

**Comments of the Izaak Walton League of America**  
on the U.S. Department of Agriculture Natural Resources Conservation Service  
**Programmatic Environmental Assessment of the Environmental Quality Incentives  
Program and Finding of No Significant Impact**

January 15, 2020

We appreciate the opportunity to provide comments on the USDA Natural Resources Conservation Service Programmatic Environmental Assessment for the Environmental Quality Incentives Program, notice at 84 FR No. 242, page 69272 et seq., and the Finding of No Significant Impact based on that Environmental Assessment. The USDA has important discretionary decisions to make concerning implementation of the changes made by Congress to the Environmental Quality Incentives Program in the 2018 Farm Bill. The Programmatic Environmental Assessment should be a document that identifies alternative approaches to implement these discretionary changes, and one that provides analyses to help the USDA and the public understand the environmental implications of those alternatives as the agency makes those decisions.

Unfortunately, it is not. The Programmatic Environmental Assessment (PEA) only identifies one viable alternative. It fails to identify a range of alternatives available to implement the provisions where USDA has substantial discretion to act, and it fails to provide meaningful analyses of the differing impacts of those alternatives on the affected environment. These failures should be corrected before the programmatic environmental assessment is finalized. As a result of these deficiencies, we believe the Finding of No Significant Impact based on the PEA is faulty as well.

USDA implementation of the changes made to the Environmental Quality Incentives Program (EQIP) could have a significant impact on the environment, in both positive and in negative ways. For example, by raising the payment limit, increasing the cost-share payment rate to 90% for a substantial number of EQIP contracts, and allocating a substantial share of EQIP funding for new irrigation-related projects, USDA could have fewer funds left for other contracts and could end up funding substantially fewer EQIP projects, reducing the overall environmental benefits of the program. In contrast, by providing additional focus and incentives on soil health planning, soil health testing, and soil health practices, USDA could deliver multiple conservation benefits from EQIP dollars and boost the overall environmental benefits of the program.

There are very foreseeable outcomes stemming directly from these NRCS discretionary decisions, and they warrant more careful analysis by NRCS of the impacts of those alternatives.

A foundation of National Environmental Policy Act environmental review is the requirement that agencies identify a range of reasonable alternatives in the decisions the agency proposes to make, carry out an analysis comparing the likely impact of those alternatives, and give the public an

opportunity to comment on the alternatives and agency analyses. The process is designed to inform the final agency decision. By failing to develop or assess meaningful alternatives, we believe the EQIP PEA fails to meet the guidance provided by the Council for Environmental Quality and the legal requirements under the National Environmental Policy Act.

Guidance provided by the Council for Environmental Quality on the effective use of programmatic NEPA reviews notes that “NEPA requires Federal agencies to consider the effects of a proposed action *and any reasonable alternatives* on the human environment<sup>1</sup>” (emphasis added). The guidance goes on to say:

“The purpose and need statement is key to developing the NEPA review, as it establishes the scope of the analyses, range of reasonable alternatives, and frames the decision to be made. The purpose and need for a programmatic review will differ from the purpose and need for a project- or site-specific EA or EIS. The purpose and need for a PEA or a PEIS should be written to avoid eliminating reasonable alternatives and focused enough for the agency to conduct a rational analysis of the impacts and allow for the public to provide meaningful comment on the programmatic proposal.<sup>2</sup>”

We believe the Council on Environmental Quality (CEQ) guidance can support the use of recent program implementation (i.e., pre-2018 Farm Bill) as a “no action alternative,” but only when it serves only as a baseline for comparison purposes or when it serves as a viable alternative. Where USDA chooses to use the past law as a baseline, it must still provide *more than one viable alternative* for its analysis. USDA cannot meet this requirement by offering only two alternatives, one of which (the pre-2018 Farm Bill) is not a legally viable or defensible alternative that USDA could actually implement.

The EQIP PEA uses the law prior to passage of the 2018 Farm Bill as the No Action Alternative. As is clear from the discussion of this alternative (beginning on page 18 of the Environmental Assessment), this alternative is based on the 2014 Farm Bill, includes only the lower funding levels available under the old Farm Bill, and does not include the new provisions of the 2018 Farm Bill that require USDA to make important decisions and exercise its discretionary powers. Because Alternative 1 is based on the old law, and could not be legally implemented, the alternative can serve as a baseline only for purposes of the Environmental Assessment, it cannot be used as one of the required alternatives.

Alternative 2, the Proposed Action, is the only legally implementable alternative (its description begins on page 37 of the Environmental Assessment). Alternative 2 includes both non-

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<sup>1</sup> Executive Office of the President, Council on Environmental Quality, *Memorandum for Heads of Federal Departments and Agencies; Subject: Effective Use of Programmatic NEPA Reviews*, Washington, DC, December 18, 2014, p. 5.

<sup>2</sup> *Ibid*, p. 18-19.

discretionary changes required by Congress (such as the increase in annual funding), and changes that require USDA discretionary action. Unfortunately, the Environmental Assessment does not use this opportunity to identify some of the options available with respect to those discretionary actions, and thus it fails to assess the relative difference in environmental benefits and economic impacts of those choices.

The type of assessment done in the EA – of the bill as passed versus the 2014 Farm Bill -- might have been helpful to Congress in enacting the legislation, but it is not useful in helping USDA or the public assess the likely impacts of discretionary decisions to be made by the agency in implementing the legislation. We believe the CEQ guidance and the NEPA law clearly requires that USDA develop reasonable alternatives beyond the one viable “Agency Proposed Action” presented, and those alternatives should reflect the major discretionary decisions USDA can make to implement the revised program.

The Council on Environmental Quality Guidance clearly contemplates the development and analysis of alternatives to the agency’s proposed action, and it specifically notes that “the standard NEPA requirements for alternatives apply.”<sup>3</sup> Key discretionary decisions facing the U.S. Department of Agriculture in implementing the EQIP provisions include whether and how to select up to 10 designated conservation practices eligible for up to 90% cost-share payments, how to implement the requirement that USDA spend 10%, instead of 5%, of EQIP funds on wildlife habitat, whether to reduce USDA’s emphasis on livestock practices given the reduction in EQIP funding set aside for livestock to 50% from 60%, how to implement new authority to contract with irrigation districts and other water management agencies for EQIP funding, and how to implement Conservation Incentive Contracts. In the Interim Final Rule, USDA also proposed doubling the payment limit for joint operations to \$900,000, in the absence of any change in statute indicating Congressional support for this change (and potentially in violation of the statutory limit of \$450,000). In each of these decisions, USDA has considerable discretion, and multiple options it could consider in implementing the changes made in the new Farm Bill. To our knowledge, none of these alternatives have been considered in past environmental assessments of EQIP from USDA. Such an assessment of alternatives, as required under the National Environmental Policy Act, would inform the public about USDA’s decision-making analyses and would inform the agency in making these important decisions.

Each of these decisions could have a substantial impact on the environmental benefits of the program. In each case, information and data should be available that would allow USDA to evaluate the benefits, costs, and feasibility of implementing various options. Although USDA cannot control which landowners apply for EQIP contracts, USDA does have decades of experience in managing conservation programs, in understanding how changes in incentive rates

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<sup>3</sup> Executive Office of the President, *Ibid*, p. 21.

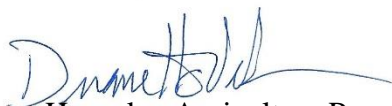
change participation, and in the environmental benefits and costs likely to result from alternatives to implementing the program.

***In summary, the Draft PEA as written does not provide adequate NEPA coverage. The Final PEA should identify a range of alternatives for implementing the discretionary decisions to be made by USDA, provide an evaluation of the likely impact of those alternatives, and give the public transparency and a reasonable opportunity to comment on the alternatives and the USDA evaluation of those alternatives.***

***As part of the environmental review, USDA should develop and assess those reasonable alternatives for each major decision needed to implement the program moving forward, reflecting the areas where the agency has been given substantial discretionary authority by Congress.***

We appreciate the opportunity to provide comments on the USDA Natural Resource Conservation Service Programmatic Environmental Assessment for the Environmental Quality Incentives Program, and the resulting Finding of No Significant Impact. The USDA has important decisions to make concerning implementation of the significant changes made by Congress to the program in the 2018 Farm Bill. This environmental assessment process under the National Environmental Policy Act should provide transparency and an opportunity for the public to comment, and it should be structured to provide valuable information to the agency as it decides how to implement those provisions. We ask you to correct these deficiencies before issuing a final EQIP Programmatic Environmental Assessment.

We would be pleased to provide further information or to discuss these comments.



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