

AMERICAN STEWARDS *of Liberty*

January 22, 2024

ISSUE BRIEFING:

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

Executive Summary:

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

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

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

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

Repurposing Conservation Programs:

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

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

P.O. Box 801 Georgetown, Texas 78627

512 . 591. 7843 www.americanstewards.us asl@americanstewards.us



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

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

Comparing the Old and New Conservation Program Language:

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

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

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

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

Another good example is the change to the Agriculture Conservation Easement Program (ACEP) program. The purpose from the program in the amended Food Safety Act of 1985 is:

SEC. 1265(b) PURPOSES. ... (3) *protect the agricultural use and future viability*, and related conservation values, of eligible land by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values; and (4) *protect grazing uses* and related conservation values by restoring or conserving eligible land. (7 U.S.C. 1281)

The new purpose for ACEP funded through the Inflation Reduction Act is as follows:

(3) to carry out, using the facilities and authorities of the Commodity Credit Corporation, the agricultural conservation easement program under subtitle H of title XII of that Act (16 U.S.C. 3865 through 3865d) ... (B) subject to the condition on the use of the funds that the Secretary shall prioritize projects and activities that *mitigate or address climate*

change through the management of agricultural production, including by reducing or avoiding greenhouse gas emissions; (Inflation Reduction Act, HR 5376 117th Congress)

It is worth noting the level of additional funding that has been appropriated to ACEP through the IRA for this purpose:

- (A)(i) \$100,000,000 for fiscal year 2022;
- (ii) \$200,000,000 for fiscal year 2023;
- (iii) \$300,000,000 for fiscal year 2024;
- (iv) \$500,000,000 for fiscal year 2025; and
- (v) \$600,000,000 for fiscal year 2026;

This shift in purpose moves the programs away from helping facilitate agriculture viability to increase human flourishing. Under the IRA funding the programs are now designed to attain a political goal of controlling agriculture production, driven by a belief that agriculture is causing a climate crisis.

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

Creating the Federal Nexus to Private Lands Through Conservation Programs:

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

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

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

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

Policy Recommendations:

I. Conservation Easement Sunset Clause and Buy-back Provision

Create a sunset clause and buy-back provision for conservation easements, ending the practice of signing these contracts in perpetuity, and providing a way for landowners to make their property whole once again.

II. 10% Limitation on Conservation Easements, Programs and Acquisitions

In every area where these programs are implemented, the property tax value and local economic input are severely reduced. The food and natural resource products derived from the land are also reduced. This increases the economic pressures on local governments to provide necessary services.

States could adopt a provision that limits the amount of land in a county, such as 10 percent, that can be encumbered in conservation easements, conservation programs, government or foreign ownership, and any other vehicle which reduces or eliminates the production and taxable value of the land.

Setting such a limitation will help ensure each county will be economically viable today and into the future reducing the need to rely on state or federal funding to support basic community services such as schools, hospitals, emergency services and infrastructure.

Endnotes:

¹"Solving the Climate Crisis," House Select Committee on the Climate Crisis, June 2020

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

About American Stewards of Liberty:

American Stewards of Liberty is a 501(c)(3) non-profit organization whose mission is to protect property rights and the liberties they secure by defending the use of our land, and restoring local control. This issue briefing is provided to educate federal, state and local officials, and property owners, on federal actions that erode property rights and identify responses that would bring these actions in alignment with full Constitutional protection of these rights.