planting of flowers and other forbs. By contrast, in many floodprone areas, it proposed not even to plant trees since the cottonwood and willow trees that dominated the floodplain of the Minnesota River sprout rapidly on their own.

Because Enhancement Programs tend to commit a far greater level of resources to a problem than previously allocated, a state should think carefully about the conservation practices it wishes to employ.

4. What length of conservation commitment should states fund and require? CRP pays for contracts up to fifteen years in length. Through Enhancement Programs, states can take

advantage of the power of present discount value to enroll land in contracts or easements that would extend the period of conservation. For example, in many cases, the present discount value of a fifteen-year contract will equal 75% of the cost of a permanent conservation easement. A state could then offer to pay the remaining 25% and, using a state program, obtain a permanent easement.

Enhancement Programs so far have employed a broad range of options. The Maryland program will enroll land in fifteen-year contracts, but will attempt to enroll 25% of the program in permanent easements. Minnesota will employ primarily permanent easements but may offer fifty-year agreements as well. In other words, landowners enrolling land in an Enhancement Program must simultaneously enter into a fifteen-year agreement with CRP and a long-term or permanent easement with Minnesota. Illinois will offer landowners the alternative of permanent easements or thirty-year agreements. It is important to remember that, for many enrollments, landowners already have a fifteen-year option available through the continuous enrollment program. Thus, Enhancement Programs are offering additional options in return for state funds. What factors should determine the options that states offer? Some groups have ideological approaches to this issue, but EDF encourages a pragmatic approach. In essence, the strongest reasons to offer or require permanent or longer-term easements are to justify particularly expensive or long-lasting conservation practices. For example, many farmers are reluctant to plant trees in CRP contracts because recropping after fifteen years would require removal of trees, which is expensive. If a particular environmental objective is best served by trees, farmers may need to be guaranteed long-term contracts or permanent easements. Similarly, for expensive forms of wetland restoration, state officials may feel that a long-term or permanent contract is necessary to justify the large state financial contribution up-front. And for efforts to establish rare habitats for endangered species, the habitat may only begin to produce species benefits well into the future. On the other hand, where environmental objectives are well served by thin grass buffer strips, states may choose not to add funds to the CRP contract because of confidence that CRP's normal continuous enrollment program is likely to exist in the future. States may wish to establish different policies for different kinds of enrollments.

5. Should the state ask for a higher or different CRP rental payment? USDA has indicated that it is open to offering a higher bonus or possibly even a different formula for determining CRP rental rates if a state can demonstrate the need. Such a change was essential to the Maryland agreement and deserves serious focus by a state.

USDA has a normal policy that CRP rental rates should not exceed the dryland, agricultural rental rate for whole farm fields of land in the county of similar soil productivity. In other words, maximum CRP rates are based on the average price at which similar farm fields rent in the area. There are a number of reasons this price may not reflect the fair market value, meaning the price at which a reasonable number of farmers will agree to participate in the program, for certain types of land and regions.

One reason is simply that many Enhancement Programs focus primarily on only strips or small pieces of farmland. Agricultural rental rates for whole farm fields should equal the expected gross returns from the crops produced on the land minus the labor, equipment and input costs of producing the crop. But a farmer who rents a narrow strip of land or a small area for a wetland

may not, in reality avoid significant labor - indeed, avoiding a strip may even increase the work of farming the field. Thus, renting a strip may present a fundamentally different economic calculation for the landowner, and the use of rental values for whole farm fields may be a poor surrogate for the "market" opened up by CRP for strips of farmland.

In many regions, land values exceed the value associated with agricultural use of the land because of even the speculative prospect of land development. This speculative premium may occur even in areas that appear remote from existing development. Landowners may be reluctant to encumber their lands in such a manner that might impede sales to any other landowner interested in something other than agricultural use. That will be particularly true if the preferred conservation practice requires tree-planting or other practice that can only be justified by a longer term conservation agreement. The agricultural rental value of pasturelands is particularly likely to deviate from its sale value.

Another issue arises in western regions for irrigated cropland. Quite simply, owners of irrigated land are unlikely to participate in the CRP if they are only paid non-irrigated land values, which are much less lucrative than the profits from farming irrigated lands. In a letter to some members of Congress, Agriculture Secretary Dan Glickman has indicated a willingness to address this issue in the context of Enhancement Programs.

In general, EDF believes that landowners are likely to participate in Enhancement Programs only if the present value of the fifteen years of CRP payments equals at least 70% of the fair market value of the land. USDA standard practice is to pay a 20% bonus for enrollments that are not whole farm fields. To determine if standard rental rates are adequate, EDF recommends that states evaluate for a representative sample of the lands they are likely to enroll the relationship between the CRP rental rate for that land and its fair market value. Bonus or alternative rental rates should be sought as necessary.

6. Who will implement the state side of the program? Implementing Enhancement Programs requires a significant state administrative effort in collaboration with federal agencies. It obviously makes sense for states not to reinvent the wheel but instead to piggy-back on existing programs and agency staff where feasible. States will also jointly administer these programs with federal agency personnel who administer CRP, including Farm Services Agency personnel who specialize in the paperwork and Natural Resource Conservation Service staff, who specialize in developing conservation plans. They can therefore try to develop an intelligent collaborative approach.

Why are state personnel needed? State personnel are needed, first of all, because states will have to administer the state paperwork, including any legal agreement to extend conservation beyond the CRP contract. Most states also wish to participate actively in the development and review of conservation plans to assure that they achieve state objectives. Perhaps most importantly, a coordinated approach to addressing an environmental problem will typically require a coordination of land retirement with other state-administered programs. For example, Illinois will require that landowners who enroll highly erodible land in its Enhancement Program also work with the state on necessary efforts at streambank stabilization. In the Pacific northwest, where Washington and Oregon are pursuing Enhancement Programs, the purpose is to restore

stream salmon habitat. But salmon cannot reach many stream segments because of downstream blockages, such as badly designed road-crossings, so it would make little sense to restore these segments unless coordinated with the states culvert redesign program.

7. How will states reach out to farmers? States will also play a critical role in reaching out to farmers. Most agricultural cost-share programs, however valuable, have had sufficiently modest funding that administrators could be confident of finding enough interested farmers to use programs funds without a great outreach effort. Enhancement Programs will concentrate a high level of resources on a particular program and will require that a large percentage of farmers agree to participate in them. To reach this level of participation, farmers will need to receive information, maybe several times, and in many cases will need to discuss the peculiar challenges of their farms with technical personnel. These programs may also require more intensive efforts to communicate with owners who are renting their lands. States should think through outreach efforts.

8. What are the state's funding responsibilities? Enhancement Programs are not traditional cost-share programs in which the federal and state governments each contribute a fixed percentage of the overall program costs to a common pool. Instead, states and the federal government will each have separate, complementary funding responsibilities. For example, for those enrollments with a contract or easement extending beyond fifteen years, the state will pay for the cost of this extended conservation. For many or all forms of restoration, states will also pay for some or all of the non-federal costs of conservation practices. And states will need to cover their own administrative costs.

The percentage of the costs of the overall program that the state will fund depends on the relative cost of the state and federal funding responsibilities. In general, the projected percentage can only be estimated because it will depend on such factors as the actual restoration costs, the actual CRP rental rates, and the actual fair market value of extended conservation agreements or easements.

USDA is likely to demand that state cost shares equal at least 20% of the overall costs of the program in present value terms. The concept of present value is important because CRP will pay out funds over a fifteen-year period beginning with the year lands are enrolled. By contrast, states will generally pay their share of the funds in the year lands are enrolled. A steady stream of payments over fifteen years is equal in value to less than two thirds of the total amount of those payments paid up-front.

So far, the state share of proposed conservation programs is likely to vary from 20% to around 40%.

9. What state funding sources can be used? States may use any appropriate funding source, and so far, different states have tapped different sources. Maryland, for example, will pay for virtually all of its costs out of two existing programs, an open space program and an agricultural cost-share program. Minnesota has long had one state program acquiring agricultural conservation easements, funded through periodically issued state bonds, that will probably receive some increased funding. Illinois funds are primarily new funds for which the Governor

has pledged future appropriations. In all cases, the federal share of the program is contingent on maintained state funding.

10. How many years will states have to implement Enhancement Programs and how does this timing relate to state funding? USDA has the authority to enroll new land in the CRP program through September 30, 2002. Although it is possible that Congress could extend the CRP program at that time, USDA today can only authorize enrollment of land through that date. That leaves at most five years to complete all enrollments.

This time frame has significance for state funding. Unless a state has the legal authority to promise future payments, it must pay the farmers its share of the cost of the enrollment in the year the land is enrolled in the program. Thus, while USDA will still be making payments on land enrolled in an Enhancement Program in 2002 as late as 2017, states must make all their payments by the end of 2002. This deadline limits the number of years states can spread their costs of enrollment, and the later an Enhancement Program is submitted and approved, the less time the state has to implement it. Interested states may therefore wish to move rapidly to prepare, submit and gain approval for their proposals.

11. What kind of proposal is expected? States will probably wish to examine the Minnesota and Maryland proposals closely as models for the proposal documents they wish to submit. The original Illinois proposal, although highly informative, less precisely addressed the detail issues illuminated in this document. A subsequent Illinois synopsis provides a good summary of the detailed elements of a program.

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