

DATE: January 19, 2022

TO: Washington State Conservation Commission
Brian Cochran, Habitat and Monitoring Coordinator

FROM: Mike Mandere, Acting State Executive Director
Danielle Garbe Reser, Acting State Committee *Danielle Garbe Reser*
Washington State FSA

SUBJECT: FSA Concerns Regarding SB 5665 and HB 1838

This memo is to voice the Washington State Farm Service Agency's concern regarding SB 5665 and HB 1838 (Lorraine Loomis Act) that is currently under legislative review.

After review of these bills, it is our understanding that its passage would severely impact FSA's ability to implement the Conservation Reserve Enhancement Program (CREP). According to handbook 2-CRP (rev. 6) paragraph 151D, FSA policy states that land is determined ineligible for enrollment in Conservation Reserve Program (CRP) if:

- *land on which the use of the land is either restricted through deed or other restriction before enrollment in CRP prohibiting the production of agricultural commodities, or requires any resource-conserving measures during any part of the proposed contract period*
- *land for which Tribal, State or other local laws, ordinances, or other regulations require any resources conserving or environmental protection measures or practices and the owners or operators of such land have been notified in writing of such requirements, except, such land may be eligible for enrollment in CRP if the land is:*
 - *at the time of offer, enrolled in CRP under an approved CREP agreement that was in effect on December 20, 2018, and was initially approved before January 1, 2014, including any amended or successor CREP agreement; provided, that the CRP contract under which the land is enrolled is in the final year of the contract period, and the scheduled expiration date of the current CRP contract is before the effective starting date of the new CRP contract; or*
 - *such other land in the State that the Deputy Administrator for Farm Programs (DAFP) determines is both otherwise eligible for CRP and appropriate for enrollment in CRP; and*

- *enrolled in exchange for a 25 percent reduction to the annual rental payment that would otherwise be paid for such land were no such laws, ordinances, or regulations in effect*

***Note:** Publication of Tribal, State, or other local laws, ordinances, or other regulations is considered written notification of requirements. Written notification is not limited to individualized notification to owners or operators.*

This same language can also be found within the Agency's regulation at 7 CFR Part 1410.6. As stated under these provisions, land would be determined ineligible if there are restrictions on the land use prior to enrollment in CRP or if there are Tribal, State or other local laws that require any resource conserving or environmental protection measures or practices, and the landowners have been notified. Publication of the law is considered landowner notification.

While the provisions under this policy would allow for current contracts to remain enrolled in CREP, passage of this law would prohibit any new enrollment into the program due to the state's influence of land use and the requirement of landowners to install riparian buffers on their land. This would severely encumber the producers within Washington State. Additionally, we do anticipate further issues regarding land eligibility due to the requirements of the land to meet the program's needed/feasible requirements. It is our understanding that if the buffer is required and cost shared by the state, it would be determined by FSA that federal assistance is no longer needed, thus making potential participants ineligible.

The policy under 2-CRP (rev. 6) does state that DAFP has the ability to grant approval for land to be enrolled in CRP that otherwise would be ineligible, if the participant also agrees to take a 25 percent reduction in the annual payments received. While the DAFP approval is still current policy, the current regulation was revised under publication in the Federal Register to remove the 25 percent reduction. While FSA still has the ability to approve land that would otherwise be ineligible, we would like to strongly note that this has not been accomplished by any other state thus far.

WA State FSA was not invited to be involved in any discussions as a stakeholder in this proposed bill. As such, very limited conversations have been had with DAFP regarding the likelihood of subsequent CREP projects being able to be approved if the bill is passed. So far, our interpretation of the first bullet in the aforementioned policy is correct, and we believe that the restriction of use will make all future contracts ineligible. We are aware of one other state with a similar state law and after its passage of their law, CREP signup was significantly hampered. The passage caused the Agency in that state to change the focus of the projects away from the kinds of buffers contained in the law. Regardless, if the bill is passed, we anticipate many issues with future CREP proposals in Washington State due to the land use restrictions imposed by the state in addition to the ability to meet the needed and feasible requirements as stated above.

While we strongly support the development of conservation practices in Washington State, we truly believe that stakeholders need to be involved in the discussions and development of this bill to ensure that all levels of interest are protected.

Thank you for your time and support in promoting conservation within the state of Washington.