United States Senate
WASHINGTON, DC 20510

August 1, 2019

The Honorable Sonny Perdue
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Dear Secretary Perdue:

The 2018 Farm Bill (P.L. 115-334) includes critical western drought provisions that provide funding for voluntary water conservation efforts to farmers, ranchers and the entities that serve them. We request that you immediately implement these new authorities and use them in a coordinated and flexible manner to establish a western drought initiative to address the water supply challenges in the West and sustain our agricultural economy. The Farm Bill was signed by the President on December 20, 2018 and our constituents are concerned with the delay in implementing conservation programs.

Drought is now the single largest cause of U.S. farm production losses, in recent years accounting for more than 40 percent of total crop insurance payments, averaging $4 billion annually.[1] Most western producers rely on water delivery systems that require both on and off-farm infrastructure. Substantial water is lost as it is conveyed from its source to their fields, and reductions in agricultural water use can also have environmental consequences.

The 2018 Farm Bill provides multiple new authorities for the United States Department of Agriculture (USDA) to address these natural resource challenges in a strategic fashion. The 2018 Farm Bill authorized USDA to address water supply and drought challenges at an expedited pace and watershed scale by modifying the Environmental Quality Incentives Program, the Regional Conservation Partnership Program, the Watershed Protection and Flood Control Act, and the Conservation Reserve Program. Below, we describe these new authorities and our intent in writing them, to help guide USDA implementation.

The Department has administratively established several major programs across the country to target substantial funding toward voluntary conservation efforts that address urgent natural resource concerns. Until the 2018 Farm Bill, USDA lacked the authority to effectively target a sizable investment to western agricultural producers to address water supply and drought challenges. Accordingly, we would like to now work with you – as you implement the new Farm Bill authorities - to establish a targeted, voluntary western drought initiative.

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[1] Wallander et. al (2013). The Role of Conservation Programs in Drought Risk Adaptation. USDA ERS, Report Number 148 (iii). https://www.ers.usda.gov/webdocs/publications/45066/37190_err148.pdf?v=0.

Thank you for your consideration and we look forward to working with you.

Sincerely,

Michael F. Bennet
United States Senator

Martha McSally
United States Senator

Jeffrey A. Merkley
United States Senator

Cory Gardner
United States Senator

Dianne Feinstein
United States Senator

Ron Wyden
United States Senator

Jerry Moran
United States Senator

Kyrsten Sinema
United States Senator

Tom Udall
United States Senator

Kamala D. Harris
United States Senator

Martin Heinrich
United States Senator

Cc: Jim Hubbard, Undersecretary for Natural Resources and Environment
Matt Lohr, Chief, Natural Resources Conservation Service

2018 Farm Bill Drought Provisions

1. Environmental Quality Incentives Program Sec. 2304(e) — Water Conservation or Irrigation Efficiency Practice.

Historically, EQIP assistance has only been made available for work directly on farm or directly adjacent to on-farm work. This limitation not only significantly undermined USDA's capacity to target water conservation funding to off-farm measures that can generate substantial water savings but often limited the effectiveness of on-farm EQIP expenditures. Section 2304(e) of the 2018 Farm Bill removes this limitation for a narrow class of watershed-wide projects and provides for streamlined contracting procedures to entities that may directly deliver this on- and off-farm assistance to benefit agricultural producers.

Section 2304(e) is purposefully expansive in terms of the lands that qualify for assistance and it does not limit the amount of funding that may be expended using this authority. Lands in production and adjacent lands are eligible for assistance under this provision. Notably, we provided that the authority is to be used to deliver EQIP assistance to facilitate "watershed-wide" projects — reflecting the intent that the Department adopt a broad reading of land eligibility so as to be able to address projects at this scale. A narrow definition of adjacency would inhibit the ability of the USDA to address drought challenges at a watershed-wide scale. Given that the prior law allowed USDA to expend EQIP funding on a narrow class of adjacent lands, USDA should interpret this new congressional authority and watershed-wide direction more broadly.

While Congress intended USDA to apply EQIP assistance delivered through Section 2304(e) at a watershed scale, Congress provided that such assistance should only be made available for a relatively narrow class of projects — specifically, for watershed-wide projects that will effectively conserve water, provide fish and wildlife habitat, or mitigate the environmental impact of drought. Report language further clarifies that USDA should "prioritize assistance under this authority to producers participating in efforts to stabilize water resources of state or regional significance, and prioritize cost-share practices which improve drought resiliency and productivity."

In addition, section 2304(e) explicitly provides that USDA can contract directly with States, irrigation districts or similar entities through a streamlined contracting process to implement the watershed-wide projects newly authorized to receive assistance. We expect the Department to adopt a less protracted process than the Alternative Funding Arrangement (AFA) model used in RCPP. One such model could be the process for the Watershed Protection and Flood Control Act, which involves a straightforward drafting of a scope of work and contract with a local sponsor, who then carries out or contracts out the work. This approach could decrease the burden born by local sponsors. The NRCS could also consider the federal Automated Standard Application for Payments service, which could reduce workload and improve project efficiency.

Section 2304(e) also provides direction to USDA to provide EQIP assistance for important, in-demand water conservation measures, including payments for groundwater conservation.

Section 2304(e) was extensively debated during Farm Bill deliberations, particularly in conference. The final 2018 Farm Bill rejects efforts to require that section 2304(e) be subjected to a formal rule-making, to limit the total amount of EQIP funding that might be expended through the authority, to adopt more stringent land eligibility requirements, to require that payments be provided directly to farmers, to limit the number of states that could use the authority, or to place specific adjusted gross income or payment limits on the provision. As these measures were considered and rejected by Congress, USDA should not impose them administratively.

2. Regional Conservation Partnership Program Sec. 2702 — Definitions, Watershed Act Authority, and Sec. 2401 —Watershed Act Plan Waiver; Sec. 2702 — Definitions, Eligible Land, and Sec. 2704(d) Grant Agreements.

Congress included several key modifications to the Regional Conservation Partnership Program (RCPP) that are intended to facilitate the capacity of partners to address agricultural water supply challenges on and off farm, including authorizing the use of the Watershed Protection and Flood Control Act (Watershed Act) program-wide, providing for a Watershed Act plan waiver, and authorizing a new direct RCPP grant that may address both on- and off-farm watershed scale conservation.

The Watershed Act, which provides on- and off-farm watershed health investments, was a permissible RCPP implementing authority under the 2014 Farm Bill for projects occurring within Critical Conservation Areas (CCAs). As a result, partnerships in designated CCAs were able to undertake water conservation projects at a watershed scale, holistically addressing water conservation needs. Projects using this authority, however, faced delays in project implementation due the Watershed Act's planning requirements.

The 2018 Farm Bill expanded and streamlined the use of the Watershed Act within RCPP by providing that any RCPP may use the Watershed Act as its principal implementing authority and by providing the Secretary with discretion to waive the watershed plan requirement where unnecessary or duplicative — including where environmental and cultural resource compliance activities have been completed by another federal agency. Report language describes this waiver as intended to be used "in instances where the proposed work of improvement would not require the same type of plan or analysis provided for in a P.L.-566 plan if the activity were conducted under another USDA conservation program authority, for work which is categorically excluded from more significant USDA or other Federal agency review, or where adequate planning has already been conducted." The Department should implement these Watershed Act provisions in this manner to provide a streamlined path to RCPP project development and implementation.

Congress also provided the Department with the authority to provide up to fifteen grants annually through RCPP to implement watershed-scale projects, including off-farm agricultural infrastructure projects, and projects to implement watershed, habitat, and other area restoration plans. The definition of eligible land under RCPP permits partners to deliver RCPP assistance both on lands in active agricultural production and on other lands where the conservation activities would help achieve the conservation benefits of the RCPP. This flexible definition of

eligible lands will greatly facilitate the ability of partnerships to address western agricultural resource challenges at the watershed scale, and should be implemented in this way by the Department.

3. Regional Conservation Partnership Program 2703(b)(5) — Renewals.

Few RCPP projects receive full requested funding. While some partnerships successfully reapply through subsequent rounds in order to secure funding to complete their work, the need to reapply and wait for new funding can derail partnerships and real conservation gains. Many partnerships build up substantial expertise through the experience of applying for and implementing a RCPP, and that experience can become a stranded asset as program funds are exhausted but projects may not be fully completed.

For these reasons, we determined that partners and USDA would benefit from the creation of a streamlined way to renew existing partnership agreements and expand their scope outside of the regular RCPP application process. Accordingly, RCPP now includes explicit renewal authority that allows the Secretary to "renew a partnership agreement through an expedited, noncompetitive process" and to expand the scope of such an agreement. The Department should offer such program renewals for RCPP in FY19/20, in order to facilitate project conservation objectives, to reduce NRCS workload, and to ensure the full expenditure of RCPP funds.

4. Conservation Reserve Enhancement Program (CREP) Sec. 2202(e) — Drought and Water Conservation Agreements.

Section 2202(e) authorizes the Department to enter into drought and water conservation agreements to provide payments to producers willing to significantly reduce consumptive water use. As is the current Department practice, the payment is calculated according to the irrigated rental rate for that reduction. Congress included this specific direction in Section 2202(e) in order to ensure that changes to underlying CRP rental rates provided in the new law do not impact the Department's provision of irrigated rental rates within CREP or change the current Department practice. Additionally, the provision authorizes the Department to enroll lands in a drought CREP agreement which do not meet CRP's land enrollment and eligibility criteria when the enrollment of such lands would further the purposes of the agreement. This flexibility is intended to permit the Department to enroll off-farm lands impacted by the reduction in agricultural consumptive water use and apply conservation assistance to those lands.