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Agricultural and Environmental Policy

Developments 1989-90

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The purpose of this brief overview is to describe developments in agricultural and environmental policy in the U.S. during 1989-90. Apart from major economic and political developments, this paper will review the progress of the 1990 Farm Bill (which has yet to achieve final form) and the conservation provisions of the bill, together with other Agricultural Policy legal actions in the environmental sphere.

The Farm Bill of 1990 was developed against a backdrop of a considerably improved farm economy compared with the 1985 bill, which was written in the midst of a farm financial crisis. Net cash income in 1990 is expected to reach a record high, in the range of \$59 to \$63 billion, up about 10 percent from 1989.¹ This compares with a previous high of \$57.2 billion in 1988. (Net farm income is the value of agricultural production, both sold and stored, plus government payments, minus all

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¹Agweek, September 10, 1990, p. 33.

costs including depreciation. It is calculated for a calendar year.) In the last two months, however, oil price increases have increased fuel costs, and may cut into these farm income increases. A \$10 a barrel increase translates roughly into a 10 percent increase in fuel costs, suggesting a roughly proportional relationship between the increase in a barrel of crude and the percentage by which farm costs will rise. In addition to the direct effects on fuel prices, oil price increases will affect longer term prices of fertilizer and other farm chemicals. They will also affect the demand side by increasing recessionary pressures both in the domestic U.S. economy and overseas. Major armed conflict in the Middle East would disrupt trade and export flows, creating additional problems for export-dependent American farmers.

Apart from the ominous developments in the Middle East, the 1990 farm bill faces more direct pressures likely to reduce government spending on agricultural programs. These pressures arise from the domestic budget deficit, a crisis which has deepened due both to general weakness in the U.S. economy (which has reduced projected revenues) and the worsening condition of the savings and loan (S&L) industry and banking system in general, for which U.S. government guarantees have created additional Treasury obligations. By October 1, Congress and the President are obligated to find sufficient revenues and spending cuts to bring the budget within the previously mandated Graham-Rudman budget "targets." If they fail to do so, an automatic "across the board" spending cut will go into effect.

Informed opinion in Washington indicates that such across the board cuts would lead to as much as a 38 percent reduction in agricultural

commodity program spending. The size of such cuts in agriculture is indicative of why Congress and the President are not likely to allow the automatic spending cut mechanism to occur, and will find a way in the "budget summit" to reach the targets (more or less). Even so, the result in agriculture is likely to be cuts in the 15 to 20 percent range if the targets are to be reached. Such cuts are still substantial.

The key to understanding what is likely to occur is that Congress need not cut "target prices" or "loan rates" in order to find such revenues. All that is needed is to reduce the total number of "base" acres eligible for payments. In return, farmers would be granted "planting flexibility" on the acres exempted from payment eligibility. By converting to something similar to the "triple base" or "flexible base" option (described last year at the Padova research conference), the U.S. government could largely meet the spending cuts targets without altering the politically sensitive target price and loan rate numbers. Such a move is really an incremental step in the direction of "decoupling," and thus would garner credit for the U.S. in the final GATT meetings leading up to the December 1990 finale in Brussels. Planting flexibility, if substantial, might also bring certain environmental benefits, if it overcame the current disincentives to rotate crops and to diversify crop production. However, even a "triple base," in which as much as one third of all base acres were allowed to "flex," would be unlikely to achieve as much flexibility as would be necessary to encourage substantially more crop rotations and crop diversification.

In short, the final form of the 1990 Farm Bill will be largely dictated by domestic budget pressures. The necessity of spending cuts is likely to be touted as a virtue by the U.S. in its final efforts in the

GATT negotiations. By increasing planting flexibility, modest environmental benefits will occur, though less than under a scheme of more total flexibility.²

Environmental Policy

The conservation elements of the 1990 Farm Bill are further evidence of the tightening constraints represented by environmental policy as it affects farmers. Although some provisions (such as the "swampbuster" and "sodbuster" requirements) are likely to be loosened, the overall effect of the 1990 Farm Bill will be to confirm and strengthen the importance of environmental interventions in the farm economy. The Center for Rural Affairs notes the following Developments, which are extracted from the Center's most recent Newsletter.³

Commodity Programs

Integrated Farm Management Program Option (IFMPO): Both House and Senate bills contain provisions allowing farmers to sign multi-year agreements to reduce soil erosion, water pollution, and use of purchased nonrenewable resources in return for being permitted greater commodity program flexibility. They will be able to plant resource conserving crops on program base acres without losing program crop base or deficiency payments, and their set-aside requirements will be reduced to help make up

²Jared R. Creason and C. Ford Runge, Agricultural Competitiveness and Environmental Quality: What Mix of Policies Will Accomplish Both Goals? Center for International Food and Agricultural Policy, University of Minnesota, St. Paul, MN 55108, July 16, 1990.

³Center for Rural Affairs, Walthill, Neb., Newsletter, September, 1990, pp. 3-5.

for any loss of production attributable to the shift from program crops to conserving crops.

The Conference Committee will have to resolve some differences between the two IFMPO versions. The Senate requires 5-year plans, the House 3-10 year plans; both versions protect the deficiency payments only if the conserving crops are not hayed or grazed, but the Senate permits grazing of the small grain residue during the periods when set-aside acres can be grazed, while the House permits both haying and grazing during that period or anytime after harvesting a small grain. Also, the House allows an IFMPO farmer complete flexibility to plant any program crop on up to 100 percent of base without losing base for any particular crop.

Finally, the Senate requires USDA to enroll at least 3 million new acres each year, but no more than 5 million acres, while the House limits participation only in counties with high Conservation Reserve Program (CRP) acres by linking unharvested IFMPO acres to the limit placed on CRP enrollment (25 percent of the acres in a county).

Payment Protection for Conservation Compliance: Under the House bill (but not the Senate), farmers who plant a resource conserving crop such as a small grain-legume mixture on base acres in order to meet conservation compliance rules would not lose base acres or program crop payments. The conserving crop could not be cut for hay nor grazed before grazing is permitted on set-aside acres.

Oats Target Price: The Senate raises the oats target price (encouraging rotation with corn) by \$.10 per year for four years (from \$1.45 to \$1.85). The House freezes oats target price at \$1.45.

Set-Asides: Both bills allow farmers to enroll up to one-half their

set-aside acres in a multi-year set-aside, providing cost-share (25 percent in the Senate, an unspecified percentage in the House) to establish a cover crop (annual or perennial in the House, perennial only in the Senate). The actual land placed in the multi-year set-aside can be rotated under the House bill.

Also, the Senate bill (but not the House) requires farmers to plant cover crops on at least 50 percent of all set-aside acres (up to 5 percent of their total base), whether they go into the multi-year set-aside or not. The House (but not the Senate) also allows end-rows to be entered as set-aside if they are planted to a perennial cover crop (under present law set-asides must be of a minimum size parcel, thus excluding end-rows).

Flexible Base: The Senate allows farmers to designate up to 25 percent of their program crop base as "flexible acres" on which they can plant any crop, including conserving crops but excluding fruit and vegetables, without losing their base. However, if they choose to plant a program crop on these flexible acres, they have to reduce other program crops so that their total program crop planting does not exceed 100 percent of their base. The House provides for flexible acreage designation on up to 25 percent of program crop and oilseed base, allows planting to exceed base if the increase is in oats, and specifies a limited range of other crops that can be planted on "flex" acres.

Base Adjustment: The Senate allows farmers to receive an adjustment in the crop bases in order to help them meet conservation compliance provisions (for example, an increased small grain base as a trade-off for a decreased corn base might help). The House has no such provision.

Cost Share for Legumes: The House (but not the Senate) provides 50

percent cost share for planting short-term soil building legumes as part of a resource conserving rotation.

Conservation Provisions

Compliance: Under current law, farmers can lose all farm program benefits for failing to comply with commitments they have made to reduce soil erosion. Both bills help farmers meet this obligation by making more flexible use of the CRP, adding the IFMPO discussed above, protecting base and providing cost share for legumes. Both bills also provide for reduced penalties for those who fail to comply if they have made a "good faith" effort to comply; the Senate says fines of \$750 to \$10,000 for those who have not made more than one violation in a ten-year period; the House says \$375 to \$2,500 fines for violations no more frequent than once in five years. The House also would allow new or revised farm conservation plans to meet a much weaker standard for soil erosion -- no more than a 50 percent reduction in current erosion rates would be required, even if current rates are far above tolerable levels.

Conservation Reserve Program: Both House and Senate allow land planted to windbreaks, shelter belts, contour grass strips and other conservation measures to be enrolled in the Conservation Reserve Program without enrolling the whole field in which these measures are established. This will help farmers meet conservation compliance requirements. Both bills also provide incentives to plant trees on CRP acres, including longer contracts (15 years rather than 10 years), the right to convert already enrolled CRP land to trees (hardwoods only in the Senate version) 50-75 percent cost share to establish and maintain or even replant tree stands. In addition, the House (but not Senate) allows sustained yield harvesting

of trees during the last three years of contract if the farmer agrees to permanently retire the crop base on those acres.

Post-Contract Base Protection on CRP Land: The Senate bill gives USDA the discretion to allow CRP land to remain in program crop base even after the ten-year contract expires as long as it remains in a conserving use. The House limits this extension of base protection to ten years, but requires USDA to extend the protection if the producer agrees to maintain conserving use of the land. The House bill also allows certain sustainable uses of this land, such as haying or grazing (CRP land cannot now be used for any economic purpose). The Senate also allows farmers to bid the least erodible CRP land out of the CRP contract if erosion control will remain as good.

Agricultural Research

Research Purposes: The senate clearly states that the purpose of agricultural research and extension is to enhance the "competitiveness and sustainability" of U.S. agriculture, and it lists specific objectives such as increased rural employment, environmental protection, and strengthening the family farm. It also requires the Secretary of Agriculture to develop guidelines to implement these objectives. The House bill doesn't include such a statement, but key House leaders agreed to support the concept embodied in a similar amendment that was not acted on by the House.

Low-Input Sustainable Agriculture (LISA): Both House and Senate define sustainable agriculture (the Senate more adequately); authorize up to \$40 million per year for LISA research (now funded at \$4.45 million/year), including priorities for research involving farm cooperators; require

preparation of LISA technical guides; provide matching grants to state sustainable agriculture programs; and require training for all extension field personnel.

The Senate bill also calls for the creation of training centers, appointment of integrated crop management specialists in each state, and competitive grants to organizations providing short courses on sustainable agriculture. The House also establishes a sustainable agriculture outreach effort in each state, places greater emphasis on farm tours and other extension activities, and provides for regional sustainable agricultural extension specialists in each state.

In addition to legislative actions, several developments in the courts may have far-reaching significance for the environmental consequences of farm production. These arise from the growing number of court cases in which liability for environmental damages is being assessed to farmers, their bankers or other credit sources such as fertilizer and chemical suppliers. A federal law, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), says that if a lender acts in such a way as to go outside the protection of its "security interest" in a borrower's actions, it may be found liable for the borrower's environmental mismanagement. Lenders are thus increasingly putting environmental compliance conditions in loan agreements, since the cost of being found liable may be as much as 1,000 times that of the loan itself.

Especially when lenders decide not to foreclose and work with farmers to reduce and restructure debt, their involvement may lead to greater liability than simply initiating a loan and/or foreclosing on it. In May,

1990, the 11th Circuit Court decided in U.S. v. Fleet Factors (901 F2d 1550) that a lender is liable for the environmental harm created by a borrower if its "involvement with the management of the facility is sufficiently broad to support the inference that it could affect hazardous waste disposal decisions if it so chose."

This judgement means that it is not necessary for the secured creditor to participate in management decisions leading directly to environmental damages such as release of hazardous wastes. Merely having the capability to participate is sufficient to lead to liability.⁴ The Court went on to say in U.S. v. Fleet Factors: "Under the standard we adopt today, a secured creditor may incur liability without being an operator, by participating in the financial management of a facility to a degree indicating a capacity to influence the corporation's treatment of hazardous waste."

This decision, and others like it, have led to a growing emphasis on the environmental consequences of farm (and non-farm) behavior, which are likely to have wide reaching influence in the years ahead. As the court stated in Fleet Factors:

Our ruling today should encourage potential creditors to investigate thoroughly the waste treatment system and polices of potential debtors. If the treatment system seems inadequate, the risk of CERCLA liability will be weighed into the terms of the loan agreement.

By affecting the costs of doing business for both lender and borrower, such court decisions are yet another way in which environmental regulation will

⁴St. Paul Bank for Cooperatives, News, 4(July-August, 1990): 2-4.

intrude on farm level decisions.

Aside from such legal questions, concerns are growing over what will happen to land currently retired as part of the Conservation Reserve Program (CRP). As the 10-year contracts in the program begin to expire, a way will need to be found to retain highly vulnerable land in protected status. At the same time, lands brought into the CRP at relatively high prices will need to be reexamined in light of budget pressures. The situation presents a prime opportunity to employ a targeting scheme, such as that developed by Taff and Runge,⁵ to differentiate between lands that should be left in the CRP, taken out, or given 3-5 year "intermediate" status.

In sum, 1990 is likely to be an unstable year in U.S. agriculture, due to a combination of recession, Middle East politics, oil price fluctuations, changing environmental standards, and last and probably least, the GATT talks.

⁵Taff, Steven J. and C. Ford Runge, "Wanted: A Leaner and Meaner CRP," Choices, First Quarter 1988, pp. 16-18.