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DOES THE 2014 FARM BILL'S NEW ACEP PROGRAM REALLY BENEFIT AMERICA, OR DOES A LACK OF FUNDING STYMIE ANY GOOD WORKS?

Brian Wood*

INTRODUCTION

As the world’s population increases, American farmers will feel pressure to provide for the needs of hundreds of millions of new mouths over the next several years. Hungry children and bread lines are not outside the realm of possibility, and the burden of feeding the masses, as always, falls on the farmers. The foresight of the federal government regarding the coming strain on farmers makes its appearance in the 2014 United States Farm Bill. The United States Farm Bill sets the policies regarding agriculture and food production for the federal government, and while it has enjoyed past success in preserving and promoting the agricultural interests of the government, the 2014 iteration gives rise to questions of the Bill's future sustainability. Should the fears about the Bill's sustainability be justified, current and future generations of Americans must face the potential consequences of grievous loss of the country's environmental and ecological assets or face worldwide food shortages as agricultural land becomes scarce.

The policies of the Farm Bill first entered United States law via the Agricultural Adjustment Act of 1933.¹ The first Farm Bill implemented policies intended to address the trials caused by the Great Depression, such as bottoming food prices, increasing hunger, and soil erosion.² Since that time, a variety of Farm Bills have been enacted, each addressing the...

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¹ Production Editor, KENTUCKY JOURNAL OF EQUINE, AGRICULTURE, & NATURAL RESOURCES LAW, 2015-2016; B.A. 2013, University of Louisville; J.D. expected May 2016, University of Kentucky.


perceived issues afflicting the nation at the time of their enactment. However, as evidenced by the fact that a total of seventeen Farm Bills have now been enacted, the policies promulgated by Congress are imperfect, subject to extreme scrutiny from the government, and very easily subject to change. The Farm Bills’ propensity to change is apparent in the newest iteration of the legislation: the Agricultural Act of 2014.

The Agricultural Act of 2014, otherwise known as the 2014 Farm Bill, continues the tradition of ensuring that American farmers are financially protected and rewarded for their yearly efforts. However, the newest iteration of the Farm Bill has also experienced some changes to its structure. Most relevant to this note is the newly enacted Agricultural Conservation Easement Program (“ACEP”), which combines various previously terminated programs to “protect working agricultural lands and limit non-agricultural uses of the land.” ACEP is a program entirely unique to the 2014 Farm Bill, consolidating three former Farm Bill programs: the Wetlands Reserve Program, Grasslands Reserve Program, and Farm and Ranch Land Protection Program. Under the auspices of the Natural Resources Conservation Service, (“NRCS”), a subsidiary of the United States Department of Agriculture, (“USDA”), ACEP purports to protect the long-term viability of the nation’s food supply by preventing conversion of working agricultural lands to non-agricultural purposes. Additionally, NRCS promulgates various other benefits that ACEP delivers: improved environmental quality, historic preservation, wildlife habitat, and protection of open space.

The lands eligible for agricultural easements include cropland, rangeland, grassland, pasture, and non-industrial private forestland. The

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3 See id.
7 See id.
8 Id.
9 Id.
10 Id.
NRCS stated that it would prioritize funding via preferring applications that protect land's agricultural uses, related conservation values in the land, and applications that maximize the contiguous acres devoted to agricultural use. This policy seems justified upon first blush. As the world's population continues to rise—projected to reach nine billion by 2050—farmers around the world will face the unprecedented task of growing more food in the next fifty years than has been produced in the past 10,000. Despite a projected fifty percent increase in America's population by 2050, cropland, pasture, and grassland acreage have decreased over the past sixty years. ACEP's policy reflects the government's knowledge of what is to come by protecting the long-term viability of in-use agricultural land and conserving such other arable land as it can. However, seeing as ACEP is the product of compromise between the two Houses of Congress, the provisions are not perfect. In fact, the Farm Bills have a long history of being unable to solve some of America's most pressing agricultural and natural issues. Ever since the first Farm Bill became law in 1933, successive Congresses worried over issues such as soil erosion and water pollution. Unfortunately, despite successive Bills throughout the decades, little success has been achieved.

ACEP's creation is yet another attempt by Congress to manage the issue of balancing the government's interest in preserving as much arable and grazing land as possible with its interest in protecting and preserving the environment. ACEP, however, despite Congress's intentions, will not help America, as it is doomed to fail, in part because of insufficient funding. Due to a progressive lessening of funding throughout the tenure of the 2014 Farm Bill, the funding for farmland and environmental conservation

11 Id.
13 Id. at 3.
14 See Agricultural Conservation Easement Program, supra note 6.
17 See id.
will be cut up to $6.1 billion over the next decade. It was similarly observed by Farm Aid that the tenuous assistance, which the Farm Bills' conservation programs provided for conserving farmland and local environments, was limited in scope and funding and particularly vulnerable to the budget cuts proposed under the most recent Farm Bill. Given its severely reduced funding, the worst-case scenario for Farm Bill supporters and dependents will mostly likely coalesce. The 2014 Farm Bill's ACEP program will be unable to adequately sustain its dual interests in conserving agricultural and ranching land along with conserving local and national environments. Upon facing a rapidly growing population and declining budget, the ACEP program will ultimately face the difficult decision of whether to focus on agricultural conservation to the detriment of the environment, or betray its long-standing and consistently enumerated mission to conserve farm land for future generations. Ultimately, due in part to the precedents set by the Farm Bills and its own wording, ACEP should be restructured so that it focuses its limited budget on agricultural land conservation in order to face the coming storm of limited funding and a growing population.

First, Part I will address the history of the Farm Bills. From this analysis, this Note shall demonstrate the evolution of Congress's intent to serve farmers and the future of the nation by conserving farmland, along with its intent to preserve local wetlands and environments. This section will also discuss the current makeup of the ACEP program, examining the programs from the former 2008 Farm Bill that currently comprise ACEP. Part II will examine the financial standing of ACEP regarding its ability to carry out its enumerated mission, and will demonstrate that all Farm Bill precedent and even ACEP's wording suggest that ACEP will focus on agricultural conservation rather than its other policies when faced with this coming emergency. Finally, this Note concludes that the professed environmental interests of ACEP conflict with its primary mission: that of ensuring that agricultural land is precluded from being used for non-agricultural purposes. The Note concludes that, given the dearth in funding

19 FARM AID, supra note 2.
facing ACEP in future years, the NRCS will necessarily let environmental policies suffer to cover its agricultural goals, and asserts that to truly and more efficiently accomplish its stated purpose of conserving agricultural land for the future trials farmers must face, the government should cut the additional, more environmentally concerned programs from the Farm Bill.

I. THE HISTORY OF THE FARM BILL

A. Initial Creation

While the first Farm Bill did not have as many conservational programs as the current Bill, its very creation stemmed from the need for conservation and protection of farmers and land. The first Farm Bill took form as the Agricultural Adjustment Act of 1933. The Bill was written in an attempt to address rock bottom food prices during the Great Depression, soil erosion, and national hunger. Even the very first Farm Bill immediately established that the government—and farmers—had a strong interest in conserving as much farmland as possible. The wording of the Act itself makes it clear that farmers are favored and protected, as the main purpose for the Farm Bill’s enactment is to “establish and maintain... balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to... the base period.”

The first Farm Bill granted the Secretary of Agriculture $100 million to fulfill its stated goal of protecting the American farmer from the trials of the Great Depression. It also created several new taxes, which were intended to further fund the Secretary’s newly laid mission. The 1933 Farm Bill, however, like all legislation, was not perfect, and subsequent

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21 See id.
22 See id. at § 8(1).
23 See id. at §2(1).
24 See id. at §12(a).
25 See id. at §9(a).
legislation was enacted in 1938 amending several provisions of the 1933 Bill. This amending legislation was titled the Agricultural Adjustment Act of 1938, and while it purported to amend certain specific provisions of the 1933 Bill, it also specifically declared it the policy of Congress to continue with the soil, natural resource, and farm and ranch land preservation policies found in the 1933 Farm Bill.\(^{26}\)

The Agricultural Adjustment Act of 1938 is the first to mention an express purpose and focus "for the conservation of national soil resources,"\(^{27}\) and appears to be the true beginning of the modern era of United States agricultural land preservation policy, as it perpetuates and further cements in legal precedent the federal government's desire to preserve farmable land and protect farmers' purchasing power. The 1938 Farm Bill states its policy as follows:

It is hereby declared to be the policy of Congress to continue the Soil Conservation and Domestic Allotment Act, as amended, for the purpose of conserving national resources, preventing the wasteful use of soil fertility, and of preserving, maintaining, and rebuilding the farm and ranch land resources in the national public interest; to accomplish these purposes through the encouragement of soil-building and soil-conserving crops and practices; to assist in the marketing of agricultural commodities for domestic consumption and for export; and to regulate interstate and foreign commerce in cotton, wheat, corn, tobacco, and rice to the extent necessary to provide for an orderly, adequate, and balanced flow of such commodities in interstate and foreign commerce through storage of reserve supplies, loans, marketing quotas, assisting farmers to obtain, insofar as practicable, parity prices for such commodities and parity of income, and assisting consumers to obtain an adequate and steady supply of such commodities at fair prices.\(^{28}\)

As seen above, the Agricultural Adjustment Act of 1938 proposed to accomplish its conservation goals via, among other things, "the


\(^{27}\) Id.

\(^{28}\) Id.
encouragement of soil-building and soil-conserving . . . practices . . . "

This was one of the first times that Congress stated a clear intention of the federal government to focus on the conservation of agricultural land not only during the time of a national emergency like the Great Depression, but also during times of peace and prosperity. The policies of assisting farmers in obtaining parity prices and parity of income along with the determination to never face a similar price crash in crop value, first mentioned in the Farm Bill of 1933 but reaffirmed in the Bill of 1938, indicated concern by the government for its farming population and producers and demonstrated that farmers were receiving preferential treatment and additional assistance from the government. At this point in history, however, the early Farm Bills only addressed one concern: the wellbeing of farmers and the nation's agricultural production capacity. There was not yet any concern for the environment or land outside that with the capability of producing food.

B. Current Farm Bill Provisions

Following in the traditions of its predecessors, the 2014 Farm Bill continues to focus on conservation of agricultural land, but its policy statement demonstrates that additional programs and concerns have been incorporated in the more than seventy years since the 1938 Farm Bill became law. According to the 2014 Bill's Statement of Purpose, it is "An Act [t]o provide for the reform and continuation of agricultural and other programs of the Department of Agriculture through fiscal year 2018, and for other purposes." These other purposes, as it shall be demonstrated, consist of environmental-oriented policies that developed over the decades following the first Farm Bills. These fairly new policies now share funding within the Farm Bill and conflict with its perpetually reiterated founding purpose—conserving agricultural and ranch land for future use and food

29 Id.
30 See generally id.
31 See id.
production. The 2014 Farm Bill, now signed into law, directs that "[t]he Secretary shall establish an agricultural conservation easement program for the conservation of eligible land and natural resources through easements or other interests in land." Over the years, however, the concept has evolved such that the easements granted can be in perpetuity or at least last for decades. Once an easement is granted for agricultural conservation, it will not disappear at the death of the grantee, but is permanent. This easement development obviously strongly favors farmers or equivalent agricultural landowners. The government will pay the farmers so that they do not sell their farmland, and in return the government may have a permanent easement over arable land that the farmers can then use to grow more crops whenever the nation requires. This leads to a discussion of the main focus of this Note, the Agricultural Conservation Easement Program, a new feature of the 2014 Farm Bill.

1. ACEP in the 2014 Farm Bill

ACEP is an entirely new program created by the 2014 Farm Bill that is a conglomeration of several conservation programs enacted by the 2008 Farm Bill. The 2014 Farm Bill states that the purpose of the ACEP program is to: (1) combine the purposes and functions of the wetlands reserve program, the grassland reserve program, and the farmland protection program; (2) restore, protect, and enhance wetlands on eligible land; (3) protect the agricultural use, future viability, and related conservation values of eligible land by limiting nonagricultural uses of that land; and (4) protect grazing uses and related conservation values by restoring and conserving eligible land.

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36 Agricultural Conservation Easement Program, supra note 6.
37 See id.
40 Id. at § 3865(b)(2).
41 Id. at § 3865(b)(3).
42 Id. at § 3865(b)(4).
While it may appear as though ACEP's sole mandate is to secure viable and potentially viable agricultural land, ACEP also has a secondary mandate to restore, protect, and enhance wetlands and other environmental locales. In fact, once the government has purchased an easement over wetlands, the alteration of any wildlife habitat or any other natural feature on the land is prohibited. The landowner cannot spray chemicals or mow without express Secretary approval unless it is necessary to meet the habitat needs of specific wildlife species. Barring a national disaster, it appears as though the wetlands reserve easement program as incorporated in ACEP will serve to preserve wildlife and habitats, a contrary position to the Farm Bill's primary and only founding goal of conserving agricultural land for agricultural use. This contrary position may place the individual conservation programs within ACEP fighting at each other's throats for sufficient funding, as this is the first time in which the programs comprising ACEP have been forced to divide lump sum funding. Further, preceding Farm Bills make extremely clear their preference for agricultural conservation to the detriment of other stated goals, which undoubtedly contradicts the ACEP's secondary goal of environmental restoration.

2. ACEP's Individual Programs

As previously mentioned, ACEP comprises of various older programs stemming from the past Farm Bills, each with its own lofty goals and methods for achieving those goals. ACEP "combine[s] the purposes and coordinate[s] the functions of the wetland reserve program ... the grassland reserve program ... and the farmland protection program ...." Therefore, the individual programs that were forcibly combined to create ACEP dealt with granting easements to wetlands, ranchland for grazing, and farmland. While these programs each used the easement procedure to further their individual conservation goals, the individual goals are compatible only so long as there is no national hunger crisis and sufficient funding.

43 See id. at § 3865(b)(2).
45 Id.
The Wetlands Reserve Program ("WRRP") was a voluntary program, which provided landowners with the opportunity to protect, restore, and enhance wetlands on their property. Its stated goal was to achieve the greatest wetland functions and values, along with optimum wildlife habitat. In the pursuit of that goal, the USDA paid all costs associated with recording an easement in the local land records office and, should the easement purchased be permanent, the USDA would pay 100 percent of the easement cost and up to 100 percent of the restoration costs. In essence, the USDA would pay for absolutely everything associated with the wetlands in order to conserve it for wildlife and the environment.

Similarly, the Grassland Reserve Program ("GRP") was a voluntary conservation program that supported working grazing operations, enhancing plant and animal biodiversity, and protecting grassland from threat of conversion to other use. Additionally, like the Wetlands Reserve Program, the participants had to restrict their foraging during the nesting seasons of a declining bird species, thereby protecting the local wildlife and their habitats. The GRP was also determined to be more likely to have a positive effect on the surrounding environment due to its conservation and restoration policies and practices.

The Farm and Ranch Lands Protection Program ("FRPP") worked to assist landowners in purchasing development rights to keep farmland in an agricultural use, and also worked to purchase conservation easements from farmers. In this program, the USDA provided up to 50 percent of the fair

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48 *Id.*

49 *Id.*


51 *Id.*


market easement value of the conservation easement to match farmers' funds to purchase their fields' development rights and conserve their land for agricultural use.54

After addressing each former program purported to compose at least some part of ACEP, it is clear that ACEP adopted nearly identical goals and many of the same provisions as its predecessor programs.55 With each formerly individual program now comprising just a single component of the sum that is ACEP, ACEP is expected to protect the long-term viability of America's food supply by sustaining agricultural lands while simultaneously balancing the duties of providing a habitat for fish and endangered wildlife in wetlands and improving environmental quality.56 ACEP, similar to the FRPP and GRP, allows the NRCS to contribute up to 50 percent of the fair market value of an agricultural land easement.57 If there is grassland of special environmental significance to protect, however, then the NRCS is authorized to increase its contribution to 75 percent.58 ACEP retained the exact spending provisions that were present in the WRP in the 1990 Farm Bill, so no ease of funding can be discovered there.59

The issues with ACEP's provisions lie in the funding that it is set to receive through 2018. ACEP has the duties, pressures, and budgetary demands of three programs all rolled into one. Without sufficient funding, ACEP will become inefficient and ineffective in all of its departments, and will likely have to cannibalize the allocated funding from two of its programs in order to keep the third running. This Note posits that because the Farm Bills have throughout their history authorized and encouraged conserving agricultural land and preserving it from non-agricultural use, whenever funding gets low the two newer directives will be scrapped in favor of maximizing the oldest and arguably most important resource: land on which to grow food.

54 Id.
55 See Agricultural Conservation Easement Program, supra note 6.
56 See id.
57 See id.
58 See id.
59 See id.
II. THE BRAND NEW ACEP PROGRAM IS LIKELY TO FAIL

Despite the optimism present when Congress approved the 2014 Farm Bill with the ACEP provision, ACEP’s own effectiveness is hampered by the means of its creation. As a program entirely dependent upon government funding, ACEP can only do as much good for both the government’s long-term food interests and the environment as the amount of money that Congress allots it will allow. ACEP, a program composed of what used to be three separate programs, receives less funding than the three programs received together. As a result, when the funding inevitably runs dry, it is highly likely that the government will put pressure on the leaders of ACEP to shift their focus to the primary goal of the Farm Bills: preserving agricultural land via conservational easement programs. The remaining funds from the wetland and grassland divisions of ACEP will likely be swept into providing for agricultural land easements.

A. Too Little Funding Dooms ACEP to Ineffectiveness

ACEP is more than likely to face budget concerns down the road, and when it does the government will have to make the difficult choice of whether to focus its remaining funding on the primary mission of procuring agricultural easements or whether it will try to divide the funds among three nation-spanning programs used to much more funding.

The 2014 Farm Bill provided $400 million for the 2014 year.60 While that may seem like a great deal of funding, in just four short years the 2014 Farm Bill provides that ACEP’s funding will be cut by nearly half, with the Bill only providing $250 million in 2018.61 Looking even further into the troubled future, calculations show that ACEP will lose $6.1 billion over the next decade.62 Missing out on billions of dollars of funding will almost certainly have serious repercussions on the actions and capabilities of the

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61 Id.
62 2014 Farm Bill Drill Down, supra note 18.
programs within ACEP. While it is true that ACEP has received permanent funding, thereby guaranteeing at least some amount of money for the duration of the 2014 Farm Bill's applicability, total funding for the three repealed programs now comprising ACEP was actually larger in the previous five years than the budget that ACEP received for the next five years. Adding insult to injury, the amount of funding actually bestowed upon ACEP was less than the amounts present in both the House and Senate versions of the bill.

Even government agencies acknowledge that the funding provided for ACEP under the 2014 Farm Bill is "significantly less" than that provided for the ACEP predecessor programs. Worries about adequate funding arose when the 2008 Farm Bill was not reauthorized and programs like GRP did not receive baseline funding. Additional worries about funding came from observations of the 2008 Farm Bill conservation programs which determined that many conservation efforts to encourage farmers to engage in sustainable farming practices which would not damage water or soil were limited in scope and funding, and especially at risk for cuts in the next Farm Bill. Without sufficient funding, ACEP will be unable to efficiently or satisfactorily perform its mandated tasks, which involves the work of three programs.

Despite the fact that ACEP has received a measure of so-called permanent funding from the 2014 Farm Bill, Congress still possesses the power to reduce the amount of funding authorized. Authorization and appropriations are two of the most important steps in securing funding for Farm Bill programs like ACEP. However, while Farm Bills—which fulfill

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64 Id.
66 Stubbs, supra note 63, at 10.
67 See Farm Bill Study Guide, supra note 2.
69 Id.
the authorization category of funding allocation via Congressional legislation—issue at an average of every five years and set initial funding levels for many programs, other sources of funding are determined on a yearly basis.\textsuperscript{70} The appropriations process, governed by the House and Senate Appropriations Committee, takes place annually, and despite the initial grants of funding from the Farm Bills, often results in conservational programs’ funding appropriated for other uses.\textsuperscript{71} In fact, funding for all Farm Bill programs, not just its conservational programs, often encounters significant reductions during the annual appropriations process.\textsuperscript{72} The regular reduction of funding for an underfunded program which already has billions of dollars less to spend over the foreseeable future will likely put severe pressure on the government actors working to ensure that the government’s agriculture interests are protected as well as the farmers, ranchers, and environmentalists who may depend on the government’s easement programs to bring in much needed money and secure land for the purposes which they consider it best suited to serve.

Despite the mandatory funding authorized by Congress, ACEP’s total funding can still be severely reduced. Despite a seemingly permanent grant of funding, Congress may still reduce the amount of funding authorized by the Farm Bill by limiting the funds, or capping the acres that can be enrolled, through the annual budget or appropriations bills.\textsuperscript{73} The trend suggests that this reduction of funding will continue with ACEP under the 2014 Farm Bill as well. Recent years have seen conservation programs increasingly serve as the subject of growing funding cuts.\textsuperscript{74} Between the years of 2003 and 2012, over $9 billion of funding was appropriated away from “mandatory” agricultural programs.\textsuperscript{75} Even more pertinent to the ACEP issues is the fact that a hugely disproportionate amount of this money came from the conservational programs under the Farm Bill—more precisely, over half of all Farm Bill appropriations from 2003 to 2010
came from programs under the conservation title of the bill. Even more worrisome is the data that the conservation programs’ reallocated funds comprised 83% of all Farm Bill programs’ appropriations. Given this trend of reducing even guaranteed funds from agricultural and conservation-oriented programs, it seems reasonable to infer that ACEP’s “mandatory” funding as set by the 2014 Farm Bill faces potentially serious reductions over the next few years—reductions which may result in an overstrain of resources and necessitate difficult choices for the directors of ACEP. The choices essentially boil down to a single inquiry: determining if a single aspect of ACEP should be emphasized and receive the lion’s share of remaining funding.

B. If ACEP Does Not Distribute its Funding Proportionately, Then the Majority of Funds Should be Reallocated Towards Gaining Agricultural Easements

The decades-long history of Farm Bills emphasizing agricultural conservation suggests that the NRCS would choose to focus limited funds on the traditional and long-emphasized path of agricultural conservational easements rather than on improving environmental habitats. With that in mind, it stands to reason that the NRCS, as the leaders of the ACEP program, would shift focus and funding to keep the agricultural easement program operating at maximum capacity if ACEP were to face significant funding shortages because of reductions in its “permanent” and “guaranteed” funding under the 2014 Farm Bill. Even with permanent funding, however, the sum total of funding for ACEP on a yearly basis is significantly less than what it was for the three programs that now compose ACEP. Language and precedent contained in the Farm Bills since their earliest days as law provides strong evidence for the inference that, if worst comes to worst and a significant portion of the program’s funding is re-appropriated such that the operational capabilities of ACEP are severely limited, Congress, the Secretary of Agriculture, the USDA, and the NRCS
will all choose to emphasize the portion of ACEP which protects and preserves agricultural and arable land to the detriment of environmental and wetland conservation policies. The government's position during this potential crisis will stem from its having an eye on the future of both America's and the world's swiftly growing population and the incipient issues which will come with such growth.

1. Funding for 2014 Farm Bill Conservation Programs is Significantly Less than in the Past

The funding crisis faced by ACEP in the near future is made evident by a simple examination of current and past funding amounts. The 2014 Farm Bill does not specify which ACEP programs its funding should benefit.79 Instead, it allows the USDA to make that decision based on its own knowledge and expertise gained over the decades.80 As previously mentioned, however, the 2014 Farm Bill provides significantly less funding for conservation easements than its 2008 counterpart.81 In fact, funding for easement programs has been continuously reduced from levels set by previous Farm Bills.82 No matter their expertise, the leaders of the USDA, NRCS, and ACEP will be hard pressed to fulfill the goals professed by the Farm Bill if congressional appropriations committees continuously raid their funding.

Upon comparison, the differences between the funding from the 2008 Farm Bill's conservation programs and the 2014 Farm Bill's programs are striking. While the 2008 Farm Bill provided an average of $410 million per year for the Wetlands Reserve Program, $65 million for the Grassland Reserve Program, and $150 million for the Farm and Ranch Lands Protection Program, totaling an average funding amount of $625 million, ACEP's "guaranteed" yearly funding, which now encompassed the essence

80 Id.
81 Id.
82 Conservation, supra note 65.
of all three of those 2008 programs, was set at a mere $400 million.\textsuperscript{83} The total difference in funding between 2008 and 2014 was therefore $225 million, which actually was the smallest deficit possible, as Congress still possessed the ability and authority to appropriate any amount it saw fit from ACEP's promised funding and increase the total funding difference between 2008 and 2014.\textsuperscript{84} In sum, the 2014 Farm Bill's ACEP program contained a significant lack of funding when compared to its predecessor's funding, and Congress possessed the power and precedent to impose additional funding hardships on the program.

Continuing with the theme that the 2008 Farm Bill had an average yearly funding of $625 million for its pre-ACEP programs, looking at the present and future realities of the 2014 Farm Bill's funding gives rise to yet more concerns. The Congressional Budget Office currently estimates that between 2014 and 2018, spending on USDA conservation programs will decrease by $200 million.\textsuperscript{85} The maximum funding available for 2015 for the three programs conglomerated into ACEP is $425 million, $200 million less than the average funding provided by the 2008 Farm Bill.\textsuperscript{86} ACEP is granted a potential maximum of $450 million in 2016 for a decrease of $175 million as compared to the average allowed by the 2008 Farm Bill.\textsuperscript{87} The year 2017 sees a slight jump in total ACEP funding to $500 million, although still for a loss of $125 million when compared with a decade before.\textsuperscript{88} However, 2018 proves to be the worst year of all for ACEP funding, halving the funding received just a year before to a mere $250 million spread out among three formerly independent programs, for a total deficit of $375 million when compared to the former average.\textsuperscript{89} Again, it is important to keep in mind that the levels listed as the funding allotted to ACEP are the maximum amounts it could possibly receive, and that Congress has a long-standing tendency to reduce the budget of Farm

\textsuperscript{83} Stubbs, supra note 63, at 30.
\textsuperscript{84} See id.
\textsuperscript{85} Conservation, supra note 65.
\textsuperscript{86} See Conserving Wetlands, supra note 79.
\textsuperscript{87} See id.
\textsuperscript{88} See id.
\textsuperscript{89} See id.
Bills' conservational programs. In other words, the deficit between the relatively lush funding years of the 2008 Farm Bill and the bare-bones allowances of the 2014 Farm Bill will only grow over the next few years. This will place great strain on the abilities of the NRCS to properly administer to all of the needs and demands of the ACEP component programs, and as a result the decision to focus solely on particular components of ACEP, such as one which promulgates one of the oldest and most highly regarded goals of the Farm Bills themselves, will likely take place.

2. The Farm Bills’ Language Pushes Towards Granting Preferential Treatment to Agricultural Conservation Programs

When the ACEP programs face the problem of inadequate funding to protect and sufficiently assert the government's interests in the future use of land, those in charge of ACEP will need to make a decision regarding where to focus its remaining funds and manpower. Considering the fact that in a relatively short time period millions more mouths will need to be fed by American farms due to rapid population expansion, it seems likely that preserving agricultural land now for future use will be high on the government's priorities as opposed to conserving wetlands or animal habitats. However, simple practicality and foresightedness is not the only reason why the government should choose to focus almost exclusively on expanding and focusing its agricultural easement programs. The Farm Bills themselves offer strong suggestions that preserving agricultural land is in the highest interests of the government and the people.

The government's strong interest in protecting and preserving the current and future agricultural and arable land of America presented itself in the very first Farm Bill in 1933. In its Declaration of Emergency, Congress, via the 1933 Farm Bill, expressed concern that the Great Depression had substantially negatively affected the farmers of America to such an extent that there was a national public interest in Congress's

90 See Conservation Funding under the Farm Bill, supra note 68.
interference.\textsuperscript{91} Congress then declared that it was its policy, "[t]o protect the consumers’ interest by readjusting farm production . . ."\textsuperscript{92} Certainly, by this language Congress authorized itself to initiate processes that benefitted both the farmer and the average citizen, as it could readjust farm production to improve both the market and the consumer’s wellbeing, both present and future. The first instance of Congress actually adopting a policy of agricultural conservation also appears in the first Farm Bill, where Congress took steps to help beleaguered cotton farmers and merchants by offering to purchase excess cotton and thereafter curtail its production to protect prices.\textsuperscript{93} The 1933 Farm Bill further provided that when the government and a cotton farmer contracted together, "[t]hat such agreement to curtail cotton production . . . contain[s] a further provision that such cotton producer shall not use the land taken out of cotton production for the production for sale, directly or indirectly, of any other nationally produced agricultural commodity or product."\textsuperscript{94} Essentially, the 1933 Farm Bill provided the government with the option to contract with and preserve parcels of land used for agricultural purposes. This concept eventually evolved into the modern practice of agricultural easements for conservation purposes.

Despite the fact that the 1933 Farm Bill did not expressly state that one of its purposes was to preserve agricultural land, its policy of requiring cotton producing farmers to preserve their fields for the future certainly allows the modern observation that even the first Farm Bill put an emphasis on agricultural preservation. The congressional policy of agricultural preservation, however, quickly became a major focal point for the Farm Bills, as the 1938 Farm Bill, the very next Farm Bill issued, made it a point to declare that its purpose was "[t]o provide for the conservation of national soil resources and to provide an adequate and balanced flow of agricultural commodities in interstate and foreign commerce and for other purposes."\textsuperscript{95} The 1938 Farm Bill even expressly declared soil conservation to be the

\textsuperscript{91} See Agricultural Adjustment Act of 1933, supra note 20, at §1.
\textsuperscript{92} See id. at §2(3).
\textsuperscript{93} See id. at §§3-7.
\textsuperscript{94} See id. at §6(c).
\textsuperscript{95} Agricultural Adjustment Act of 1938, supra note 26.
official policy of Congress "for the purpose of ... rebuilding the farm and ranch land resources in the national public interest." In the 1938 Farm Bill, Congress took a large step towards the modern practice of agricultural easements by incorporating the Soil Conservation and Domestic Allotment Act in its provisions, and gave the Secretary of Agriculture the power to give grants and other payments to agricultural producers based on their soil conservation and use of the land. This allowance is very similar to the practice of granting conservational easements, in which the government helps farmers and other landowners preserve their lands for future use and restricts them from using their land for any purpose other than how the easement classifies their land.

In the 1938 Farm Bill there is little to no mention of any sort of land conservation policies other than that with agricultural purposes and intent. The same holds true for the 1933 Farm Bill, since at that time Congress was less concerned with the environment and more concerned with righting the sinking agricultural industry. Combined, the first two Farm Bills make a strong argument for the case that agricultural concerns take precedent over other conservational policies. In fact, the statutes creating conservational goals for wetlands, ranch lands, or grasslands did not come into existence until the 1990, 1996, and 2002 Farm Bills, respectively.

When it came down to deciding which conservational policy to favor, the heads of the ACEP program would be confronted with evidence that the first Farm Bills were acclimated towards agricultural protection for future production, evidence which has only been reaffirmed over the passage of each successive Farm Bill. The heads of ACEP would then compare the long and well-settled history of the government's longstanding interest in agricultural conservation and compare it to the relative newness of other conservation programs. Considering the differences between the Farm Bills' history of allowing agricultural preservation in some form or fashion and their relatively recent acknowledgement of environmental and habitat

96 See id. at §2.
97 See id. at §101.
99 See Agricultural Adjustment Act of 1933, supra note 20.
100 See Conserving Wetlands, supra note 78.
conservation, it seems clear that ACEP’s focus should be shifted towards that of agricultural conservation and preservation, especially in the face of swiftly rising populations.

Even the 2014 Farm Bill lends itself to the assertion that ACEP’s focus should shift towards a more agricultural conservation-centric view when faced with restricted funding and the smallest operating budget in years. The initial wording of the Act states that its purpose is to “provide for the reform and continuation of agricultural and other programs of the Department of Agriculture... and for other purposes.” (emphasis added). The very first words of the 2014 Farm Bill therefore intimate that its primary purposes are agricultural, while all other goals and purposes are secondary and therefore do not need mentioning. Additionally, from the way in which ACEP itself is written and organized in the United States Code, it is clear that agricultural preservation is favored over environmental concerns. While the purposes of ACEP are listed separately and according to the three programs combined to create ACEP, wetlands receive a vague, “restore, protect, and enhance” directive, while grasslands are simply meant to be protected, restored, and conserved. For agricultural land, however, ACEP administrators are asked to “protect the agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land.”

From these descriptions, ACEP’s preference for which policy to enact over the others seems clear, as it specifically states its well-reasoned purpose for desiring agricultural conservation—to protect the future viability of agricultural land for agricultural use, and therefore have the ability to meet any challenges which may arise involving a rapidly rising population in an increasingly urbanizing world. The Farm Bills’ underlying policy of preventing hunger and uncertainty in the present and future should lead the government to conclude that the most intelligent option when faced with insufficient ACEP funding and a rising population crisis is to focus on preserving the most agricultural land possible. As intimated by the Farm

101 See Agricultural Act of 2014, supra note 5.
102 See id. at §§ 3865b- 3865c.
104 Id. at §3865(b)(3).
Bills and ACEP itself, any environmental policies present in ACEP necessarily take a backseat to the all-important task of securing enough land and food to survive the coming years.

CONCLUSION

Despite being a well-intended continuation of a policy dating back to the Great Depression, ACEP will fail to meet its stated goals so long as it professes a strong interest in conservation easements and a weaker interest in environmental improvements while faced with a severe budget shortage. ACEP's problems, like so many other government-created programs, stem from money troubles. The 2014 Farm Bill is steeped in tradition, and has sought the same general objectives as its predecessors for over eighty years. The very tradition that dictates the Farm Bill's easement and environmental goals, however, shall prove to be ACEP's undoing during the tenure of the current Farm Bill unless the government chooses to intervene and allocate the remaining funds in ACEP's coffers to its agricultural easement program. When the money runs out, the NRCS must make the call as to what policies should stay funded and which should become inactive until the next round of funding.

Even a cursory examination of the Agriculture Act of 2014 quickly reveals the answer. Since 1933, the Farm Bills have promulgated the conservation of agricultural land in one form or another, and the 2014 Farm Bill continues the tradition. The lack of proper funding may lead to the negligent treatment of environmental policies, it is true, but the basic necessities of the future population also demand attention and should take precedence. There is no easy solution to this problem except for Congress granting more funding to the ACEP program. Otherwise, the directors of ACEP face a difficult choice, a choice where they will make the correct decision and focus on conserving agricultural land for future agricultural purposes.

The blame and solution for this issue lies with Congress and its authorization and appropriation policies. With enough funding, ACEP can fulfill all of its stated goals satisfactorily and efficiently. All it needs is a
sympathetic Congress and a favorable next iteration of the Farm Bill in order to continue with eighty years of Farm Bill policies and precedent without facing tough choices.