

# United States Senate

WASHINGTON, DC 20510

February 4, 2020

Mr. Richard Fordyce, Administrator  
Farm Service Agency  
U.S. Department of Agriculture  
1400 Independence Avenue SW  
Washington, District of Columbia 20250

Dear Administrator Fordyce:

Thank you for your ongoing work to implement the 2018 Farm Bill. As FSA works to finalize the Conservation Reserve Program (CRP) interim final rule, I write to provide comments regarding key provisions to benefit water quality that were included in the 2018 Farm Bill. As a member of the Senate Agriculture Committee, I worked to ensure that the farm bill included critical CRP improvements to benefit water quality, including the establishment of the Clean Lakes, Estuaries and Rivers (CLEAR) Initiative, as well modifications to the Conservation Reserve Enhancement Program (CREP).

Pennsylvania's farmers and landowners are committed to stewardship and the protection of water quality. These efforts are especially important given the need to ensure Pennsylvania is able to meet its commitments to reduce nutrient pollution within the Chesapeake Bay watershed. Much of the Delaware River Watershed is also in Pennsylvania, and CLEAR practices and CREP agreements contribute significantly to improving the health of the watershed. Through the establishment of riparian buffers and other beneficial water quality practices, CRP can and must play a central role in supporting farmers in their commitment to protecting and improved our shared water resources.

Following are my comments regarding the CRP interim final rule. I appreciate your consideration of these recommendations, and I look forward to working with you as FSA finalizes the changes made to CRP in the 2018 Farm Bill.

## **Clean Lakes, Estuaries and Rivers Initiative**

The 2018 Farm Bill established the Clean Lakes, Estuaries and Rivers (CLEAR) Initiative, directing FSA to give priority within Continuous CRP (CCRP) to the enrollment of practices that help reduce nutrient and sediment loadings. FSA was directed to enroll at least 40 percent of all CCRP acres, including the Conservation Reserve Enhancement Program (CREP), in CLEAR practices. These practices include riparian buffers, which are an essential component of efforts in Pennsylvania to achieve the goals set in the Chesapeake Clean Water Blueprint. Pennsylvania has a goal of planting 95,000 acres of riparian forest buffers across the Commonwealth by 2025 to improve the health of waterways and the Chesapeake Bay.

While I appreciate that FSA has released a new fact sheet on CLEAR and has started to report on CLEAR enrollment through its monthly summary reports, I am concerned that this important initiative is not explicitly included in the interim final rule. I urge FSA to ensure that the final rule includes specific guidance on CLEAR and offer the following recommendations:

- **Include a definition for the CLEAR Initiative in the CRP Final Rule.** In Section 1410.2, FSA should add a definition for CLEAR. Section 2201(c)(3) of the Agriculture Improvement Act of 2018 (2018 Farm Bill) directs USDA to establish the CLEAR Initiative. While the CLEAR 30 pilot project is described, it is essential that the underlying initiative and the practices included under the 2018 Farm Bill are also explicitly defined and included in a final CRP rule.
- **Identify the statutorily defined list of CLEAR practices in the final rule.** FSA should modify Section 1410.6(c)(1) (Eligible Land) and Section 1410.30(b) (Signup) to distinguish between CLEAR practices and all other CCRP practices. Section 2201(b)(3) of the 2018 Farm Bill defines the list of CLEAR eligible practices that will have a positive impact on water quality. I urge FSA to ensure that these practices are included and separated out in the final rule to distinguish between CLEAR practices and all other CCRP practices. Within the Eligible Land section, FSA should modify the CCRP language (1410.6(c)(1)) to clearly distinguish between the practices eligible for enrollment within CLEAR and all other CCRP practices. Similarly, under Signup (Section 1410.30(b)), FSA should clearly distinguish between CLEAR practices and all other CCRP practices.
- **Conduct outreach and promote opportunities through CLEAR.** In order to ensure that farmers and landowners are aware of the opportunity through CLEAR to enroll practices that benefit water quality, FSA should provide outreach and education to eligible producers about the initiative. This should include information regarding the specific practices eligible through the initiative, as well as the conservation benefits and water quality outcomes. I urge FSA to also work with USDA's Natural Resources Conservation Service (NRCS) to ensure eligible producers have this information.

### **Conservation Reserve Enhancement Program**

The Conservation Reserve Enhancement Program (CREP) has been instrumental in getting beneficial water quality practices, including forested riparian buffers, on the ground in Pennsylvania and across the country. Forested riparian buffers reduce nutrient and sediment runoff in streams, improving livestock health, water quality and habitat for fish and wildlife. Recognizing the environmental value of riparian buffers, Pennsylvania has set a goal of planting 95,000 acres of riparian forest buffers by 2025.

Of the 3.4 million acres currently enrolled in CLEAR practices across the country, 15 percent of those acres are enrolled through CREP, highlighting the important role that CREP agreements across the country play in enhancing water quality.

I worked to ensure that CREP was codified in the 2018 Farm Bill and secured important program improvements to benefit water quality. While I appreciate FSA moving forward with

implementing many of these changes, I have several concerns and outstanding questions following the publication of the CRP interim final rule. I urge FSA to ensure that the final rule includes several modifications and additions to CREP and offer the following recommendations:

- **Allow existing CREP agreements to incorporate riparian buffer management payments without a major amendment to the agreement.** The regular management of riparian buffers, including activities to enhance or maintain the vegetative cover, is critical to maximizing environmental benefits. That is why I worked to ensure that the Farm Bill required FSA to provide payments for these management activities. I appreciate that Section 1410.90(e) of the interim final rule includes this provision consistent with the farm bill, but I am concerned about the lack of clarity that has been provided, either through the rule or in guidance to the states, regarding the process of incorporating this change into existing CREP agreements. I urge you to provide states with standardized CREP agreement amendment language and a streamlined amendment process to incorporate this provision into existing CREP agreements. Updating a CREP agreement to include new 2018 Farm Bill provisions should not be considered a major change and, therefore, should not trigger the need to renegotiate other terms of the CREP agreement.
- **Ensure that CREP partners are given an opportunity to propose alternative soil rental rates (SRRs).** Section 1234(d)(4)(D)(i) of the 2018 Farm Bill requires the Secretary to ensure that State FSA Committees *or eligible CREP partners* to propose alternative SRRs prior to finalizing new rates. Despite this directive, as FSA moved forward with new rental rates this year, state offices were given no direction for involving CREP partners in the process and thus partners were not able to propose alternatives. Further, the interim final rule does include guidance on the process through which CREP partners can be able to propose alternative SRRs. I understand that FSA plans to allow this for future years, and I urge FSA to also ensure that this clarification is included in the final rule. In order to ensure maximum enrollment to benefit water quality, it is critical that FSA allow for careful consideration of input from CREP partners in order to establish fair and adequate SRRs.
- **Allow for partial practice incentive payments (PIPs) once a component of a practice is completed.** It can take several years to fully install a riparian forested buffer, including often costly components like stream fencing, water crossing and alternate water sources. In order to address this reality, Section 1231A(c)(3)(A) of the Farm Bill required the Secretary, if requested by a CREP participant, to provide a practice incentive payment (PIP) when a major component of a conservation practice is completed under CREP. This provision was not included in the interim final rule, and I urge FSA to modify Section 1410.90 in the final rule in order to ensure that USDA provides the part of the PIP that corresponds to the part of the practice installed, to be provided if requested by the participant.
- **Ensure PIPs do not get counted towards the total cap for cost share payments.** PIPs are one-time additional cost share payments to help cover a percentage of the eligible installation costs of the practice. These payments are important within CREP agreements for supporting enrollment of the most impactful conservation practices, including those that benefit water quality. Section 1410.90(d) of the interim final rule states that

“Notwithstanding § 1410.40(d), cost-share payments, *including practice incentive payments* [emphasis added], from all sources may exceed 100 percent of the actual cost of establishing eligible practices, but only if specifically authorized by the Conservation Reserve Enhancement Program agreement.” This is in line with how many CREP agreements have operated and reflects Congressional intent. FSA should eliminate the requirement that this must be explicitly authorized by the CREP agreement and instead apply the exception to all CREP agreements regardless. Additionally, I urge FSA to modify Section 1410.40(d)(2) of the interim final rule to further clarify that CREP is excluded from the requirement that PIPs count towards the 100% cap on total cost share payments.

- **Allow for a temporary waiver of non-federal CREP match for enrollment to continue.** In order to address temporary pauses in the availability of non-federal funds for the CREP match, Section 1231A(2)(C) of the farm bill directed FSA to allow for a temporary waiver of CREP matching requirements in order to allow for continued enrollment in the agreement. The interim final rule does not include this important provision, and I therefore urge you to ensure it is included in the final rule. This flexibility is critical to avoid abrupt stops and starts to CREP agreements in order to maintain continuity and confidence for producers and partners in the program.
- **Ensure that the 30% match is *not* imposed on States and other non-NGO CREP partners.** Historically, the non-federal CREP match requirement was 20% under long standing agency policy. Section 1231A(b)(2)(B) of the 2018 Farm Bill clearly distinguished between the match requirement for CREP agreements in which a majority of the match comes from States or Tribes and CREP agreements in which a majority of the match comes from nongovernmental organizations (NGOs). While NGO agreements require the match to be at least 30 percent, in the case of CREP agreements in which a majority of the match comes from States or Tribes, the farm bill authorizes the match amount to be negotiated between the Secretary and the partners. Despite this direction, the Section 1410.90(c)(1) of the interim final rule incorrectly applies the 30% match requirement to agreements primarily with States, Tribes or other non-NGO partners. I urge FSA to ensure that the final rule revises the match requirement for non-NGO partners to allow these partners to negotiate a match with USDA, as directed by the Farm Bill.
- **Ensure farmers with hardwood tress in wetlands and near streams through CREP are aware of the option to re-enroll.** While the 2018 Farm Bill limits CRP hardwood tree plantings to only one re-enrollment, riparian forest buffers, forested wetlands and shelterbelts are excluded from this limitation. We especially excluded riparian buffers and forested wetlands from the limitation due to the water quality benefits they provide. I urge FSA to ensure that landowners with expiring hardwood tree enrollments should be encouraged to continue to reenroll eligible portions as riparian forest buffers or forested wetlands.



## **Continuous Enrollment**

With regard to all CCRP (including CLEAR) and CREP enrollments, I urge FSA to ensure that continuous enrollment remains truly continuous. It has been challenging for producers and partners to adjust to the stop and go nature of enrollment opportunities over the past several years, and as indicated in the program's name, Continuous CRP (CCRP) should be available for farmers and landowners to *continually* enroll eligible land at any time, rather than waiting for specific enrollment periods. Over the past several years, FSA has limited CCRP enrollment to specific windows during which applicants can enroll. Not only does this create confusion on the part of the landowner, but it also results in lost benefits that new or renewed CCRP contracts could provide. As FSA continues to administer CRP under the 2018 Farm Bill, I urge FSA to ensure that enrollment remains continually available for eligible farmers and landowners.

## **Protecting the CRP Baseline**

Finally, I am concerned that many of the changes included in the interim final rule will have negative implications for the total amount of funding available for CRP in the baseline. That means these policies will not only harm the ability to support producers in their clean water efforts under this farm bill, but a reduction in baseline would further limit the availability of CRP and conservation funding available for future farm bills. If reductions in spending as a result of the discretionary changes to CRP implementation that FSA is choosing to make are not reinvested in the program, this will have major implications for baseline funding and the availability of future conservation funding. I urge FSA to ensure that program implementation supports the adoption of the most effective conservation activities, including those to benefit water quality, and any changes that do lead to a reduction in spending are retained within CRP, including the CLEAR Initiative and though CREP agreements.

Thank you for considering these recommendations as you work to implement key changes to CRP included in the 2018 Farm Bill. As discussed above, CRP provides enormous opportunity to support farmers and landowners in their efforts to protect and enhance water quality, including through the CLEAR Initiative and CREP agreements. I look forward to working with you as FSA finalizes the CRP rule and implements changes made through the 2018 Farm Bill.

Sincerely,

A handwritten signature in blue ink that reads "Bob Casey, Jr." in a cursive style.

Robert P. Casey, Jr.  
United States Senator