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Montana Water Project

April 17, 2009

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Financial Assistance Programs Division
USDA Natural Resources Conservation Service
Environmental Quality Incentives Program Comments
Docket Number NRCS-IFR-08005
1400 Independence Avenue, S.W., Room 5237S
Washington, DC 20250-2890

RECEIVED APR 24 2009

Re: Trout Unlimited's EQIP Comments—Water Savings Provision

Dear Sir or Madam:

On behalf of Trout Unlimited (TU), thank you for the opportunity to provide suggestions to NRCS as it develops rules and other guidance to implement the changes to conservation programs included in the 2008 Farm Bill. TU is working with ranchers and states across the nation, but especially in the West, to protect and restore instream flows to conserve trout and salmon resources. Effective use of EQIP projects provides NRCS with a strong opportunity to help protect and restore healthy streams. The 2008 Farm Bill includes a significant – and very positive – change to the way water conservation and irrigation efficiency practices are funded under EQIP. The recommendations below are intended to assist NRCS in ensuring that this new provision is implemented effectively in all states.

1. New Water Savings Provision in EQIP.

Section 2503 of the 2008 Farm Bill amends Section 1240B of the Food Security Act of 1985 (16 U.S.C. 3839aa-2), adding the following new provision:

“(h) WATER CONSERVATION OR IRRIGATION EFFICIENCY PRACTICE.—

“(1) AVAILABILITY OF PAYMENTS.—The Secretary may provide payments under this subsection to a producer for a water conservation or irrigation practice.

“(2) PRIORITY.—In providing payments to a producer for a water conservation or irrigation practice, the Secretary shall give priority to applications in which—

“(A) consistent with the law of the State in which the eligible land of the producer is located, there is a reduction in water use in the operation of the producer; or

“(B) the producer agrees not to use any associated water savings to bring new land, other than incidental land needed for efficient operations, under irrigated production, unless the producer is participating in a watershed-wide project that will effectively conserve water, as determined by the Secretary.

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In a letter we sent jointly with Environmental Defense Fund on July 29, 2008, we characterized this provision (along with explanatory language in the Joint Statement of Managers accompanying the farm bill) as an important step forward. The Joint Statement states that Sec. 1240B(h) is meant to “address the intent of the House bill,” which included a provision that allowed payments for water conservation practices under EQIP *only* if the Secretary determined that the practice would result in a reduction of consumptive use, any saved water would remain in the source, and the practice would *not* result, directly or indirectly, in an increase of consumptive use in the producer’s operation. While the statute does not define what a “reduction in water use in the operation of the producer,” is, it does make clear that priority must be given to funding applications that do not exacerbate water scarcity conflicts.

In this way, the new Section 1240B(h) addresses a shortcoming of the 2002 Farm Bill, which restricted the use of funding provided through the Ground and Surface Water Conservation Program to practices that produced a net savings of ground or surface water, but did *not* require any water savings for water conservation or irrigation efficiency practices funded through regular EQIP. It is therefore critical that NRCS ensure – through the new EQIP rule, changes to the EQIP manual, and other guidance – that EQIP is implemented in all states to effectively prioritize applications that promise to reduce water use and deliver the most significant environmental benefits associated with water conservation and irrigation efficiency practices.

2. Proposed Rule for the new Water Savings Provision: Maximizing Conservation Benefit from “Reduction in Water Use.”

The proposed EQIP rule for the water savings provision is noticed at 74 Fed.Reg. 2293 (January 15th, 2009), at 2313-2314, section 1466.20(b)(2). This proposed rule closely follows the statutory language. Section 1466.20(b)(2)(i) states that the State Conservationist will give priority to those applications where, “there is a reduction in water use in the agricultural operation or where the producer agrees not to use any associated water savings to bring new land under irrigated production.”

The proposed EQIP rule does not define “reduction in water use” in a producer’s operation. By linking a “reduction in water use” with giving priority to applications that do not expand irrigated acreage, however, the new rule implies that expanded irrigated acreage is disfavored.

We suggest that the NRCS provide State Conservationists with guidance on how to define “reduction in water use.” Below is a five step hierarchy for ranking funding applications based on the intersection of a “reduction in water use” and not expanding irrigated acreage:

- Applications that propose to reduce the amount of irrigated acreage in the operation of the applicant should be funded first;
- Applications that propose an increase in surface streamflows that will have a water quality or streamflow benefit through a means other than reducing irrigated acreage should be funded second;

- Applications that reduce consumption of groundwater through a means other than reducing irrigated acreage should be funded third;
- Applications that reduce consumption of surface water through a means other than reducing irrigated acreage should be funded fourth; and
- Other applications, so long as they do not include an *increase* in irrigated acreage, should be funded fifth.

This relatively straight-forward hierarchy of funding priorities allows the new statutory mandate to be implemented consistent with legislative intent, but without requiring complex water consumption calculations. The recommended five-part hierarchy does not exclude any practice from funding. Rather, it preferentially funds increases to streamflows or improved water quality over addressing aquifer draw-downs or reducing groundwater pumping costs because of the more direct conservation benefit to surface waters. With its focus on whether irrigated acres are expanded or not under a particular EQIP application, this proposed five-part funding prioritization applies a test that will be straight-forward to administer while still providing an effective way to ensure the most conservation benefit for EQIP dollars expended.

3. Proposed new rules for Water Savings Provision's exception for bringing new land under irrigated production

TU supports the Water Savings Provision's proposed rule that provides specificity to the statutory exception for bringing new land under irrigated production. That statutory exception allows an increase in irrigated acreage so long as "the producer is participating in a watershed-wide project that will effectively conserve water, as determined by the Secretary." The proposed rule's Section 1466.20(b)(2)(ii)(A)-(C) sets out three conditions for such eligible watershed-wide projects: A) having a current comprehensive water resource assessment; B) demonstrated effective water conservation management strategies; and C) consultation with relevant state and local agencies. 74 Fed. Reg. 2293 (January 15th, 2009), at 2314.

TU strongly recommends adding a fourth condition for an eligible watershed wide project. The fourth condition should require *either* an increase in stream or river flows *or* a reduction in aquifer over-drafting as a result of the "effective water conservation strategies." This insures that there is a conservation benefit to the watershed-wide project that justifies the otherwise disfavored practice of expanding irrigated acreage using EQIP funding. Likewise, the "comprehensive water resource assessment" should include an assessment of aquatic health in the watershed, as it relates to stream and river flows and water management actions, so that the implementation of the "effective water conservation strategies" is linked to an increase in aquatic health.

Finally, to ensure that the exception to allow expansion of irrigated acreage included in Section 1240B(h)(2)(B) remains the very narrow exception it was intended to be and is not misused, TU also recommends that the State Conservationist's designation of eligible watershed-wide projects be made in consultation with NRCS headquarters to ensure consistency of its application across states. Only where the conservation benefits of the watershed-wide project are clear should participants be allowed to expand irrigated acreage using EQIP funding.

4. Performance Incentives Based on Effective Application Prioritization.

The new Water Savings Provision rules will no doubt present some new challenges in their implementation because they are a departure from past practice. TU recommends that NRCS incorporate into the criteria it uses to award "performance incentives" an evaluation of how effectively each state prioritizes applications for funding to implement water conservation or irrigation efficiency practices consistent with the requirements of the Water Savings Provision.

This can be accomplished simply by adding to 7 C.F.R. 1466.5(b), after "effectively addressing National priorities and measures and state and local resource concerns," "*effectively prioritizing applications for funding to implement water conservation or irrigation efficiency practices.*" We believe that effective use of the performance incentives to reward states that do the best job of implementing EQIP to produce environmental benefits will be very important to ensuring that Section 1240B(h) provides the important step forward in reducing water scarcity conflicts as intended by Congress.

Please don't hesitate to contact me at lziemer@tu.org or (406) 522-7291 ext 103 if I can be of assistance to you in your effort to ensure effective implementation of this Water Savings Provision.

Sincerely,



Laura Ziemer