

PART II. LAND STABILIZATION AND CONSERVATION¹

WATER BANK ACT¹⁻¹

[As Amended Through P.L. 110-246, Effective May 22, 2008]

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[DECLARATION OF POLICY; AUTHORITY OF SECRETARY]

SEC. 2. [16 U.S.C. 1301] The Congress finds that it is in the public interest to preserve, restore, and improve the wetlands of the Nation, and thereby to conserve surface waters, to preserve and improve habitat for migratory waterfowl and other wildlife resources, to retire lands now in agricultural production, to enhance the natural beauty of the landscape, and to promote comprehensive and total water management planning. The Secretary of Agriculture (hereinafter in this Act referred to as the "Secretary") is authorized and directed to formulate and carry out a continuous program to prevent the serious loss of wetlands, and to preserve, restore, and improve such lands, which program shall begin on July 1, 1971.

[CONSERVATION AGREEMENTS]

SEC. 3. [16 U.S.C. 1302] In effectuating the water bank program authorized by this Act, the Secretary shall have authority to enter into agreements with landowners and operators in important migratory waterfowl nesting and breeding areas for the conservation of water on specified farm, ranch, or other wetlands identified in a conservation plan developed in cooperation with the Soil and Water Conservation District in which the lands are located, under such rules and regulations as the Secretary may prescribe. These agreements shall be entered into for a period of ten years, with provision for renewal for additional periods of ten years each. The Secretary shall, beginning in 1980, reexamine the payment rates at the beginning of the fifth year of any such ten-year initial or renewal period and before the beginning of any renewal period, in the light of the then current land and crop values, and make needed adjustments in rates for any such initial or renewal period as provided in section 5 of this Act. In addition, the Secretary shall, beginning in 1980, reexamine the payment rates in any agreement that has been in effect for five years or more in the light of current land and crop values and make any needed adjustments in rates. As used in this Act, the term "wetlands" means (1) the inland fresh areas described as types 1 through 7 in Circular 39, Wetlands of the United States, published by the United States Department of the Interior (or the inland fresh areas corresponding to such types in any successor wetland classification system developed by the Department of the Interior), (2) artificially developed inland fresh areas that meet the description of the inland fresh areas described in clause (1) of this sentence, and (3) such other wetland types as the Secretary may designate. No agreement shall be entered into under this Act concerning land with respect to which the ownership or control has changed in the two-year period preceding the first year

¹Title X of the Agricultural Act of 1970 was added by section 1(28) of the Agriculture and Consumer Protection Act of 1973, P.L. 93-86, 87 Stat. 241, August 10, 1973, and repealed by section 336(d)(1) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 1006, April 4, 1996.

¹⁻¹P.L. 91-559, 84 Stat. 1468, December 19, 1970.

of the agreement period unless the new ownership was acquired by will or succession as a result of the death of the previous owner, or unless the new ownership was acquired prior to July 1, 1971, under other circumstances which the Secretary determines, and specifies by regulation, will give adequate assurance that such land was not acquired for the purpose of placing it in the program, except that this sentence shall not be construed to prohibit the continuation of an agreement by a new owner or operator after an agreement has once been entered into under this Act. A person who has operated the land to be covered by an agreement under this Act for as long as two years preceding the date of the agreement and who controls the land for the agreement period shall not be required to own the land as a condition of eligibility for entering into the agreement. Nothing in this section shall prevent an owner or operator from placing land in the program if the land was acquired by the owner or operator to replace eligible land from which he was displaced because of its acquisition by any Federal, State, or other agency having the right of eminent domain. The Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers, including provision for sharing, on a fair and equitable basis, in payments or compensation under this program. No provision of this Act shall prevent an owner or operator who is participating in the program under this Act from participating in other Federal or State programs designed to conserve or protect wetlands.

[TERMS OF AGREEMENT]

SEC. 4. [16 U.S.C. 1303] In the agreement between the Secretary and an owner or operator, the owner or operator shall agree—

(1) to place in the program for the period of the agreement eligible wetland areas he designates, which areas may include wetlands covered by a Federal or State government easement which permits agricultural use, together with such adjacent areas as determined desirable by the Secretary;

(2) not to drain, burn, fill, or otherwise destroy the wetland character of such areas, nor to use such areas for agricultural purposes, as determined by the Secretary;

(3) to effectuate the wetland conservation and development plan for his land in accordance with the terms of the agreement, unless any requirement thereof is waived or modified by the Secretary pursuant to section 7 of this Act;

(4) to forfeit all rights to further payments or grants under the agreement and refund to the United States all payments or grants received thereunder upon his violation of the agreement at any stage during the time he has control of the land subject to the agreement if the Secretary determines that such violation is of such a nature as to warrant termination of the agreement, or to make refunds or accept such payment adjustments as the Secretary may deem appropriate if he determines that the violation by the owner or operator does not warrant termination of the agreement;

(5) upon transfer of his right and interest in the lands subject to the agreement during the agreement period, to forfeit all rights to further payments or grants under the agreement and refund to the United States all payments or grants received thereunder during the year of the transfer unless the trans-

feree of any such land agrees with the Secretary to assume all obligations of the agreement;

(6) not to adopt any practice specified by the Secretary in the agreement as a practice which would tend to defeat the purposes of the agreement; and

(7) to such additional provisions as the Secretary determines are desirable and includes in the agreement to effectuate the purposes of the program or to facilitate its administration.

[ANNUAL PAYMENT]

SEC. 5. [16 U.S.C. 1304] In return for the agreement of the owner or operator, the Secretary shall (1) make an annual payment to the owner or operator for the period of the agreement at such rate or rates as the Secretary determines to be fair and reasonable in consideration of the obligation undertaken by the owner or operator; and (2) bear such part of the average cost of establishing and maintaining conservation and development practices on the wetlands and adjacent areas for the purposes of this Act as the Secretary determines to be appropriate. In making his determination, the Secretary shall consider, among other things, the rate of compensation necessary to encourage owners or operators of wetlands to participate in the water bank program. The rate or rates of annual payments as determined hereunder shall be increased, by an amount determined by the Secretary to be appropriate, in relation to the benefit to the general public of the use of the wetland areas, together with designated adjacent areas, if the owner or operator agrees to permit, without other compensation, access to such acreage by the general public, during the agreement period, for hunting, trapping, fishing, and hiking, subject to applicable State and Federal regulations. The rates of annual payment shall be adjusted, to the extent provided for in advance by appropriation Acts, in accordance with section 3 of the Act.

[RENEWAL OR EXTENSION OF AGREEMENTS]

SEC. 6. [16 U.S.C. 1305] Any agreement may be renewed or extended at the end of the agreement period for an additional period of ten years by mutual agreement of the Secretary and the owner or operator, subject to any rate redetermination by the Secretary. If during the agreement period the owner or operator sells or otherwise divests himself of the ownership or right of occupancy of such land, the new owner or operator may continue such agreement under the same terms or conditions, or enter into a new agreement in accordance with the provisions of this Act, including the provisions for renewal and adjustment of payment rates, or he may choose not to participate in such program.

[TERMINATION OR MODIFICATION OF AGREEMENTS]

SEC. 7. [16 U.S.C. 1306] The Secretary may terminate any agreement by mutual agreement with the owner or operator if the Secretary determines that such termination would be in the public interest, and may agree to such modification of agreements as he may determine to be desirable to carry out the purposes of the program or facilitate its administration.

[UTILIZATION OF SERVICES AND FACILITIES]

SEC. 8. [16 U.S.C. 1307] In carrying out the program, the Secretary may utilize the services of local, county, and State committees established under section 8 of the Soil Conservation and Domestic Allotment Act, as amended. The Secretary is authorized to utilize the facilities and services of the Commodity Credit Corporation in discharging his functions and responsibilities under this program.

[ADVISORY BOARD]

SEC. 9. [16 U.S.C. 1308] The Secretary may, without regard to the civil service laws, appoint an Advisory Board to advise and consult on matters relating to his functions under this Act as he deems appropriate. The Board shall consist of persons chosen from members of organizations such as wildlife organizations, land-grant colleges, farm organizations, State game and fish departments, soil and water conservation district associations, water management organizations, and representatives of the general public. Members of such an Advisory Board who are not regular full-time employees of the United States shall be entitled to reimbursement on an actual expense basis for attendance at Advisory Board meetings.

[CONSULTATION]

SEC. 10. [16 U.S.C. 1309] The Secretary shall consult with the Secretary of the Interior and take appropriate measures to insure that the program carried out pursuant to this Act is in harmony with wetlands programs administered by the Secretary of the Interior. He shall also, insofar as practicable, consult with and utilize the technical and related services of appropriate local, State, Federal, and private conservation agencies to assure coordination of the program with programs of such agencies and a solid technical foundation for the program.

[AUTHORIZATION OF APPROPRIATIONS]

SEC. 11. [16 U.S.C. 1310] There are hereby authorized to be appropriated without fiscal year limitation, such sums as may be necessary to carry out the program authorized by this Act. In carrying out the program, in each fiscal year through the fiscal year ending September 30, 1980, the Secretary shall not enter into agreements with owners and operators which would require payments to owners or operators in any calendar year under such agreements in excess of \$10,000,000. In carrying out the program, in each fiscal year after the fiscal year ending September 30, 1980, the Secretary shall not enter into agreements with owners and operators which would require payments to owners or operators in any calendar year under such agreements in excess of \$30,000,000. Not more than 15 percent of the funds authorized to be appropriated in any fiscal year after the fiscal year ending September 30, 1980, may be used for agreements entered into with owners or operators in any one State.

[REGULATIONS]

SEC. 12. [16 U.S.C. 1311] The Secretary shall prescribe such regulations as he determines necessary and desirable to carry out the provisions of this Act.