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The Agricultural Act of 2014: Conservation Easement Programs, The Agricultural Conservation Easement Program (ACEP)

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The conservation easement programs undergo major changes for 2014 with the retirement of the Grasslands Reserve Program (GRP), Wetlands Reserve Program (WRP) and the Farmland Protection Program (FPP), including the Farm Viability Program. The easement functions of these programs are merged into one program, the Agricultural Conservation Easement Program (AECP).

What is ACEP?
The ACEP is a new program for 2014 that serves as a consolidation of the all previous major easement programs. Despite the amount of change the new farm bill brings to conservation easement programs, there should be minimal disturbance to participants of GRP, WRP and FPP. All land and funding previously allocated to the now retired programs is automatically transferred to the ACEP and all easements from the previous programs will be maintained. Despite this, total funding for ACEP is less than the sum of its predecessors (USDA ERS 2014; USDA OBPA 2014).

The main purpose of the Agricultural Conservation Easement Program is to provide easements for the long-term restoration and protection of environmentally sensitive lands from being developed or converted to non-agricultural uses (USDA ERS 2014). The program focuses on conserving agricultural land as well as wetlands and their related benefits. These two functions are evaluated separately, maintaining some of the distinction implied by having separate programs (USDA OBPA 2014).

AECP in Colorado:
Total funding for ACEP predecessor programs in Colorado peaked at over $5 million in 2009 and fell for 2010. A dramatic dip in total funding can be seen in 2008 (Figure 1). This is due to in part to a lag in the shift away from the Wetlands Reserve Program and the Grassland Reserve Program and towards the Farm and Ranch Protection Program. While total funding for all three programs fell off towards the end of the 2003 Farm Bill, funding for the FPP rebounded after 2008 as it took on more obligations (Figure 2 and Figure 3). However, the GRP and WRP have continued to see decreased funding and reductions in total obligations Total acres enrolled for predecessor programs, available only for WRP and GRP, do not fall off as dramatically as funding for these programs but nevertheless show a downward trend. Financial assistance to program participants in all three programs make up the majority of program obligations while technical assistance for planning and expertise make up a very small share (Figure 5).

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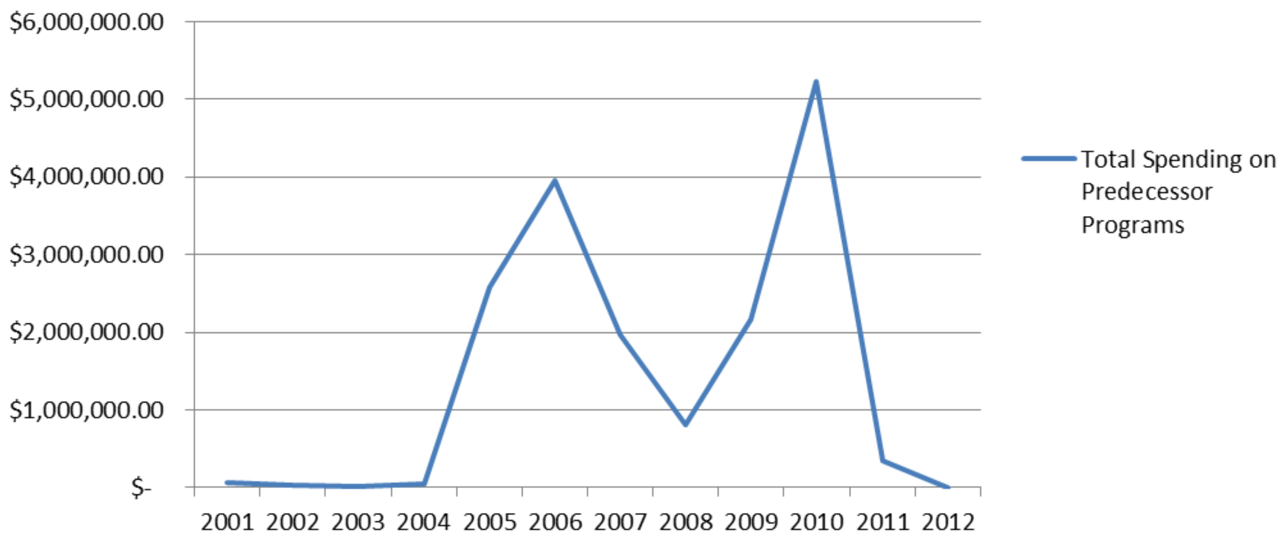

Figure 1: Total Spending on Predecessor Programs in Colorado, 2001-2012
Source: The Environmental Working Group, 2014
Note: *Information on conservation spending is incomplete for 2011 and 2012.*

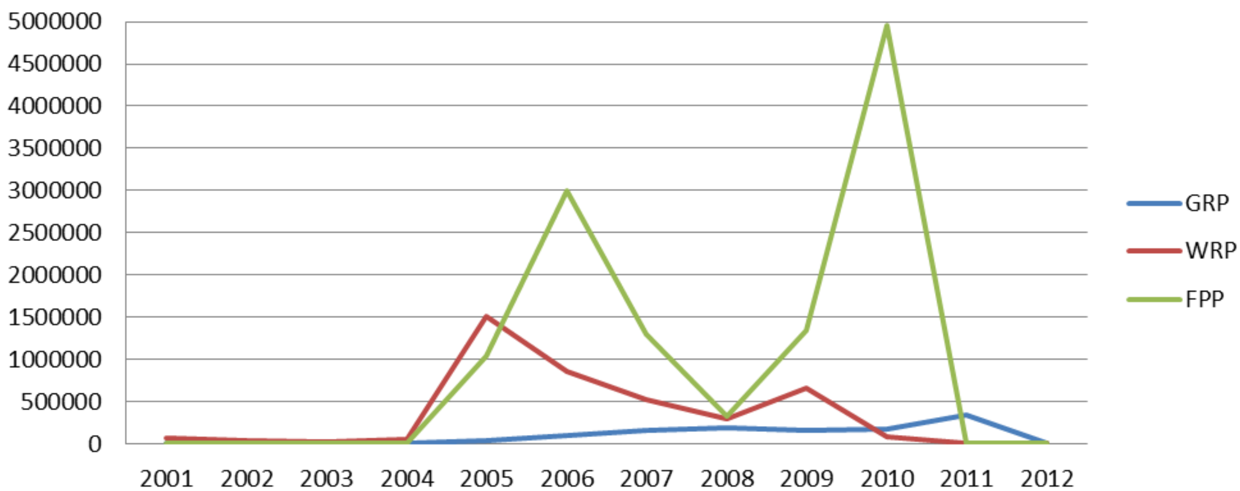

Figure 2: Historical Spending on Predecessor Programs in Colorado, 2001 - 2012
Source: The Environmental Working Group, 2014
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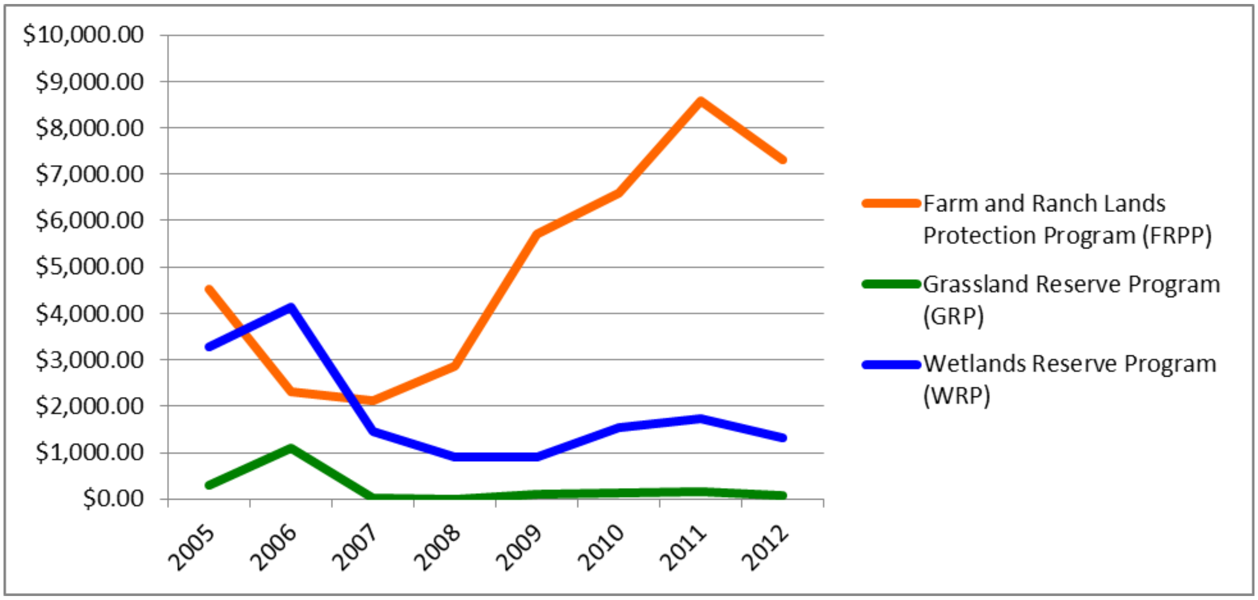

Figure 3: ACEP Predecessor Obligations, Colorado
Source: Natural Resources Conservation Service- Washington- DC. 31 May 2013.

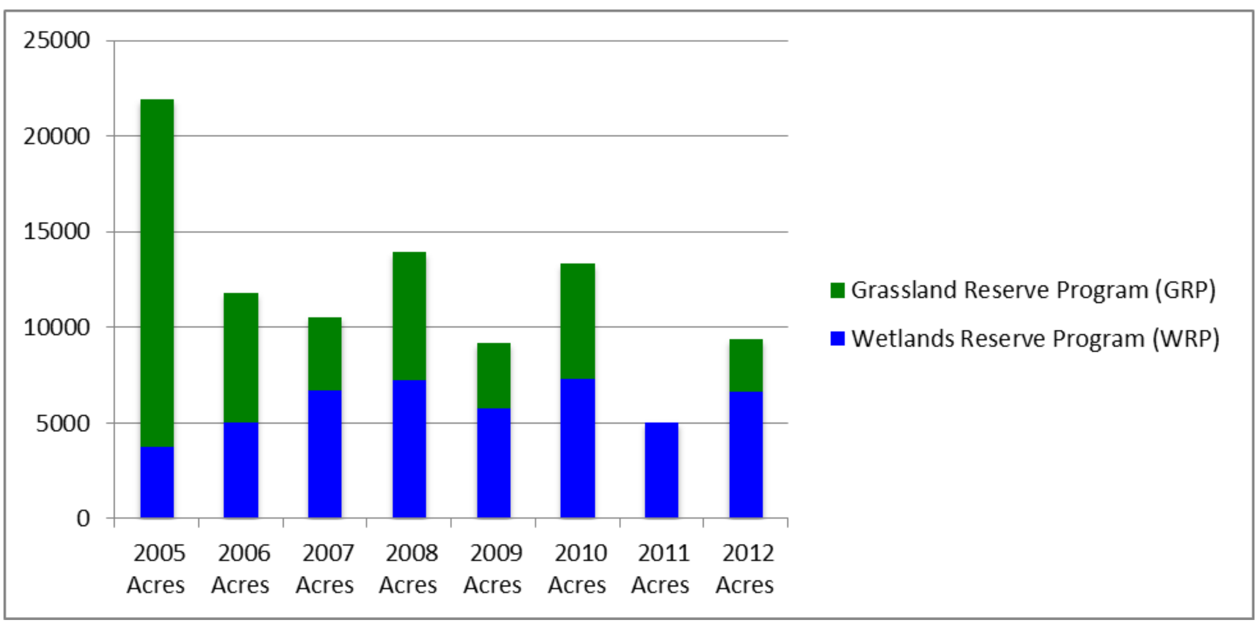

Figure 4: ACEP Predecessor Programs Total Acres Enrolled, Colorado
Source: Natural Resources Conservation Service- Washington- DC. 31 May 2013.

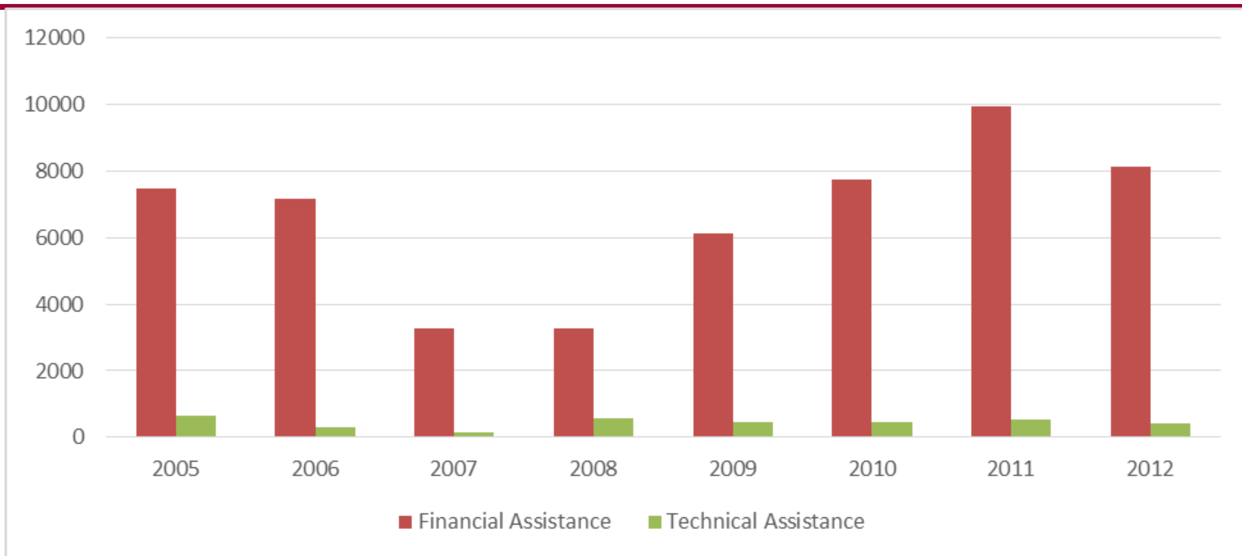

Figure 5: ACEP Predecessor Programs Total Obligations, Colorado
Source: Natural Resources Conservation Service- Washington- DC. 31 May 2013.

	Agricultural Land Easements	**Wetland Reserve Easements**
Purpose	Protect the long-term viability of the nation's food supply by preventing conversion of productive working lands to non-agricultural uses. Land protected by agricultural land easements provides additional public benefits, including environmental quality, historic preservation, wildlife habitat and protection of open space.	Provide habitat for fish and wildlife, including threatened and endangered species, improve water quality by filtering sediments and chemicals, reduce flooding, recharge groundwater, protect biological diversity and provide opportunities for educational, scientific and limited recreational activities.
Financial Assistance	NRCS provides financial assistance to eligible partners for purchasing Agricultural Land Easements that protect the agricultural use and conservation values of eligible land. In the case of working farms, the program helps farmers and ranchers keep their land in agriculture. The program also protects grazing uses and related conservation values by conserving grassland, including rangeland, pastureland and shrubland. Eligible partners include Indian tribes, state and local governments and non-governmental organizations that have farmland or grassland protection programs.	Provides technical and financial assistance directly to private landowners and Indian tribes to restore, protect, and enhance wetlands through the purchase of a wetland reserve easement.
Easements	NRCS may contribute up to 50 percent of the fair market value of the agricultural land easement. Where NRCS determines that grasslands of special environmental significance will be protected, NRCS may contribute up to 75 percent of the fair market value of the agricultural land easement.	Permanent Easements – Permanent Easements are conservation easements in perpetuity. NRCS pays 100 percent of the easement value for the purchase of the easement. Additionally, NRCS pays between 75 to 100 percent of the restoration costs. 30-year Easements – 30-year easements expire after 30 years. Under 30-year easements, NRCS pays 50 to 75 percent of the easement value for the purchase of the easement. Additionally, NRCS pays between 50 to 75 percent of the restoration costs. Term Easements - Term easements are easements that are for the maximum duration allowed under applicable State laws. NRCS pays 50 to 75 percent of the easement value for the purchase of the term easement. Additionally, NRCS pays between 50 to 75 percent of the restoration costs. 30-year Contracts – 30-year contracts are only available to enroll acreage owned by Indian tribes, and program payment rates are commensurate with 30-year easements.

Eligibility	Cropland, rangeland, grassland, pastureland and non industrial private forest land. NRCS will prioritize applications that protect agricultural uses and related conservation values of the land and those that maximize the protection of contiguous acres devoted to agricultural use.	Farmed or converted wetland that can be successfully and cost-effectively restored. NRCS will prioritize applications based the easement's potential for protecting and enhancing habitat for migratory birds and other wildlife.
Enrollment	NRCS enters into cooperative agreements with eligible partners. Each easement is required to have an agricultural land easement plan that promotes the long-term viability of the land.	NRCS enters into purchase agreements with eligible private landowners or Indian tribes that include the right for NRCS to develop and implement a wetland reserve restoration easement plan. This plan restores, protects, and enhances the wetland's functions and values.
Application	Eligible partners may submit proposals to NRCS to acquire conservation easements on eligible land.	Landowners may apply at any time at the local USDA Service Center.

Figure 6: Summary of ACEP and Application Process
Source: USDA National Resources Conservation Service, 2014

Summary of changes to ACEP:

Prior Law/Policy	**Enacted 2014 Farm Bill (P.L. 113-79)**
No directly comparable provision. Similar to the establishment and purposes section of the Wetlands Reserve Program, the Farmland Protection Program, and the Grassland Reserve Program of the FSA.	Establishes the Agricultural Conservation Easement Program (ACEP). Combines the purposes of WRP, FPP, and GRP.
No directly comparable provision.	Defines agricultural land easements-and easement that protects the natural resources and the agriculture nature of the land, while maintaining production. Eligible entity may include land located in an area historically dominated by grassland, forbs, or shrubs that could provide wildlife habitat of ecological significance. Adopts wetland 'reserve' easements.
No directly comparable provision. Provides for the purchase of conservation easements by limiting the land's nonagricultural uses. The federal cost may not exceed 50% of the appraised market value of the easement and entities must contribute a minimum of 25% of the acquisition purchase price. Prohibits bidding down. Requires USDA to include a contingent right of enforcement in the terms of the easement, and that a conservation plan be required for any easements that include highly erodible cropland. Establishes a certification process for USDA to enter into agreements with eligible entities to use FPP cost-share assistance to purchase easements. To become certified, entities must have the authority and resources to enforce easements, polices in place that are consistent with the purposes of the program, and clear procedures to protect the integrity of the program. Agreements with certified entities are a minimum of five years with a review and recertification required every three years. Agreements with non-certified entities are 3-5 years in length.	Retains much of the FPP easement requirements for cost-share assistance, agreements with eligible entities, certification of eligible entities, including review and recertification requirements. Allows for grazing as a protected agricultural use, similar to GRP easements. Requires appraisals based on uniform standards of professional appraisal practice or any other industry approved standard. Requires eligible entities to provide contributions equivalent to the federal share or at least 50% of the federal share if the entity includes contributions from the private landowner. Allows up to 75% federal cost-share for grasslands of special environmental significance. Authorizes the Secretary to waive any portion of the eligible entity cash contribution requirement for projects of special significance, subject to an increase of private landowner donation equal to the amount of the waiver if donation is voluntary. Establishes an evaluation and ranking criteria for applications.

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No directly comparable provision. Similar to Sec. 1237-1237F (WRP) of the FSA, as amended. WRP enrolls lands through the use of permanent easements, 30-year easements, restoration cost-share agreements, or any combination thereof. Eligible lands under WRP include: farmed wetland or converted wetland, together with adjacent land, except wetlands converted before December 23, 1985; cropland or grassland that was used for agricultural production prior to flooding from the natural overflow of a closed basin lake or pothole; and possibly farmed wetlands enrolled in CRP that are likely to return to production upon contract expiration. Ineligible lands include CRP acres containing timber stands or CRP pasture established to trees. USDA is required to determine the value of easements and contracts by providing the lowest amount of compensation based on a comparison of the fair market value of the land, a geographic cap, or an offer made by the landowner. Easements with values less than $500,000 must be paid out over 1-30 years; easements with values greater than $500,000 are to be paid out over 5-30 years. Authorized to conduct a Wetlands Reserve Enhancement Program (WREP) for agreements with states similar to CREP. Priority is given to easements based on the value of protecting and enhancing habitat for migratory birds and other wildlife,while taking into consideration costs and future agricultural and food needs. Eligible land cannot have changed ownership in the previous 7-year period unless the new ownership was by will, succession, foreclosure, or USDA is assured the land was not acquired for the purpose of enrolling in WRP. [16 U.S.C. 3837-3837f]	Retains much of the WRP easement requirements for land eligibility, easement terms, compatible uses, easement compensation, violation procedures, duties of USDA and the owner, costshare, restoration, and technical assistance requirements, and modification and termination procedures. Reauthorizes WREP-like program referred to as the wetland enhancement option. No longer allows for stand-alone cost-share restoration agreements, only 30-year easements, permanent easements (or maximum duration allowed under law), and 30-year contracts for Indian Tribes, which may include restoration assistance. Reduces the land ownership requirement to the preceding 24-month period. Requires the establishment of an evaluation and ranking criteria that maximizes the benefit of federal investment. Retains priority for easements based on the value of protecting and enhancing habitat for migratory birds and other wildlife, but removes consideration for costs and future agricultural and food needs. Makes the reserved grazing rights pilot program permanent. Compensation provisions are similar to WRP, but adds a requirement that 30-year contract (Tribes only) and 30-year easement compensation be between 50% and 75% of a permanent easement's compensation. Payment schedules are changed for easements with values less than $500,000 to be paid outnot more than ten years and easements with values greater than $500,000 to be paid out over 5-10 years. Easement administration may be delegated, however, the monitoring and enforcement responsibilities may not. Amended Sec. 1265C [Sec. 2301(a)]

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No comparable provision.	Outlines administrative requirements for ACEP using elements of WRP, FPP, and GRP. Provides priority for expiring CRP acres to enter into (1) agricultural land easements if they are grasslands that would benefit from long-term easements, or (2) wetland easements if they are wetlands with the highest functions and value that could return to production after leaving the CRP.
No comparable provision.	Requires ACEP participants to meet highly erodible land and wetlands conservation requirements. Excludes shelterbelts, windbreaks, and wet and saturated soils from the 25% county acreage cap. Also amends acreage limitations to include the repealed WRP acres in the 25% county acreage cap in addition to CRP and the new wetland easements under ACEP.
No directly comparable provision. Authorizes mandatory funding to enroll WRP & GRP acres. Authorizes mandatory FPP funding, rising from $97 million in FY2008 to $200 million in FY2014	Authorizes mandatory ACEP funding: $400 million (FY2014); $425 million (FY2015); $450 million (FY2016); $500 million (FY2017); and $250 million (FY2018).

Figure 7: Summary of Changes to ACEP
Source: Congressional Research Service, 2014

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