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February 11, 2004

Bruce I. Knight, Chief
Conservation Operations Division
Natural Resources Conservation Services
PO Box 2890
Washington, DC 20013-2890

Dear Chief Bruce I. Knight:

Clean Up the River Environment (CURE) prepared the following comments for your consideration in finalizing the Proposed Rule for the Conservation Security Program (CSP) (7CFR Part 1459).

CURE has been actively working for over 5 years to help implement a working-land farm conservation program that would reduce agricultural associated water pollution in the Upper Minnesota River Watershed. We held Minnesota River Watershed farmer input meetings during 1999 and 2000 to gather their recommendations about what practices they could implement to keep more soil, fertilizers/farm chemicals and fecal coliform bacteria on their working lands and out of our rivers, lakes and wetlands and how large of incentive payments it would take to get them and 50 percent of their neighbors to implement those practices.

CURE compiled the farmer's recommendations from these meetings and submitted them to Congressman David Minge for consideration in creating/supporting legislation for rewarding farmers who protect their soils and help clean up our polluted rivers and lakes. Congressman Minge met three times with CURE, other interested groups, and the public and formulated a coordinated plan which culminated in his introducing the Conservation Security Act (CSA) in the House during October, 2000. Senator Harkins did the same in the Senate.

As you know, that original CSA survived verbatim to become the CSP part of the 2002 Farm Bill. CURE and many other like-minded groups worked long and hard to ensure passage of the CSP, and we expect the Natural Resources Conservation Service (NRCS) to promulgate a Final Rule which fully meets the intent and letter of that law.

GENERAL COMMENTS:

The Proposed Rule should have been written specifically to address the CSP as a fully funded entitlement program as stated in the law. The Proposed Rule should have been first written to address the letter-of-the-law as passed by Congress and signed by the President. These are the rules which Congress and the public want to see, evaluate, and comment on to NRCS. Subsequent modifications resulting from further Congressional action, such as capping funding for the first year, then just become an addendum or addition to the comprehensive Final Rule.

NRCS's decision to write the Proposed Rule based mostly on a severely restrictive funding cap for 2004 will lead many people to believe that the CSP has little potential for achieving the success envisioned by its supporters. To rectify this glaring oversight by NRCS, the agency should immediately write a comprehensive Final Rule based on a fully funded CSP available to all farmers and ranchers who want to voluntarily participate in the program.

Within the newly written comprehensive Final Rule, NRCS should address the fact that the law states the Secretary is to ASSIST producers in promoting conservation. Nowhere in the law can

we find reference that only producers who are already meeting NRCS technical guide quality criteria for soil and water are eligible to apply for and participate in CSP.

CURE fully supports programs that first reward the producers, who are already meeting the minimum quality criteria for soil and water as stated in NRCS's Technical Guide. NRCS, however, cannot close the CSP door on the majority of producers who want and need financial assistance to convert over to more sustainable and conservation based agriculture. NRCS has never written such a restrictive rule in the past. There would have been little if any participation in EQIP, WHIP, WRP, CRP, etc. if the producers would have had to expend all their own money to first implement the associated practices before NRCS offered them the opportunity to seek reimbursement if the programs ever became available in their counties. The Current Proposed Rule language will be a disincentive to most producers who want to participate in the CSP.

Farmers and ranchers who are not currently achieving minimum quality criteria for soil and water must be allowed to participate in CSP after all those, who are currently meeting soil and water goals and wish to sign up, have had a chance to do so. The rule should be stringent but sufficiently helpful to ensure that the second group can achieve the soil and water minimum quality criteria in a timely manner. As currently written, the Rule is so restrictive that only a very small percentage of farmers and ranchers will qualify, and the program will die from apparent lack of interest. This was not the intent of Congress or the Law.

Another glaring disincentive is NRCS's proposal to only fund CSP in specific small watersheds selected in Washington, DC. The CSP law was passed to allow all farmers equal opportunities to participate in the program. This cannot be achieved unless every state is provided its fair share of CSP funding each year. State conservationists must be given full responsibility for making the determinations on how to best distribute the money in their states to achieve maximum soil and water benefits. This is the only way to move the selections process out of the political arena of Washington, D.C. and into that of an objective, local, science-based process.

The current Proposed Rule is much more stringent than the law implies relative to modifying and terminating CSP contracts. In addition, the law says that CSP contracts can be renewed, whereas the Rule proposes that participants must re-compete for acceptance after their first contract expires. This is another disincentive to participate in CSP. Renewal options must be included in the forthcoming Comprehensive Final Rule which addresses CSP as a fully funded entitlement program.

The recurring comments heard over and over at CURE's farmer input meetings were that any CSP type program for working lands must be "FARMER FRIENDLY" and available to all farmers, if it is to be successful. The farmers recognize that NRCS must write enforceable rules and regulations in order to make the program an environmental success, but even this requirement can be stated in a manner that does not scare away potential participants.

NRCS has the opportunity to make the CSP the most environmentally and farmer beneficial of any and all farm conservation programs of the past. As the Proposed Rule is currently written, however, CSP is doomed to a short, painful life. CURE urges NRCS to write the Final Rule to fit the letter and spirit of the CSP legislation.

SPECIFIC COMMENTS:

Page 195, Column 3, Paragraph 1, Environmental Analysis: Full and effective implementation of the CSP will have a tremendously positive (significant) impact on the quality of the human

environment. Are EISs only done if there is potential significant negative impact on the quality of the human environment?

Page 196, Column 3, paragraph 2: The CSP law does not imply that producers, who do not currently meet minimum soil and water quality criteria, cannot qualify for CSP participation. As stated previously, excluding these producers from qualifying will basically kill the potential practical benefits of the CSP in helping to clean up our agriculturally polluted rivers and lakes and to restore soil quality.

Page 198, Column 3, Paragraph 5: NRCS might also consider giving category six participants preference points during subsequent sign-up periods.

Page 199, Column 1, Paragraph 1: Payments for all aspects of the CSP participation in Tier II and III levels should allow producers enrolling above average sized farm and ranch operations to be able to achieve the maximum payment limit for their FULL participation. CURE supports giving greater weight to environmental performance as long as above average sized operations can reasonably be expected to achieve the maximum payment limit through this effort.

Page 199, Column 2, Paragraph 8: Setting the "high bar" for 2004 participation with its capped funding is not the best solution and it is totally unacceptable for a fully funded CSP. As mentioned previously, restricting eligibility is totally contrary to the intent and letter of the original legislation. The intent was always to first reward the best and secondly to motivate the rest with financial assistance to bring their operations up to par. Setting the bar too high ultimately will lead to CSP failure. Restricting eligibility to only high priority watersheds selected in Washington, D.C. is not acceptable for 2004, and is totally unacceptable for a fully funded CPS. Also, any prioritization of watersheds must give strong consideration to those where groups and producers have already taken the initiative to cooperatively organize their own active soil and water conservation protection programs. Some of these watersheds represent the best-of-the-best and should be rewarded with the first CSP sign-ups in each state during 2004, and not necessarily those facing the greatest environmental challenges caused by continued poor farming practices. With such limited funding for 2004, NRCS should give consideration to funding a group of operators representing a variety of different agricultural operations in each state as CSP Demonstration Farms and Ranches. This would give more positive publicity to CSP in 2004 than randomly spreading the money around as proposed and would provide on-the-ground examples to farmers and the public about the ultimate goal of the CSP in each state.

Page 201, Column 3, Paragraphs 3 & 5: As stated before, stewardship standards are to be achieved through CSP participation, not necessarily before one is eligible to sign-up. Those already meeting quality criteria for soil and water should be given a bonus rather than eliminating cutting out the majority of producers who do not currently meet stewardship standards. Priority for enrollment in other NRCS funding programs should be given to CSP applicants who need additional financial assistance to achieve CSP stewardship standards.

Page 202, Column 3, Paragraph 3: The best initial effort NRCS can take to monitor environmental changes resulting from CSP implementations is to establish CSP farms which can serve as visible focal points for demonstrating stewardship practices. This also would be an acceptable manner to expend available CSP funds in 2004. There are four such conventional farms already in existence which have been funded within a mini-type CSP by the North Dakota Natural Resources Trust. For more information you can reach the Trust at (701) 223-8501.

Page 204, Column 1, Paragraph 2: CURE supports NRCS's selection of soil and water quality as the current national significant resource concerns for CSP participation. Meeting these two concerns will automatically address animal, plant, and air concerns.

Page 206, Column 3, Paragraph 1: CURE supports NRCS's proposal for monitoring and calculating CSP enhancement payments. As stated before, sufficient enhancement opportunities should be made available to allow a motivated above average sized cohesive unit operation to achieve maximum payment limits under Tier II and III. The State Conservationists, in obtaining advice, also should include producers input as indicated in the CSP legislation.

Page 207, Column 2, Paragraph 1: A simple lease agreement, even handwritten, between a tenant and landlord should be sufficient to show control of a parcel for the life of a CSP contract. If the landlord should sell the land or die, the CSP legislation provides for the acreage to be removed from the contract without retroactive punitive penalties.

Page 207, Column 3, Paragraph 1: CURE opposes the watershed prioritization selection process. If it is pursued in 2004, it must be done fairly and objectively. Otherwise, the process could become political and/or lead to rewarding the worst and penalizing the best conservation operators in the country.

Page 208, Column 2, Paragraph 8: A recurring criticism of NRCS by those attending CURE's farmer input meetings was the frustration with long lines and limited funds for popular programs. There is no easy solution, but first-come-first serve may be the most easily understood and least frustrating process for farmers. Another potential is to prioritize all who qualify during a sign-up period and give subsequent preference to those who are not initially selected.

Page 209, Column 3, Paragraph 4: NRCS should give priority consideration to CSP participants who have converted cropland to pasture during the last 20 years versus those producers who have converted pasture to cropland. Also, the former group should not be penalized with lower base payments.

Page 210, Column 1, Paragraph 1: Tier I participants obviously will be operating non-CSP contract land at less than quality criteria standards. Tier II & III participants have to automatically manage all their land within their cohesive unit within stewardship standards.

Page 210, Column 2, Paragraphs 1 & 2: The CSP legislation was fairly clear that all farmers and ranchers are eligible for participation. The Final Rule written for a fully funded CSP cannot be as restrictive as currently written throughout the Proposed Rule. Such language provides no incentive what-so-ever for farmers and ranchers in "low" priority watersheds because they cannot participate. This restrictive prioritization is unacceptable for 2004, and in the future. NRCS has a presence in every agricultural county in the country and producers in these counties should have a potential and timely opportunity to participate in the CSP.

Page 211, Column 3, Paragraph 2: CSP participants should be given the opportunity to select the programs of their choice in pursuit of necessary structural practices, as long as minimum quality criteria for soil and water sign-up requirement are met in a timely fashion.

Page 212, Column 2, Paragraphs 3, 4 & 6: Nowhere in the law is it mentioned or implied that all final performance standards must be met before one can qualify to apply for CSP participation. Adding another significant resource concern to Tier II is not suggested in the law but might be useful for moving them toward achieving Tier III status or higher Tier II payments.

Page 212, Column 3, Paragraph 1 & 6: The Rule has been made much more retroactively punitive than the law relative to a participants being unable to fulfill initial expectations during the entire contract period. Such language is a disincentive to participants and counter-productive to long term CSP success. Obviously, future payments will not be made, but severely penalizing participants for unforeseen/uncontrollable situations does not call for refund of all past payments along with accrued interest. CURE agrees that a CSP participant cannot cease enhancement activities and still receive base and existing practice payments.

Page 213, Column 1, Paragraph 3: The law already laid out that base payments will be 5, 10 and 15 percent of average rental rates for Tier I, II, and III, respectively. Is it NRCS's contention that these amounts will be further reduced by 90 percent? If this is the case, then the base payment offers little if any incentive. As an example, \$50 rental rate land would only produce a base payment of 25 cents per acre for Tier I participants ($\$50.00 \times .05 \times .1 = \00.25). Such ridiculously low base payment only can be logically supported if the larger than average sized cohesive units can reasonably be expected to achieve the full Tier II or III payment limits by implementing additional potential enhancement measures. If this is how the CSP is proposed to be managed, then any reduction factor should be fixed over the life of the program, or if it is subsequently changed to a higher level, current participants should will receive the new benefits.

Page 214, Column 1, Paragraphs 1 & 2: All five enhancement activity concepts are appropriate from a national perspective. We agree that each state can best pick and choose to meet their specific conservation needs and to reward those producers who propose to do the most for meeting quality criteria for soil and water.

Page 214, Column 1, Paragraph 4: Payments for beneficial land management practices that have a high initial capital overhead cost should receive the higher payments. However, incentives are also needed to get operators to change bad habits which degrade soil and/or water quality, even if there is no differential cost factor involved. Applying fertilizer in the fall gives operators the peace-of-mind of having a major work item out of the way when spring arrives. If we want this action and all other environmentally negative actions such as fall tillage, over fertilization, inadequate crop rotations, insufficient crop residue after planting, etc., to be curtailed, then incentives must be provided. This was the main purpose of the CSP.

Page 214, Column 3, Last paragraph: The law mentions having local producers also offer advice to the State Conservationists. If producers serve on the State Technical Committee and/or the Sub-committee for CSP, that should be sufficient to meet the intent of the law.

Page 217, Column 3, Paragraph 3 (3): There are a very small percentage of active farmers in the Minnesota River Watershed who do not rent land as part of their cohesive farming unit. As long as simple, even hand-written, lease agreements are sufficient to meet this requirement, there should be no major deterrent or disincentive implied. If lessees lose parcels of rented land through no fault of their own, then CSP payments for those lands can be removed from the contract in future years.

Page 218, Column 2, Paragraph 1, (e)(1): The enabling legislation made CSP a national program that is to be available to all farmers. Limiting CSP to only watersheds selected in Washington, DC will effectively kill the program because most farmers will be automatically excluded from participation. Every state and territory should be given its fair share of the 2004 CSP funding to implement the program as the State Conservationists determine priorities, be it by watershed, counties, or regions under their jurisdiction. In subsequent years, without funding caps, every farmer who qualifies should be given the opportunity to sign up for CSP.

Page 220, Column 2, Paragraph 1 (c) (2): See previous comments on Page 212, Column 2, Paragraphs 3, 4 & 6 about the addition of another significant resource concern during the contract period for Tier II qualification.

Page 221, Column 1, Paragraph 1, (f): The law says contracts for Tier II and III are renewable. There needs to be strong justification to make the Rule more restrictive than the law. Non-renewability of Tier I and Tier II contracts could be useful to provide an incentive for participants to pursue automatic renewal at the next higher Tier and/or to give other new CSP applicants a better chance if funding caps occur. Cooperative Tier III participants should be given the automatic chance to go through at least two contract periods. The lack of a renewability clause could serve as another disincentive for farmers and ranchers to expend significant funds to initially apply for CSP Tier II and III participation, especially if only 5-year contracts are allowed.

Page 221, Column 2, Paragraph 7, (a) (2) (v) and (3): See Previous comment (Page 213, Column 1, Paragraph 3) about the calculation of base rates relative to enhancement payments and above average sized cohesive units being reasonably able to achieve full Tier II and III payment limits through implementation of enhancement activities.

Page 222, Column 3, Paragraph 6, (d): See previous comments, (Page 213, Column 3, Paragraphs 1 & 6) about the Rule exceeding the law relative to repayment when operators lose control of CSP contract land through no fault of their own.

In summary, the Final Rule must be written to (1) specifically address the CSP law as an entitlement program without funding caps, (2) allow producers, who are not currently meeting minimum soil and water performance standards, to sign-up for CSP as a mechanism to achieve those standards in a timely manner (3) allocate CSP funding to all states in a fair manner and allow State Conservationists to prioritize distribution of those funds, (4) make it as farmer friendly and environmentally beneficial as practical for each state, and (5) allow the CSP to succeed in all states and become the working-land cornerstone of future farm bills.

Thank you for the opportunity to comment on the Proposed Rule for the CSP. Please call or write me if you need additional clarification on our comment or have other questions.

Sincerely,

Dick Kroger

Brian Wojtalewicz

Dick Kroger
CURE Conservation Ag Advisor

Brian Wojtalewicz
CURE Board Chairman

2/16/04

Dear Mr. Knight:

I to time NRCS fulfill its conservation responsibility by rewarding landowners that deliver clean surface and groundwater, air and long term sustainability back to the taxpaying public that supports them. To often you encourage abusive practices so you are then eligible for the NRCS "Reward". Phase out this cycle please! Larry Lewis