

**Comments of the Izaak Walton League of America**  
on the U.S. Department of Agriculture Natural Resources Conservation Service  
**Programmatic Environmental Assessment of the Regional Conservation Partnership  
Program and Finding of No Significant Impact**  
March 16, 2020

We appreciate the opportunity to provide comments on the USDA Natural Resources Conservation Service Programmatic Environmental Assessment for the Regional Conservation Partnership Program, January, 2020, Docket ID 2019-0012, RIN 0578-AA70, 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 Regional Conservation Partnership Program in the 2018 Farm Bill. The Programmatic Environmental Assessment should be a document that identifies alternative approaches to the discretionary changes available in implementing the program, and 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 two alternatives, and Alternative 1 is not a viable alternative (it is based on the pre-2018 law that was changed substantially by Congress). The PEA only identifies one viable alternative, Alternative 2. Thus the PEA fails to identify a range of alternatives available to implement the changes made in the 2018 Farm Bill 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 Regional Conservation Partnership Program (RCPP) could have a significant impact on the environment, in both positive and in negative ways. Congress made substantial changes to the statutes governing RCPP in the 2018 Farm Bill, including the addition of the Conservation Reserve Program authorities and conservation activities for all RCPP projects and the addition of PL-566 authorities for the state/multi-state funding pool.

USDA has alternatives available in implementing these changes, and the Environmental Assessment should provide an evaluation of the impact of those alternatives. For example, the PEA says USDA will implement the new Conservation Reserve Program (CRP) authority for rental agreements in RCPP projects in ways that are quite different than the 10-15 year contracts traditionally used through the CRP to take marginal land out of production and plant buffer strips, filter strips, riparian forest buffers, or windbreaks, restore blocks of critical habitat, or to

restore or buffer wetlands. All of those practices could play important roles in addressing a regional resource challenge and in providing for water quality, wildlife habitat, and other benefits. Instead, USDA proposes to use the CRP authority “to compensate producers for 1-3 years of lost income during their adoption of new and financially risky cropping systems” or to offset lost income associated with donating or selling a conservation easement. That is an important discretionary decision that is not required by the 2018 Farm Bill, and if implemented it could have important impacts on the environmental outcomes. There are very foreseeable outcomes stemming directly from NRCS discretionary decisions like these, and they warrant more careful analysis by NRCS of the impacts of those alternatives and an opportunity for public input on that analysis.

Similarly, USDA is making discretionary decisions in how it implements the expanded PL-566 authority under RCPP and those deserve to be carefully analyzed with an opportunity for public input. In addition, as the Izaak Walton League of America noted in comments to USDA in February, 2019, “USDA rules should provide that USDA will assess RCPP proposals based in part on conservation outcomes, including the environmental, social, and economic impacts of the proposals, and their effectiveness in addressing the priority natural resource concern targeted in the watershed or region. USDA should require tracking and reporting of conservation outcomes for each partnership, including the use of strategies like stream monitoring and edge-of-field monitoring for water quality projects, population and habitat assessments for wildlife projects, and soil testing where soil health strategies are employed.”

The League also noted the opportunity for USDA to use the RCPP and other Farm Bill conservation programs to help farmers and ranchers adopt soil health plans, carry out soil health testing, and put in place soil health systems and practices. Although the PEA provides descriptions of many RCPP projects that include soil health as a conservation outcome, USDA does not indicate that soil health would be a priority in delivering the program. This is a discretionary decision that USDA could and should choose to make, and we believe it is one that warrants careful analysis of the relative environmental outcomes.

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 and provide for public input. By failing to develop or assess meaningful alternatives, we believe the RCPP 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>”

The PEA proposes to use the program as implemented under the 2014 Farm Bill as Alternative 1, the “No Action Alternative”. 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 RCPP 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 on page 5-6 of the Environmental Assessment, this alternative is based on the 2014 Farm Bill and USDA admits that it is not a viable alternative but intended to serve only as a baseline. Because Alternative 1 could not be legally implemented, the alternative can *only* serve as a baseline for purposes of the Environmental Assessment, it cannot be used as one of the required viable alternatives.

Alternative 2, the Proposed Action described on page 6, is the only legally implementable alternative offered. Alternative 2 includes both non-discretionary changes required by Congress (such as the increase in overall 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.

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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.

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 without identifying rulemaking alternatives 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 “Proposed Action” presented, and those alternatives should reflect the major discretionary decisions USDA can make to implement the revised program.

The Environmental Assessment does provide some very interesting and useful information on the easements and conservation practices put in place over the years from the RCPP. As impressive as the past results have been, USDA faces some important discretionary decisions in implementing the program in the future and those decisions should be the focus of the Environmental Assessment.

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 RCPP provisions are noted above. In each of these decisions, USDA has considerable discretion, and options it could consider in implementing the changes made in the new Farm Bill. 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 organizations apply for RCPP contracts nor which farmers will ultimately apply for and receive agreements, USDA does have decades of experience in managing conservation programs 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 viable 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***

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

*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 Regional Conservation Partnership 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 RCPP Programmatic Environmental Assessment.

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

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