



# Aerial Photography Privacy

**Dorsey Plunk – NRCS NGMC**

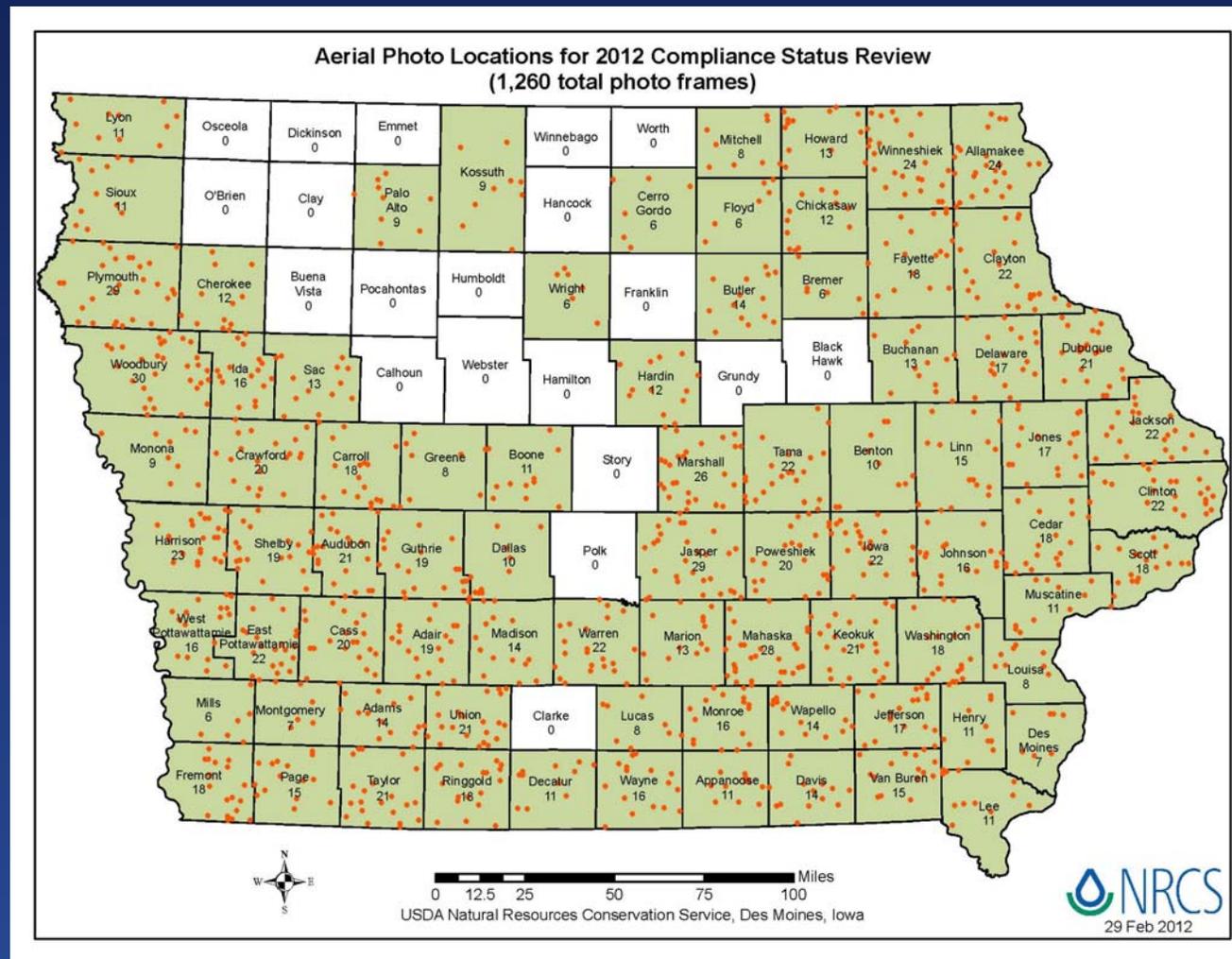
# Aerial Photography Issues – June 14, 2012

- Suddenly a hot topic.
- The Hill wants to know where we use it and for what purpose.

# Iowa Compliance Review

- Aerial photography contracted through APFO for random status reviews.
- Ephemeral gullies
  - No, review completed in office
  - Yes, full field review

# Iowa Highly Erodible Lands (HEL) Sites



United States Department of Agriculture  
Natural Resources Conservation Service



April 18, 2012

Mr. Name  
Address  
City, State Zip Code

Dear Producer:

The Natural Resources Conservation Service of the US Department of Agriculture, as part of its responsibility in carrying out the conservation provisions of the Food Security Act (FSA) of 1985 as amended, is conducting status reviews on a random selection of USDA program participants. The purpose of this review is to determine if the conservation provisions of the Farm Bill are being followed. Your tract number(s) \_\_\_\_\_ has been selected for review this year.

The status review will consist of making determinations on conservation compliance, wetland conservation and early release Conservation Reserve Program provisions as they apply to this tract of land.

Iowa NRCS will be gathering preliminary information regarding your tract using high resolution aerial photographs. If additional information is required, NRCS personnel will then conduct an on-site field visit. The status review process will be handled by a regional team and not by our local field office.

If you wish to be present, if on-site field visit is made, please notify me at \_\_\_\_\_ so I can make those arrangements with the Regional Team.

Sincerely,

Designated Conservationist  
Address

## Conservation officials using aerial photography to monitor farmers

Iowa is the second state in which the practice has been implemented

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Contour farming aerial stock photo, Washington County, Iowa near Kalona (SourceMedia Group)

Federal conservation officials used aerial photography last month to help ensure Iowa farmers are complying with conservation rules.

Unlike recent controversial surveillance flights conducted by the Environmental Protection Agency, however, these flights have not raised farmers' hackles.

"To the best of my knowledge, we have had no complaints," said Marty Adkins, state resource conservationist with the Natural Resources Conservation Service.

One of the big differences between the conservation service flights and the EPA flights, which targeted water pollution at livestock feedlots in Iowa and Nebraska, is that the National Resources Conservation Service, as required by law, notified affected farmers in advance of the flights.

Operating without that legal constraint, the EPA did not notify the livestock producers it targeted, opening itself to charges of spying on farmers and invading their privacy.

After conducting a pilot project last year in western Iowa, conservation service officials expanded the project to all tracts randomly selected for

Love, Orlan. June 12, 2012.  
Conservation officials using aerial  
photography to monitor farmers.  
The Gazette.

<http://thegazette.com/2012/06/12/conservation-officials-using-aerial-photography-to-monitor-farmers/>

## EPA defends aerial surveillance

By Joe Duggan  
WORLD-HERALD BUREAU

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LINCOLN — Snapping photos of livestock farms from an airplane is a legal and cost-effective way to help protect Nebraska and Iowa streams from runoff contamination, say officials with the U.S. Environmental Protection Agency.

The agency's aerial surveillance program came under scrutiny last week when Nebraska's congressional delegation sent a joint letter to EPA Administrator Lisa Jackson. The elected officials asked Jackson to reply by June 10 to a list of 25 questions, including whether federal law allows such surveillance.

On Friday, EPA officials in the agency's Region 7 office in Kansas City provided written responses to questions emailed earlier in the week by The World-Herald.

"Courts, including the Supreme Court, have found similar types of flights to be legal (for example to take aerial photographs of a chemical manufacturing facility) and EPA would use such flights in appropriate instances to protect people and the environment from violations of the Clean Water Act," the agency said in response to a question about legality.

Sen. Mike Johanns, R-Neb., a former U.S. agriculture secretary, said Friday he remains highly doubtful the agency has congressional authority to act as an eye in the sky.

"They are just way on the outer limits of any authority they've been granted," he said.

Nebraska's two senators and three representatives signed the letter at the urging of livestock producers who consider the flyovers an invasion of privacy and heavy-handed government intimidation.

The producers also worry that a greater EPA presence in the state will lead to more costly manure-control modifications on their farms, dairies and feedlots, said Chuck Folken, owner of a 7,500-head cattle feed yard near Leigh and former president of the Nebraska Cattlemen. Folken said he and many other producers find it easier to work with the Nebraska Department of Environmental Quality than with federal environmental enforcers.

### Related news

- [Ranchers polite, but not overly so, to EPA visitors](#)
- [Johanns' bill would stop farm flyovers by EPA](#)
- [Johanns to keep after EPA on flyovers](#)
- [EPA told to come clean on feedlot flyovers](#)

Dugan, Joe. June 4, 2012.  
EPA defends aerial surveillance.  
World-Herald Bureau.

<http://www.omaha.com/article/20120604/NEWS01/706049932>

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**Congresswoman Capito Introduces Legislation to Ban EPA's Aerial Surveillance**

By [Ian Smith](#)

Wednesday, June 20, 2012

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Following on the heels of [similar legislation introduced in the Senate](#), Congresswoman Shelley Moore Capito (R-WV) has introduced legislation in the House that would ban the Environmental Protection Agency (EPA) from conducting aerial surveillance of farms throughout the country.

The legislation comes in response to surveillance the EPA has conducted on agricultural lands when enforcing the Clean Water Act.

Known as the Farmer's Privacy Act of 2012, the legislation provides (subject to some noted exceptions) that the EPA may not conduct aerial surveillance of agricultural lands when enforcing the Clean Water Act.

"Agricultural lands" includes land used primarily for agricultural production, including cropland, grassland, prairie land, improved pastureland, rangeland, cropped woodland, marshes, and land used for agro-forestry or the production of livestock.

"Aerial surveillance" is defined as including any surveillance from the air, including surveillance conducted from fixed wing aircraft, helicopters, drones, and remote controlled aircraft; and the use of aerial or satellite images, regardless of whether the images are publicly available.

Exceptions to the prohibition on aerial surveillance include:

- If voluntary written consent has been obtained
- If public notice has been given
- If the EPA has obtained a certification of reasonable suspicion

Capito had reached out to the EPA about the matter last December, but concluded that legislation was going to be necessary to stop the practice of aerial surveillance. You can see [Capito's previous inquiry to the EPA](#) as well as the [agency's response](#).

Speaking on the legislation, Capito said, "It's getting to the point that I'll have to file for a Clean Water Act permit if I want to turn the hose on in my backyard. The EPA will take any opportunity to make it harder for farmers, energy operators, or any business that deals with the EPA, to operate."

Smith, Ian. June 20, 2012.  
Congresswoman Capito Introduces  
Legislation to Ban EPA's Aerial  
Surveillance. FedSmith.com.

<http://www.fedsmith.com/article/3474/congresswoman-capito-introduces-legislation-ban-epas.html>.

# Supreme Court Cases

- 1946 – United States v. Causby
  - Justice William O. Douglas announced: "We have said that the airspace is a public highway."
  - Craig, Brian. Online Satellite and Aerial Images: Issues and Analysis. North Dakota Law Review [online]. Vol. 83:547, pages 559-560.  
[http://zxc10.law.und.nodak.edu/LawReview/issues/web\\_assets/pdf/83/83-2/83NDLR547.pdf](http://zxc10.law.und.nodak.edu/LawReview/issues/web_assets/pdf/83/83-2/83NDLR547.pdf)

# Supreme Court Cases

- California v. Ciraolo
  - Warrantless aerial observation of a person's backyard does not violate the Fourth Amendment to the United States Constitution. [http://en.wikipedia.org/wiki/California\\_v.\\_Ciraolo](http://en.wikipedia.org/wiki/California_v._Ciraolo)
  - This has been interpreted to mean “anything capable of being viewed from a public space is considered outside the realm of privacy in the United States, aerial photography may legally document features and occurrences on private property.” [http://en.wikipedia.org/wiki/Aerial\\_photography](http://en.wikipedia.org/wiki/Aerial_photography)

# Supreme Court Cases

- DOW CHEMICAL CO. v. UNITED STATES
  - Use of aerial observations and photography is within EPA's statutory authority.
  - EPA's taking, without a warrant, of aerial photographs of petitioner's plant complex from an aircraft lawfully in public navigable airspace was not a search protected by the Fourth Amendment.
  - <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=476&invol=227>



# Discussion