



## MEMORANDUM

TO: Water Resources Committee and Alternates, Board of Directors and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: September 11, 2023

RE: Water Resources Committee to Consider Recommendations on Legislation /  
Board of Directors to Consider Same

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### Staff Recommendation

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#### Federal Legislation

##### Support

- Adopt a position of “Support” on S. 2636 (Bennett), Healthy Watersheds, Healthy Communities Act
- Adopt a position of “Support” on S. 2250 (Bennett)/H.R. 4902 (Caraveo), Voluntary Groundwater Conservation Act of 2023

### Summary

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#### S. 2636 (Bennett), Healthy Watersheds, Healthy Communities Act

**RECOMMENDATION: SUPPORT**

**OBJECTIVE: Improve Water Infrastructure Affecting Authority Member Agencies**

##### Summary

The legislation would amend the Natural Resources Conservation Service’s (NRCS) Watershed and Flood Prevention Operations program (also known as the “PL-566” program) to implement solutions to the natural disaster impacts of extreme drought and flooding. This bill streamlines the program’s planning and administration processes, while promoting projects that benefit the health of our waterways and the communities and wildlife that depend on them.

The Healthy Watersheds, Healthy Communities Act would:

- Make Drought Resilience an Explicit Purpose of the Program, by amending the declaration of policy to include drought as a natural resource concern.
- Consolidate Planning of One or More Subwatersheds: the Act’s statutory limitation to watersheds less than 250,000 acres has historically disadvantaged western interests seeking assistance under



the law. Consolidated planning is now allowed, so that one or more subwatersheds of 250,000 acres each may be planned together at the discretion of the sponsor of a proposed project.

- Define Irrigation Efficiency and Water Conservation, ensuring drought resilience benefits can be realized through projects, similar to flood control benefits under the Act.
- Include Irrigation Districts as a Local Organization, making them clearly eligible for assistance under the law.
- Give State Conservationists More Discretion to Oversee Watershed Plan Review, to meet state and community watershed priorities and speed planning and construction timelines. This bill shifts project assistance and oversight away from the overburdened national office in DC and to NRCS State Conservationists— allowing for more comprehensive planning and flexibility by state and local NRCS staff most knowledgeable of their watersheds and local partner projects.
- Simplify Planning Requirements for Natural Infrastructure Project Components, by reducing agency administrative expenses and giving the Secretary the flexibility to waive the requirement to estimate and assign a monetary value to fish and wildlife habitat restoration or water quality improvements in a project's Watershed Plan.
- Require Public Notification and Prioritize Projects with Multiple Benefits, by requiring the USDA to make publicly available information on project benefits and funding, and prioritize projects that provide multiple conservation and public benefits.
- Recognize Increased Material and Labor Costs and Encourage Interagency Coordination, by raising the allowable federal contribution to projects from \$25 million to \$50 million. In just the last two years alone, materials used in irrigation piping projects have increased in cost by an average of 60%. While the bill maintains current cost-share requirements, it does allow for non-USDA federal funding to go towards the local/state-match requirement to encourage projects at the watershed scale

#### Status

S. 2636 was introduced on July 27, 2023, and has been referred to the Senate Committee on Agriculture, Nutrition, and Forestry.

#### Importance to the Authority

The Watershed Protection and Flood Prevention Operations (WFPO) Program includes the Flood Prevention Operations Program (Watershed Operations) authorized by the Flood Control Act of 1944 (P.L. 78-534) and the provisions of the Watershed Protection and Flood Prevention Act of 1954 (P.L. 83- 566). It provides for cooperation between the Federal government and the States and their political subdivisions to address resource concerns due to erosion, floodwater, and sediment and provide for improved utilization of the land and water resources.

The WFPO Program provides technical and financial assistance to States, local governments and Tribes to plan and implement authorized watershed project plans for the purpose of:

- Flood Prevention
- Watershed Protection
- Public Recreation
- Public Fish and Wildlife



- Agricultural Water Management
- Municipal and Industrial Water Supply
- Water Quality Management
- Watershed Structure Rehabilitation (There is a separate program that manages rehabilitation projects)

Importantly, this program has been limited to watersheds of 250,000 acres or smaller, which has limited access of western states to the program's benefits. Additionally, the funding cap of \$25 million for projects has limited access.

Pros:

- The legislation expands upon the allowable purposes of WFPO to multibenefit projects, which should open the program to serve more purposes in the West, rather than single-purpose flood control projects in the Southeast, which is where most of the funding is currently allocated.
- The modification to allow multiple "sub-watersheds" of 250,000 acres to be combined into a single watershed project opens the applicability of this program to more regions in California, including important tributaries to the CVP and to member agency service areas.
- The increased funding cap on projects could improve the implementation of projects necessary to advance a number of member agency priorities, as well as assist in funding the alternative to the Bay-Delta Water Quality Control Plan Unimpaired flow proposal.
- This bill streamlines the program's planning and administration processes, while promoting projects that benefit the health of our waterways and the communities and wildlife that depend on them.

Cons:

- None identified at this time.
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[S. 2250 \(Bennett\)/H.R. 4902 \(Caraveo\), Voluntary Groundwater Conservation Act of 2023](#)

**RECOMMENDATION: SUPPORT**

**OBJECTIVE: Improve Water Infrastructure Affecting Authority Member Agencies**

Summary

The legislation would amend the Natural Resources Conservation Service's (NRCS) Agricultural Conservation Easement Program (ACEP) to establish a voluntary groundwater conservation easement program within ACEP. The program would be used to assist in the purchase of groundwater conservation easements that would advance local, regional, or state groundwater management to promote the conservation and reduction in groundwater use, including the recharge of groundwater aquifers, while allowing for continued agricultural production and to promote renewable energy in the face of long-term declines in groundwater availability. Easements must be for a minimum of 3 years, with an option to extend further based on conditions.



### Status

S. 2250 was introduced on July 11, 2023, and has been referred to the Senate Committee on Agriculture, Nutrition, and Forestry.

H.R. 4902 was introduced on July 26, 2023, and has been referred to the House Committee on Agriculture.

### Importance to the Authority

The Agricultural Conservation Easement Program (ACEP) protects the agricultural viability and related conservation values of eligible land by limiting nonagricultural uses which negatively affect agricultural uses and conservation values, protect grazing uses and related conservation values by restoring or conserving eligible grazing land, and protecting and restoring and enhancing wetlands on eligible land.

ACEP has two components:

- [Agricultural Land Easements](#) (ALE) help private and tribal landowners, land trusts, and other entities such as state and local governments protect croplands and grasslands on working farms and ranches by limiting non-agricultural uses of the land through conservation easements.
- [Wetland Reserve Easements](#) (WRE) help private and tribal landowners protect, restore and enhance wetlands which have been previously degraded due to agricultural uses.

Additionally, through ACEP, USDA offers the [Wetland Reserve Enhancement Partnership](#) (WREP), a voluntary program through which NRCS enters into agreements with eligible partners to leverage resources to carry out high priority wetland protection, restoration, and enhancement and to improve wildlife habitat.

This legislation would provide for ACEP to be expanded to provide funding through conservation easements for groundwater pumping reductions required by SGMA implementation, as long as the easements were consistent with the underlying goals of the program.

Pros:

- The legislation expands upon the allowable purposes of ACEP to fund groundwater conservation easements, which could assist growers in necessary land transitions as a result of implementation of the SGMA.

Cons:

- Could increase pressure on limited funding pools for other conservation title activities funded through ACEP.
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## Guidelines for Taking Positions on Legislation

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A number of controversial bills are introduced each year in the Congress and in the California Legislature. It is important to understand how the Authority takes positions on legislation.

### Policy

By Agenda Item 9, dated December 8, 2022, the Board adopted the Fiscal Year 2024 Objectives.



## Water Authority's Positions on Legislation

The Water Authority takes positions on legislation that, if enacted, would impact Water Authority members, consistent with Water Authority Board adopted Goals and Objectives. The Water Authority may take the following positions on legislation: Oppose, Support, Oppose Unless Amended, Support if Amended, Not Favor, Favor, Not Favor Unless Amended, Favor if Amended, and Watch (neutral). The Water Authority's staff and consultants testify and advocate with legislators and staff through meetings and member agency contacts on all positions except Watch, Favor and Not Favor. For Favor and Not Favor positions, written communication of the Water Authority's position is provided to the legislator. Nothing in this section should be read to preclude the Executive Director or his or her delegee from taking an informal support or informal oppose position on behalf of the Water Authority that is consistent with adopted legislative or policy objectives, or to preclude the Executive Director from communicating a position on emergency legislation after obtaining the concurrence of the Chair, or the Chair's designee, provided that the Executive Director informs the Board regarding such positions on emergency legislation no later than the next regularly scheduled Board meeting.

## Amendment Development Process

If the Water Authority takes an Oppose Unless Amended or Support if Amended position, the Water Authority will typically discuss the concepts for the amendments at the meeting. Then Water Authority staff, in consultation with Committee and/or Board Members as needed, will develop the amendments after the meeting.

## Information Sharing

To provide adequate information to the entire Water Authority membership, the Water Authority provides legislative updates, posts positions and other information on our website, and sends out advisories and alerts on key legislation.

The Water Authority's legislative department is available to provide specific information on bills on request and Board Members are encouraged to communicate Water Authority positions on priority legislation in meetings with legislative staff, consistent with Water Authority policy. The Water Authority's Water Policy Director appreciates being informed by Water Authority members of positions taken by Water Authority members on legislation.

# **BILL TEXT**

118TH CONGRESS  
1ST SESSION

# S. 2636

To amend the Watershed Protection and Flood Prevention Act to improve that Act, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 27, 2023

Mr. BENNET (for himself, Mrs. FISCHER, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

To amend the Watershed Protection and Flood Prevention Act to improve that Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Healthy Watersheds,  
5 Healthy Communities Act of 2023”.

6 **SEC. 2. SHORT TITLE; FINDINGS; DECLARATION OF POLICY.**

7 The first section of the Watershed Protection and  
8 Flood Prevention Act (16 U.S.C. 1001) is amended to  
9 read as follows:

1 **“SECTION 1. SHORT TITLE; FINDINGS; DECLARATION OF**  
2 **POLICY.**

3 “(a) **SHORT TITLE.**—This Act may be cited as the  
4 ‘Watershed Protection and Flood Prevention Act’.

5 “(b) **FINDINGS.**—Congress finds that erosion, flood-  
6 water, drought, and sediment damages in the watersheds  
7 of the rivers and streams of the United States cause loss  
8 of life, declines in agricultural production, harm to fish,  
9 birds, wildlife, and recreation opportunities, and damage  
10 to property, thereby constituting a menace to the national  
11 welfare.

12 “(c) **SENSE OF CONGRESS.**—It is the sense of Con-  
13 gress that the Federal Government should cooperate with  
14 States and political subdivisions of States, Tribal organi-  
15 zations described in section 2(2)(C), insular areas (as de-  
16 fined in section 1404 of the National Agricultural Re-  
17 search, Extension, and Teaching Policy Act of 1977 (7  
18 U.S.C. 3103)), soil or water conservation districts, flood  
19 prevention or control districts, irrigation districts or simi-  
20 lar entities, nonprofit organizations, and other local public  
21 agencies for the purposes of—

22 “(1) preventing the damages described in sub-  
23 section (b);

24 “(2) furthering the conservation, development,  
25 utilization, and disposal of water, and the conserva-  
26 tion and utilization of land; and



1           “(3) thereby preserving, protecting, and improv-  
2           ing land and water resources and the quality of the  
3           environment.”.

4 **SEC. 3. DEFINITIONS.**

5           Section 2 of the Watershed Protection and Flood  
6           Prevention Act (16 U.S.C. 1002) is amended to read as  
7           follows:

8 **“SEC. 2. DEFINITIONS.**

9           “In this Act:

10           “(1) IRRIGATION EFFICIENCY.—The term ‘irri-  
11           gation efficiency’ means a reduction in the quantity  
12           of non-consumed water diverted at a source for irri-  
13           gation purposes, consistent with State water law.

14           “(2) LOCAL ORGANIZATION.—The term ‘local  
15           organization’ means—

16           “(A)(i) any State, political subdivision of a  
17           State, soil or water conservation district, flood  
18           prevention or control district, or combination  
19           thereof; or

20           “(ii) any other governmental agency having  
21           authority under State law to carry out, main-  
22           tain, and operate a work of improvement;

23           “(B) any irrigation district or reservoir  
24           company, water users’ association, canal com-  
25           pany, ditch association, acequia, or similar enti-

1 ty, or nongovernmental organization that is not  
2 being operated for profit, with—

3 “(i) the capacity to engage in the  
4 planning or implementation of land treat-  
5 ment and related conservation measures;  
6 or

7 “(ii) the authority to construct and  
8 maintain structural measures; or

9 “(C) any Indian Tribe or Tribal organiza-  
10 tion (as those terms are defined in section 4 of  
11 the Indian Self-Determination and Education  
12 Assistance Act (25 U.S.C. 5304)) having au-  
13 thority under Federal, State, or Indian Tribal  
14 law to carry out, maintain, and operate a work  
15 of improvement.

16 “(3) MULTIBENEFIT WORK OF IMPROVE-  
17 MENT.—The term ‘multibenefit work of improve-  
18 ment’ means a work of improvement, including irri-  
19 gation efficiency, flood-damage reduction, water  
20 management, or watershed protection, that provides  
21 2 or more of the following public benefits:

22 “(A) Improvement in the condition of a  
23 natural feature that increases fish or wildlife  
24 habitat, reduces drought impact, or reduces  
25 flood-risk.

1                   “(B) Improvement in water quality.

2                   “(C) Water conservation.

3                   “(D) Improvement to instream flow.

4                   “(E) Enhanced fish passage or reduction  
5                   in fish entrainment.

6                   “(F) Permanent protection of a natural  
7                   feature.

8                   “(G) Off-channel renewable energy produc-  
9                   tion.

10                  “(4) NATURAL FEATURE.—The term ‘natural  
11                  feature’ means a feature that is created through the  
12                  action of physical, geological, biological, and natural  
13                  chemical processes over time.

14                  “(5) SECRETARY.—The term ‘Secretary’ means  
15                  the Secretary of Agriculture.

16                  “(6) WATER CONSERVATION.—The term ‘water  
17                  conservation’ means a reduction in total annual con-  
18                  sumptive water use compared to total annual con-  
19                  sumptive water use before a work of improvement is  
20                  carried out under this Act.

21                  “(7) WATER MANAGEMENT.—The term ‘water  
22                  management’ means any project or activity carried  
23                  out to increase the efficiency of water use, transfer,  
24                  diversion, or conveyance.

25                  “(8) WORK OF IMPROVEMENT.—

1           “(A) IN GENERAL.—The term ‘work of im-  
2           provement’ means any undertaking carried out  
3           in a watershed or subwatershed area not ex-  
4           ceeding 250,000 acres (including on Federal  
5           land necessary to accomplish the purposes of  
6           the undertaking) for—

7                   “(i) flood prevention (including struc-  
8                   tural and land treatment measures);

9                   “(ii) the conservation, development,  
10                  utilization, and disposal of water; or

11                  “(iii) the conservation and proper uti-  
12                  lization of land.

13           “(B) EXCLUSION.—The term ‘work of im-  
14           provement’ does not include any single struc-  
15           ture that provides—

16                   “(i) more than 12,500 acre-feet of  
17                   floodwater detention capacity; and

18                   “(ii) more than 25,000 acre-feet of  
19                   total capacity.

20           “(C) REQUIREMENT FOR AGRICULTURE OR  
21           CONSERVATION BENEFITS.—Each undertaking  
22           described in subparagraph (A) shall contain  
23           benefits directly related to agriculture or con-  
24           servation, including communities in rural areas  
25           (as defined in section 343(a) of the Consoli-

1           dated Farm and Rural Development Act (7  
2           U.S.C. 1991(a))), that account for at least 20  
3           percent of the total benefits of the undertaking.

4           “(D) CONSOLIDATED PLANNING.—1 or  
5           more subwatersheds, when the subwatersheds  
6           are components of a larger watershed, may be  
7           planned together at the discretion of the local  
8           organization sponsoring the applicable under-  
9           taking.”.

10 **SEC. 4. ASSISTANCE TO LOCAL ORGANIZATIONS.**

11           Section 3 of the Watershed Protection and Flood  
12           Prevention Act (16 U.S.C. 1003) is amended—

13           (1) by redesignating subsection (b) as sub-  
14           section (e);

15           (2) in subsection (a)(6), in the first sentence,  
16           by striking “occupiers, individually” and inserting  
17           the following: “occupiers in accordance with sub-  
18           section (b).

19           “(b) AGREEMENTS WITH LANDOWNERS, OPERA-  
20           TORS, AND OCCUPIERS.—

21           “(1) IN GENERAL.—The Secretary may enter  
22           into agreements under subsection (a)(6) with land-  
23           owners, operators, and occupiers, individually”;

24           (3) in subsection (b) (as so designated)—

1 (A) by striking “supplemented. Applica-  
2 tions” and inserting the following: “supple-  
3 mented.

4 “(2) APPLICATIONS.—Applications”;

5 (B) in paragraph (2) (as so designated)—

6 (i) in the first sentence, by striking  
7 “such conservation plans” and inserting  
8 “conservation plans described in paragraph  
9 (1)”; and

10 (ii) by striking “such district. In re-  
11 turn” and all that follows through “inter-  
12 est. The portion” and inserting the fol-  
13 lowing: “that district.

14 “(3) COST SHARING.—

15 “(A) IN GENERAL.—The Secretary may  
16 agree to share the costs of carrying out a work  
17 of improvement, or specific practices and meas-  
18 ures described in such an agreement, if the Sec-  
19 retary determines that cost sharing is appro-  
20 priate and in the public interest.”;

21 “(B) PORTION OF COSTS.—The portion”;

22 and

23 (iii) in subparagraph (B) (as so des-  
24 ignated)—

1 (I) by striking “programs. The  
2 Secretary” and inserting the fol-  
3 lowing: “programs.

4 “(4) TERMINATION; MODIFICATIONS.—The Sec-  
5 retary”;

6 (C) in paragraph (4) (as so designated)—

7 (i) in the first sentence, by striking  
8 “hereunder, as he” and inserting “under  
9 this subsection, as the Secretary”; and

10 (ii) by striking “herein. Notwith-  
11 standing” and inserting the following:  
12 “under this subsection.

13 “(5) PRESERVATION OR SURRENDER OF HIS-  
14 TORY.—Notwithstanding”; and

15 (D) in paragraph (5) (as so designated)—

16 (i) by striking “he” and inserting “the  
17 Secretary”;

18 (ii) by striking “paragraph” and in-  
19 serting “subsection”;

20 (iii) by striking “hereunder for (1)  
21 preservation” and inserting the following:  
22 “under this paragraph for—

23 “(A) preservation”; and

24 (iv) in subparagraph (A) (as so des-  
25 igned), by striking “crop; or (2) sur-

1 render” and inserting the following: “crop;

2 or

3 “(B) surrender”;

4 (4) by inserting after subsection (b) (as so des-  
5 ignated) the following:

6 “(c) DELEGATION OF AUTHORITIES.—The Secretary  
7 shall delegate final decision-making authority to the State  
8 Conservationist, or the agency having that responsibility,  
9 of the State in which the work of improvement is located  
10 for the determination of when the watershed plan for a  
11 work of improvement shall be released for final public  
12 comment.

13 “(d) DEADLINE FOR APPROVAL OR DISAPPROVAL.—

14 “(1) IN GENERAL.—Subject to paragraph (2),  
15 not later than 45 days after the date on which an  
16 application for a work of improvement is submitted  
17 to the Secretary, the Secretary shall approve or dis-  
18 approve the application.

19 “(2) EXTENSIONS.—The Secretary may extend  
20 the deadline described in paragraph (1) by 45 days,  
21 if necessary.”;

22 (5) in subsection (e) (as so redesignated)—

23 (A) in the matter preceding paragraph

24 (1)—



1 (i) by inserting “or the delegated au-  
2 thority under subsection (c)” after “The  
3 Secretary”; and

4 (ii) by inserting “or the delegated au-  
5 thority” after “if the Secretary”; and

6 (B) in paragraph (2), by striking “section  
7 4” and inserting “section 7”; and

8 (6) by adding at the end the following:

9 “(f) APPROVAL OF PLANS THAT IMPROVE THE CON-  
10 DITION OF A NATURAL FEATURE.—Notwithstanding sub-  
11 section (a)(3), the Secretary may approve a plan for a  
12 multibenefit work of improvement, regardless of the ratio  
13 of costs to benefits of the multibenefit work of improve-  
14 ment.

15 “(g) GUARANTEE OF FUNDING FOR CERTAIN CON-  
16 STRUCTION MATERIALS.—

17 “(1) IN GENERAL.—Except as provided in para-  
18 graph (2), the Secretary may approve funding under  
19 a work of improvement for construction materials  
20 for pipes to convey water if the Secretary determines  
21 that the construction materials—

22 “(A) are fully recyclable;

23 “(B) maintain structural integrity for not  
24 less than 100 years; and

1           “(C) are capable of being manufactured  
2           on-site.

3           “(2) CONSTRUCTION MATERIALS WITH LESS  
4           THAN 100-YEAR STRUCTURAL INTEGRITY.—The Sec-  
5           retary, at the election of a project sponsor and with  
6           the recommendation of the applicable State Con-  
7           servationist of the project sponsor, may approve  
8           funding under a work of improvement for construc-  
9           tion materials for pipes to convey water that do not  
10          meet the criteria described in subparagraphs (A)  
11          through (C) of paragraph (1).”.

12 **SEC. 5. NOTIFICATION REQUIREMENT.**

13          Section 4 of the Watershed Protection and Flood  
14          Prevention Act (16 U.S.C. 1004) is amended to read as  
15          follows:

16 **“SEC. 4. NOTIFICATION REQUIREMENT.**

17          “(a) IN GENERAL.—

18                 “(1) APPROVAL BY SECRETARY REQUIRED.—  
19                 No amounts shall be provided under this Act for any  
20                 plan for a work of improvement involving an esti-  
21                 mated Federal contribution to construction costs in  
22                 excess of \$50,000,000, or that includes any struc-  
23                 ture that provides more than 2,500 acre-feet of total  
24                 capacity, unless the Secretary has approved the work  
25                 of improvement.

1           “(2) NOTICE.—Except in the case of a flood  
2 prevention project described in subsection (b), not  
3 less than 60 days before approving a plan described  
4 in paragraph (1), the Secretary shall provide to the  
5 Committee on Agriculture, Nutrition, and Forestry  
6 of the Senate and the Committee on Agriculture of  
7 the House of Representatives a notice of the ap-  
8 proval, including a description of the justification for  
9 the approval and a copy of the plan.

10           “(b) FLOOD PREVENTION PROJECTS.—

11           “(1) PROJECTS LESS THAN 4,000 ACRE-FEET OF  
12 CAPACITY.—In the case of any plan for a flood pre-  
13 vention project under this Act involving no single  
14 structure providing more than 4,000 acre-feet of  
15 total capacity, not less than 60 days before approv-  
16 ing a plan described in subsection (a)(1), the Sec-  
17 retary shall provide to the Committee on Agri-  
18 culture, Nutrition, and Forestry of the Senate and  
19 the Committee on Agriculture of the House of Rep-  
20 resentatives a notice of the approval, including a de-  
21 scription of the justification for the approval and a  
22 copy of the plan.

23           “(2) PROJECTS MORE THAN 4,000 ACRE-FEET  
24 OF CAPACITY.—In the case of any plan for a flood  
25 prevention project under this Act involving any sin-

1       gle structure providing more than 4,000 acre-feet of  
2       total capacity, not less than 60 days before approv-  
3       ing a plan described in subsection (a)(1), the Sec-  
4       retary shall provide to the Committee on Environ-  
5       ment and Public Works of the Senate and the Com-  
6       mittee on Transportation and Infrastructure of the  
7       House of Representatives a notice of the approval,  
8       including a description of the justification for the  
9       approval and a copy of the plan.

10       “(c) WATERSHED OR SUBWATERSHED AREAS.—If  
11       the estimated Federal contribution to the construction  
12       cost of works of improvement in the plan for any water-  
13       shed or subwatershed area exceeds \$50,000,000 or in-  
14       cludes any structure that provides more than 2,500 acre-  
15       feet of total capacity, the Secretary shall provide a copy  
16       of the plan and a justification for the plan to—

17               “(1) the Committee on Agriculture, Nutrition,  
18               and Forestry of the Senate and the Committee on  
19               Agriculture of the House of Representatives, if the  
20               plan includes no single structure providing more  
21               than 4,000 acre-feet of total capacity; or

22               “(2) the Committee on Environment and Public  
23               Works of the Senate and the Committee on Trans-  
24               portation and Infrastructure of the House of Rep-  
25               resentatives, if the plan includes any single structure

1 providing more than 4,000 acre-feet of total capac-  
2 ity.”.

3 **SEC. 6. MULTIBENEFIT WORK OF IMPROVEMENT ALLOCA-**  
4 **TION.**

5 Section 5 of the Watershed Protection and Flood  
6 Prevention Act (16 U.S.C. 1005) is amended to read as  
7 follows:

8 **“SEC. 5. MULTIBENEFIT WORK OF IMPROVEMENT ALLOCA-**  
9 **TION.**

10 “The Secretary shall allocate not less than 50 percent  
11 of the total amount made available under this Act for each  
12 fiscal year for the planning, design, or construction of  
13 multibenefit works of improvement.”.

14 **SEC. 7. REPEALS; REDESIGNATIONS.**

15 (a) REPEALS.—Sections 9 and 11 of the Watershed  
16 Protection and Flood Prevention Act (16 U.S.C. 1006b;  
17 16 U.S.C. 1001 note; 68 Stat. 668; 70 Stat. 1090) are  
18 repealed.

19 (b) REDESIGNATIONS.—The Watershed Protection  
20 and Flood Prevention Act is amended by redesignating  
21 sections 3A, 6, 7, 8, 12, 13, 14, and 15 (16 U.S.C. 1003a,  
22 1006; 68 Stat. 668; 16 U.S.C. 1006a, 1008, 1010, 1012,  
23 1012a) as sections 6, 9, 11, 12, 13, 14, 15, and 16, respec-  
24 tively.

25 (c) CONFORMING AMENDMENTS.—

1           (1) Section 515(b)(8)(B) of the Surface Mining  
2 Control and Reclamation Act of 1977 (30 U.S.C.  
3 1265(b)(8)(B)) is amended by striking “Public Law  
4 83–566 (16 U.S.C. 1006)” and inserting “section 9  
5 of the Watershed Protection and Flood Prevention  
6 Act”.

7           (2) Section 1211(a)(3)(D) of the Food Security  
8 Act of 1985 (16 U.S.C. 3811(a)(3)(D)) is amend-  
9 ed—

10                   (A) by striking “or 8”;

11                   (B) by striking “and 1006a”; and

12                   (C) by inserting “or section 12 of that  
13 Act” before the period at the end.

14           (3) Section 1221(b)(3)(D) of the Food Security  
15 Act of 1985 (16 U.S.C. 3821(b)(3)(D)) is amend-  
16 ed—

17                   (A) by striking “or 8”;

18                   (B) by striking “and 1006a”; and

19                   (C) by inserting “or section 12 of that  
20 Act” before the period at the end.

21           (4) Section 1271A(1)(F) of the Food Security  
22 Act of 1985 (16 U.S.C. 3871a(1)(F)) is amended by  
23 striking “section 14 (16 U.S.C. 1012) of that Act”  
24 and inserting “section 15 of that Act”.

1           (5) Section 10 of the Watershed Protection and  
2 Flood Prevention Act (16 U.S.C. 1007) is amended,  
3 in the second sentence, by striking “provisions of  
4 section 3 or clause (a) of section 8 of this Act” and  
5 inserting “section 3 or subsection (a) of the first  
6 sentence of section 12”.

7 **SEC. 8. COST SHARE ASSISTANCE.**

8           Section 6 of the Watershed Protection and Flood  
9 Prevention Act (16 U.S.C. 1001 et seq.) (as redesignated  
10 by section 7(b)) is amended—

11           (1) in subsection (a), by inserting “, as deter-  
12 mined by the Secretary,” after “assistance”; and

13           (2) by adding at the end the following:

14           “(c) TREATMENT OF OTHER FEDERAL FUNDS FOR  
15 WORKS OF IMPROVEMENT.—Any funds provided for a  
16 work of improvement through any Federal department or  
17 agency other than the Department of Agriculture shall be  
18 considered to be part of the non-Federal share of the cost  
19 of the work of improvement provided by the sponsor of  
20 the work of improvement.”.

21 **SEC. 9. CONDITIONS FOR FEDERAL ASSISTANCE.**

22           The Watershed Protection and Flood Prevention Act  
23 (16 U.S.C. 1001 et seq.) is amended by inserting after  
24 section 6 (as redesignated by section 7(b)) the following:

1 **“SEC. 7. CONDITIONS FOR FEDERAL ASSISTANCE.**

2       “(a) IN GENERAL.—The Secretary shall require, as  
3 a condition of providing Federal assistance for the instal-  
4 lation of a work of improvement, that a local organization  
5 sponsoring the work of improvement shall—

6           “(1) acquire, or, with respect to interests in  
7 land to be acquired by condemnation, provide assur-  
8 ances satisfactory to the Secretary that they will ac-  
9 quire, without cost to the Federal Government from  
10 funds appropriated for the purposes of this Act (ex-  
11 cept as provided in subsection (b)), such land, ease-  
12 ments, or rights-of-way as will be needed in connec-  
13 tion with works of improvement installed with Fed-  
14 eral assistance;

15           “(2) make arrangements satisfactory to the  
16 Secretary for defraying costs of operating and main-  
17 taining such works of improvement, in accordance  
18 with regulations presented by the Secretary;

19           “(3) acquire, or provide assurance that land-  
20 owners or water users have acquired, such water  
21 rights, pursuant to State law, as may be needed in  
22 the installation and operation of the work of im-  
23 provement;

24           “(4) obtain agreements to carry out rec-  
25 ommended soil conservation measures and proper  
26 farm plans from owners of not less than 50 percent



1 of the land situated in the drainage area above each  
2 retention reservoir to be installed with Federal as-  
3 sistance; and

4 “(5) submit a plan of repayment satisfactory to  
5 the Secretary for any loan or advancement made  
6 under section 12.

7 “(b) COST SHARE OR ADVANCE PAYMENTS FOR CER-  
8 TAIN ACTIVITIES.—

9 “(1) PUBLIC FISH AND WILDLIFE OR REC-  
10 REATIONAL DEVELOPMENT.—

11 “(A) IN GENERAL.—If a local organization  
12 agrees to operate and maintain any reservoir or  
13 other area included in a plan for public fish and  
14 wildlife or recreational development, the Sec-  
15 retary shall not bear more than 50 percent of  
16 the costs of—

17 “(i) the land, easements, or rights-of-  
18 way acquired or to be acquired by the local  
19 organization for such reservoir or other  
20 area; and

21 “(ii) minimum basic facilities needed  
22 for public health and safety, access to, and  
23 use of such reservoir or other area for such  
24 purposes.

25 “(B) RECREATIONAL DEVELOPMENT.—

1           “(i) CONDITIONS.—The Secretary  
2           may participate in recreational develop-  
3           ment in any watershed project under sub-  
4           paragraph (A) only to the extent that the  
5           need for the recreational development is  
6           demonstrated in accordance with standards  
7           established by the Secretary—

8                   “(I) taking into account the an-  
9                   ticipated man-days of use of the pro-  
10                  jected recreational development; and

11                  “(II) giving consideration to the  
12                  availability within the region of exist-  
13                  ing water-based outdoor recreational  
14                  developments.

15           “(ii) LIMITATIONS.—The Secretary  
16           may participate in—

17                   “(I) not more than 1 recreational  
18                   development in a watershed project  
19                   containing less than 75,000 acres;

20                   “(II) not more than 2 rec-  
21                   reational developments in a watershed  
22                   project containing—

23                           “(aa) not less than 75,000  
24                           acres; and

1                   “(bb) not more than  
2                   150,000 acres; or

3                   “(III) not more than 3 rec-  
4                   reational developments in a watershed  
5                   project containing more than 150,000  
6                   acres.

7                   “(2) ADVANCE PAYMENTS.—If the Secretary  
8                   and a local organization have agreed that the imme-  
9                   diate acquisition by the local organization of land,  
10                  easements, or rights-of-way is advisable for the pres-  
11                  ervation of sites for works of improvement included  
12                  in a plan from encroachment by residential, commer-  
13                  cial, industrial, or other development—

14                  “(A) the Secretary may advance to the  
15                  local organization from funds appropriated for  
16                  construction of works of improvement the  
17                  amounts required for the acquisition of such  
18                  land, easements, or rights-of-way; and

19                  “(B) except where such costs are to be  
20                  borne by the Secretary, such advance shall be  
21                  repaid by the local organization, with interest,  
22                  prior to construction of the works of improve-  
23                  ment, for credit to such construction funds.

24                  “(3) MITIGATION OF FISH AND WILDLIFE HABI-  
25                  TAT LOSSES.—

1           “(A) IN GENERAL.—The Secretary may  
2           bear an amount not to exceed 50 percent of the  
3           costs of the land, easements, or rights-of-way  
4           acquired or to be acquired by a local organiza-  
5           tion for mitigation of fish and wildlife habitat  
6           losses.

7           “(B) OUTSIDE BOUNDARIES.—An acquisi-  
8           tion under subparagraph (A) shall not be lim-  
9           ited to the confines of the watershed project  
10          boundaries.

11         “(c) FUTURE DEMANDS.—

12           “(1) IN GENERAL.—The Secretary shall re-  
13           quire, as a condition of providing Federal assistance  
14           for the installation of works of improvement, that—

15           “(A) the cost of water storage to meet fu-  
16           ture demands may not exceed 30 percent of the  
17           total estimated cost of the reservoir structure;  
18           and

19           “(B) the local organization shall give rea-  
20           sonable assurances, and provide evidence, that  
21           such demands for the use of such storage will  
22           be made within a period of time which will per-  
23           mit repayment within the life of the reservoir  
24           structure of the cost of such storage.

1           “(2) ASSURANCES.—The Secretary shall deter-  
2 mine prior to initiation of construction or modifica-  
3 tion of any reservoir structure including water sup-  
4 ply storage that there are adequate assurances by  
5 the local organization or by an agency of the State  
6 having authority to give such assurances, that—

7           “(A) the Secretary will be reimbursed the  
8 cost of water supply storage for anticipated fu-  
9 ture demands; and

10           “(B) the local organization will pay not  
11 less than 50 percent of the cost of storage for  
12 present water supply demands.

13           “(3) REPAYMENT.—

14           “(A) IN GENERAL.—The cost to be borne  
15 by the local organization for anticipated future  
16 demands may be repaid within the life of the  
17 reservoir structure but in no event to exceed 50  
18 years after the reservoir structure is first used  
19 for the storage of water for anticipated future  
20 water supply demands, except that—

21           “(i) no reimbursement of the cost of  
22 such water supply storage for anticipated  
23 future demands need be made until such  
24 supply is first used; and

1           “(ii) no interest shall be charged on  
2           the cost of such water supply storage for  
3           anticipated future demands until such sup-  
4           ply is first used, but in no case shall the  
5           interest-free period exceed 10 years.

6           “(B) INTEREST RATE.—The interest rate  
7           used for purposes of computing the interest on  
8           the unpaid balance under subparagraph (A)(ii)  
9           shall be determined in accordance with section  
10          12.

11          “(d) CONDITION OF FUNDS.—Nothing in this Act  
12          shall be construed to supersede or in any manner affect  
13          or conflict with State water law, Federal water law, inter-  
14          state compacts, or treaty obligations.”.

15          **SEC. 10. CONTRACT SERVICES.**

16          The Watershed Protection and Flood Prevention Act  
17          (16 U.S.C. 1001 et seq.) is amended by inserting after  
18          section 7 (as added by section 9) the following:

19          **“SEC. 8. CONTRACT SERVICES.**

20                 “(a) IN GENERAL.—

21                         “(1) SECURING SERVICES.—A local organiza-  
22                         tion may secure services, including for the planning,  
23                         design, preparation of contracts and specifications,  
24                         awarding of contracts, and supervision of construc-  
25                         tion, in connection with works of improvement, if—

1           “(A) the Secretary and the interested local  
2 organization have agreed on a plan for the  
3 works of improvement;

4           “(B) the Secretary, in consultation with  
5 the delegated authority under section 3(e), has  
6 determined that the benefits exceed the costs,  
7 except that the benefits of fish and wildlife  
8 habitat or water quality improvement shall not  
9 be required to be monetized to be considered  
10 against costs;

11           “(C) the local organization has met the re-  
12 quirements for participation in carrying out the  
13 works of improvement described in section 7;  
14 and

15           “(D) the Secretary, in consultation with  
16 the delegated authority under section 3(e), has  
17 determined that the services are satisfactory,  
18 based on the works of improvement.

19           “(2) SERVICES PROVIDED BY THE SEC-  
20 RETARY.—The Secretary may provide services under  
21 paragraph (1) on request by the local organization,  
22 with priority given to multibenefit works of improve-  
23 ment.

24           “(3) REIMBURSEMENT.—If the local organiza-  
25 tion elects to secure services under paragraph (1),

1 the Secretary shall reimburse the local organization  
2 for the costs charged for work in an amount not to  
3 exceed the amount agreed upon in the plan for  
4 works of improvement or any modification thereof.

5 “(4) ADVANCE PAYMENTS.—

6 “(A) IN GENERAL.—The Secretary may  
7 advance such amounts as may be necessary to  
8 pay for services described in paragraph (1).

9 “(B) LIMITATIONS.—Advances under sub-  
10 paragraph (A) shall not exceed—

11 “(i) in the case of a work of improve-  
12 ment for flood prevention or drought resil-  
13 iency, 5 percent of the estimated installa-  
14 tion cost of the work of improvement; and

15 “(ii) in the case of a work of improve-  
16 ment the primary purpose of which is fish  
17 and wildlife habitat or water quality im-  
18 provement, 75 percent of the estimated in-  
19 stallation cost of the work of improvement.

20 “(b) CONSTRUCTION OF STRUCTURES.—

21 “(1) IN GENERAL.—Except as to the installa-  
22 tion of works of improvement on Federal land and  
23 as provided in paragraph (2), the Secretary shall not  
24 construct or enter into any contract for the con-  
25 struction of any structure.



1           “(2) REQUESTS OF LOCAL ORGANIZATION.—  
2           The Secretary may enter into a contract for the con-  
3           struction of structures on request of a local organi-  
4           zation.”.

5 **SEC. 11. MAXIMUM LOAN AMOUNT.**

6           Section 12 of the Watershed Protection and Flood  
7           Prevention Act (16 U.S.C. 1001 et seq.) (as redesignated  
8           by section 7(b)) is amended, in the third sentence, by  
9           striking “five million dollars” and inserting  
10          “\$10,000,000”.

11 **SEC. 12. DATA.**

12          Section 14 of the Watershed Protection and Flood  
13          Prevention Act (16 U.S.C. 1001 et seq.) (as redesignated  
14          by section 7(b)) is amended—

15                 (1) in the matter preceding paragraph (1), by  
16                 striking “collect and maintain” and inserting “col-  
17                 lect, maintain, and publish on the website of the De-  
18                 partment of Agriculture”;

19                 (2) in paragraph (1), by striking “control and  
20                 conservation” and inserting “control, conservation,  
21                 and drought resilience”; and

22                 (3) by striking paragraph (2) and inserting the  
23                 following:

24                         “(2) expenditures for—

1           “(A) improvement in the condition of a  
2 natural feature that increases fish or wildlife  
3 habitat, reduces drought impact, or reduces  
4 flood-risk;

5           “(B) improvement in water quality;

6           “(C) water conservation;

7           “(D) improvement to instream flow;

8           “(E) enhanced fish passage or reduction in  
9 fish entrainment;

10          “(F) permanent protection of a natural  
11 feature; and

12          “(G) off-channel renewable energy produc-  
13 tion.”.

○

118TH CONGRESS  
1ST SESSION

# S. 2250

To amend the Food Security Act of 1985 to establish a groundwater conservation easement program, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 11, 2023

Mr. BENNET (for himself, Mr. MORAN, and Mr. HEINRICH) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

To amend the Food Security Act of 1985 to establish a groundwater conservation easement program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Voluntary Ground-  
5 water Conservation Act of 2023”.

1 **SEC. 2. GROUNDWATER CONSERVATION EASEMENT PRO-**  
 2 **GRAM.**

3 (a) AGRICULTURAL CONSERVATION EASEMENT PRO-  
 4 GRAM PURPOSES.—Section 1265(b) of the Food Security  
 5 Act of 1985 (16 U.S.C. 3865(b)) is amended—

6 (1) in paragraph (3), by striking “and” at the  
 7 end;

8 (2) in paragraph (4), by striking the period at  
 9 the end and inserting “; and”; and

10 (3) by adding at the end the following:

11 “(5) facilitate reductions in groundwater con-  
 12 sumption to support local, regional, or State ground-  
 13 water management.”.

14 (b) ESTABLISHMENT.—Subtitle H of title XII of the  
 15 Food Security Act of 1985 (16 U.S.C. 3865 et seq.) is  
 16 amended by adding at the end the following:

17 **“SEC. 1265E. GROUNDWATER CONSERVATION EASEMENT**  
 18 **PROGRAM.**

19 “(a) DEFINITIONS.—In this section:

20 “(1) ELIGIBLE ENTITY.—The term ‘eligible en-  
 21 tity’ means—

22 “(A) an agency of State or local govern-  
 23 ment;

24 “(B) an Indian Tribe; or

25 “(C) an organization described in section  
 26 1265A(3)(B).

1           “(2) ELIGIBLE LAND.—The term ‘eligible land’  
2 means the surface estate of land on which eligible  
3 water rights have been historically used, as deter-  
4 mined by governing State law, including—

5           “(A) cropland;

6           “(B) grassland;

7           “(C) rangeland;

8           “(D) pasture land;

9           “(E) nonindustrial private forest land; and

10          “(F) other agricultural land.

11          “(3) ELIGIBLE WATER RIGHTS.—The term ‘eli-  
12 gible water rights’ means rights that are—

13          “(A) owned or controlled by 1 or more pri-  
14 vate, governmental, or Tribal landowners to  
15 groundwater that has been used on eligible  
16 land; and

17          “(B) subject to a pending offer for the  
18 purchase of a groundwater conservation ease-  
19 ment from an eligible entity, the purchase of  
20 which would—

21           “(i) promote reduced groundwater  
22 consumption and reduced reliance on  
23 groundwater; and

24           “(ii) advance local, regional, or State  
25 groundwater management consistent with

1           the purposes of the groundwater conserva-  
2           tion easement program.

3           “(4) GROUNDWATER CONSERVATION EASE-  
4           MENT.—

5           “(A) IN GENERAL.—The term ‘ground-  
6           water conservation easement’ means an ease-  
7           ment or other interest in eligible water rights  
8           that—

9                   “(i) is conveyed for the purpose of  
10                   supporting local, regional, or State ground-  
11                   water management that reduces ground-  
12                   water consumption while providing commu-  
13                   nity and environmental benefits;

14                   “(ii) includes restrictions on the con-  
15                   sumption of groundwater related to the  
16                   historical withdrawals of the groundwater  
17                   of the landowner associated with the en-  
18                   tirety of the eligible land associated with  
19                   the eligible water rights; and

20                   “(iii) expressly permits the landowner  
21                   the right to continue agricultural produc-  
22                   tion and other uses compatible with re-  
23                   duced groundwater consumption, con-  
24                   sistent with the legally permissible use and

1 administration of the water rights by the  
2 applicable State.

3 “(B) ELIGIBLE LAND.—An easement or  
4 other interest described in subparagraph (A)  
5 may include eligible land associated with the eli-  
6 gible water rights described in that subpara-  
7 graph, subject to the choice of the owner of the  
8 eligible land, consistent with applicable State  
9 law.

10 “(b) ESTABLISHMENT.—The Secretary shall estab-  
11 lish a groundwater conservation easement program for the  
12 conservation of groundwater resources associated with eli-  
13 gible water rights, which may include eligible land associ-  
14 ated with those eligible water rights, through groundwater  
15 conservation easements.

16 “(c) PURPOSES.—The purposes of the groundwater  
17 conservation easement program are—

18 “(1) to promote the conservation and reduction  
19 in consumption of groundwater resources, including  
20 the recharging of declining aquifers, while allowing  
21 for continued agricultural production and other uses;

22 “(2) to support landowners in the adaptation  
23 to, and reduction in reliance on, declining ground-  
24 water resources; and

1           “(3) to protect agricultural use, community vi-  
2           tality, and economic well-being, including through  
3           the development of renewable energy, in the face of  
4           long-term declines in groundwater availability.

5           “(d) AVAILABILITY OF ASSISTANCE.—The Secretary  
6 shall facilitate and provide funding for—

7           “(1) the purchase by eligible entities of ground-  
8           water conservation easements; and

9           “(2) technical assistance to implement the  
10          groundwater conservation easement program.

11          “(e) COST-SHARE ASSISTANCE.—

12          “(1) IN GENERAL.—The Secretary shall encour-  
13          age conservation of groundwater resources through  
14          cost-share assistance to eligible entities for pur-  
15          chasing groundwater conservation easements.

16          “(2) SCOPE OF ASSISTANCE AVAILABLE.—

17          “(A) IN GENERAL.—An agreement de-  
18          scribed in paragraph (4) shall provide for—

19                  “(i) subject to subparagraph (D), a  
20                  Federal share determined by the Secretary  
21                  of an amount not to exceed 65 percent of  
22                  the fair market value of the groundwater  
23                  conservation easement, as determined  
24                  under subparagraph (B); and



1           “(ii) an additional payment in an  
2           amount not to exceed 5 percent of the  
3           Federal share determined under clause (i)  
4           for costs associated with securing a deed to  
5           the groundwater conservation easement,  
6           including the costs of valuation, survey, in-  
7           spection, and title.

8           “(B) FAIR MARKET VALUE.—The fair  
9           market value of a groundwater conservation  
10          easement shall be determined by the Secretary  
11          using—

12                 “(i) the Uniform Standards of Profes-  
13                 sional Appraisal Practice;

14                 “(ii) an areawide market analysis or  
15                 survey;

16                 “(iii) another industry-approved meth-  
17                 od;

18                 “(iv) a methodology used by another  
19                 Federal agency;

20                 “(v) a model for valuation developed  
21                 by a research institution; or

22                 “(vi) a method of valuing ecosystem  
23                 services associated with protected water  
24                 rights.

25          “(C) REIMBURSABLE COSTS.—

1           “(i) IN GENERAL.—Except as pro-  
2           vided in clause (ii), the Secretary shall pro-  
3           vide a payment under subparagraph (A)(ii)  
4           to an eligible entity as a reimbursement  
5           after the costs described in that subpara-  
6           graph are incurred by the eligible entity.

7           “(ii) LIMITED RESOURCE LAND-  
8           OWNERS.—In the case of eligible water  
9           rights or eligible land owned by a limited-  
10          resource landowner, as determined by the  
11          Secretary, the Secretary shall provide a  
12          payment under subparagraph (A)(ii) in ad-  
13          vance as part of an agreement described in  
14          paragraph (4).

15          “(D) LOWER FEDERAL SHARE OPTION.—

16               “(i) IN GENERAL.—An eligible entity  
17               may elect to enter into an agreement de-  
18               scribed in paragraph (4) under which the  
19               Federal share does not exceed 25 percent  
20               of the fair market value of the ground-  
21               water conservation easement, as deter-  
22               mined under subparagraph (B).

23               “(ii) NO RIGHT OF ENFORCEMENT.—  
24               Notwithstanding paragraph (4)(C)(iii), an  
25               agreement with respect to which an eligible

1           entity makes the election under clause (i)  
2           shall not include a right of enforcement for  
3           the Secretary.

4           “(E) PERMISSIBLE FORMS.—The non-Fed-  
5           eral share provided by an eligible entity under  
6           this paragraph may comprise—

7                   “(i) cash resources;

8                   “(ii) a charitable donation or qualified  
9                   conservation contribution (as defined in  
10                  section 170(h) of the Internal Revenue  
11                  Code of 1986) from the landowner from  
12                  which the groundwater conservation ease-  
13                  ment will be purchased;

14                  “(iii) costs associated with securing a  
15                  deed to the groundwater conservation ease-  
16                  ment, including the cost of appraisal, sur-  
17                  vey, inspection, and title; and

18                  “(iv) other costs, as determined by the  
19                  Secretary.

20           “(3) EVALUATION AND RANKING OF APPLICA-  
21           TIONS.—

22                   “(A) CRITERIA.—The Secretary shall es-  
23                   tablish evaluation and ranking criteria to maxi-  
24                   mize the benefit of Federal investment under

1 the groundwater conservation easement pro-  
2 gram.

3 “(B) CONSIDERATIONS.—In establishing  
4 the criteria under subparagraph (A), the Sec-  
5 retary shall emphasize support for—

6 “(i) maintaining or enhancing ground-  
7 water-dependent ecosystems; and

8 “(ii) advancing long-term groundwater  
9 sustainability consistent with existing State  
10 or local groundwater management initia-  
11 tives.

12 “(C) BIDDING DOWN.—If the Secretary  
13 determines that 2 or more applications for cost-  
14 share assistance under this subsection are com-  
15 parable in achieving the purpose of the ground-  
16 water conservation easement program, the Sec-  
17 retary shall not assign a higher priority to any  
18 of those applications solely on the basis of less-  
19 er cost to the groundwater conservation ease-  
20 ment program.

21 “(4) AGREEMENTS WITH ELIGIBLE ENTITIES.—

22 “(A) IN GENERAL.—The Secretary shall  
23 enter into agreements with eligible entities to  
24 stipulate the terms and conditions under which

1 the eligible entity is permitted to use cost-share  
2 assistance provided under this subsection.

3 “(B) LENGTH OF AGREEMENTS.—An  
4 agreement under this paragraph shall be for a  
5 term that is—

6 “(i) in the case of an eligible entity  
7 certified under the process described in  
8 paragraph (5), a minimum of 5 years; and

9 “(ii) for all other eligible entities, not  
10 less than 3, but not more than 5, years.

11 “(C) MINIMUM TERMS AND CONDITIONS.—  
12 An eligible entity shall be authorized to use  
13 such terms and conditions for groundwater con-  
14 servation easements as the eligible entity may  
15 establish, subject to the condition that the Sec-  
16 retary shall determine that those terms and  
17 conditions—

18 “(i) are consistent with the purposes  
19 of the groundwater conservation easement  
20 program;

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22 the conservation purposes of the ground-  
23 water conservation easements, including—

1           “(I) a mechanism for the meas-  
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3           ductions; and

4           “(II) the ability to enforce those  
5           reductions under relevant State law;

6           “(iii) except as provided in paragraph  
7           (2)(D)(ii), include a right of enforcement  
8           for the Secretary, which may be used only  
9           if the terms of the groundwater conserva-  
10          tion easement are not enforced by the  
11          holder of the groundwater conservation  
12          easement; and

13          “(iv) subject the eligible water rights  
14          and eligible land, if applicable, in which an  
15          interest is purchased to a groundwater  
16          conservation easement plan that includes—

17               “(I) a description of the activities  
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19               sources and reduced groundwater use  
20               and meet any other conservation pur-  
21               poses for which the groundwater con-  
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24               plan, where appropriate, that includes,  
25               at the option of the Secretary, activi-

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2 groundwater-dependent ecosystems;  
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4 “(III) any other provisions that  
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7 the groundwater conservation ease-  
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9 “(D) SUBSTITUTION OF QUALIFIED  
10 PROJECTS.—An agreement under this para-  
11 graph shall allow, on mutual agreement of the  
12 parties, substitution of qualified projects that  
13 are identified at the time of the proposed sub-  
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15 “(E) EFFECT OF VIOLATION.—If a viola-  
16 tion of a term or condition of an agreement  
17 under this paragraph occurs, the Secretary  
18 may—

19 “(i) terminate the agreement; and

20 “(ii) require the eligible entity to re-  
21 fund all, or part of, any payments received  
22 by the eligible entity under the ground-  
23 water conservation easement program, with  
24 interest on the payments, as determined  
25 appropriate by the Secretary.

1 “(5) CERTIFICATION OF ELIGIBLE ENTITIES.—

2 “(A) CERTIFICATION PROCESS.—The Sec-  
3 retary shall establish a process under which the  
4 Secretary may—

5 “(i) directly certify eligible entities  
6 that meet established criteria;

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8 with certified eligible entities; and

9 “(iii) accept proposals for cost-share  
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11 conservation easements throughout the du-  
12 ration of those agreements.

13 “(B) CERTIFICATION CRITERIA.—To be  
14 certified under subparagraph (A), an eligible  
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14 “(i) REVIEW.—The Secretary shall  
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17 quently than once every 3 years to ensure  
18 that the eligible entities are meeting the  
19 criteria established under subparagraph  
20 (B).

21 “(ii) REVOCATION.—If the Secretary  
22 finds that a certified eligible entity no  
23 longer meets the criteria established under  
24 subparagraph (B), the Secretary may—

1                   “(I) allow the certified eligible  
2                   entity a specified period of time, but  
3                   not less than 180 days, during which  
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9                   ble entity does not meet the criteria.

10           “(f) GEOGRAPHIC SCOPE.—The Secretary may only  
11 enroll eligible water rights or eligible land under this sec-  
12 tion in regions—

13                   “(1) experiencing significant groundwater de-  
14                   pletion, as determined by the Secretary consistent  
15                   with data of the United States Geological Survey;  
16                   and

17                   “(2) where groundwater monitoring and permit-  
18                   ting exists through the State, a local government, or  
19                   a groundwater management district.

20           “(g) METHOD OF ENROLLMENT.—The Secretary  
21 shall enroll eligible water rights and eligible land under  
22 this section through the use of—

23                   “(1) permanent easements; or

24                   “(2) easements for the maximum duration al-  
25                   lowed under applicable State laws.

1       “(h) TECHNICAL ASSISTANCE.—The Secretary may  
2 provide technical assistance, if requested, to assist in—

3               “(1) compliance with the terms and conditions  
4 of groundwater conservation easements; and

5               “(2) implementation of an approved ground-  
6 water conservation easement plan described in sub-  
7 section (e)(4)(C)(iv).”.

8 **SEC. 3. ADJUSTED GROSS INCOME LIMITATION.**

9       Section 1001D of the Food Security Act of 1985 (7  
10 U.S.C. 1308–3a) is amended—

11               (1) in subsection (a)(1)—

12                       (A) by striking “In this” and inserting the  
13 following:

14                               “(A) IN GENERAL.—In this”; and

15                               (B) by adding at the end the following:

16                               “(B) EXCLUSION.—In this section, the  
17 term ‘average adjusted gross income’ does not  
18 include any income received by a person or legal  
19 entity that is a landowner of eligible land (as  
20 defined in section 1265A) as compensation for  
21 the purchase of an agricultural land easement  
22 under subtitle H.”; and

23               (2) in subsection (b)(3), by inserting “, or aqui-  
24 fer recovery or a permanent reduction in consump-

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2       tected”.

○

118TH CONGRESS  
1ST SESSION

# H. R. 4902

To amend the Food Security Act of 1985 to establish a groundwater conservation easement program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2023

Ms. CARAVEO (for herself and Mr. LATURNER) introduced the following bill;  
which was referred to the Committee on Agriculture

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## A BILL

To amend the Food Security Act of 1985 to establish a groundwater conservation easement program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Voluntary Ground-  
5 water Conservation Act of 2023”.

6 **SEC. 2. GROUNDWATER CONSERVATION EASEMENT PRO-**  
7 **GRAM.**

8 (a) AGRICULTURAL CONSERVATION EASEMENT PRO-  
9 GRAM PURPOSES.—Section 1265(b) of the Food Security  
10 Act of 1985 (16 U.S.C. 3865(b)) is amended—

1 (1) in paragraph (3), by striking “and” at the  
2 end;

3 (2) in paragraph (4), by striking the period at  
4 the end and inserting “; and”; and

5 (3) by adding at the end the following:

6 “(5) facilitate reductions in groundwater con-  
7 sumption to support local, regional, or State ground-  
8 water management.”.

9 (b) ESTABLISHMENT.—Subtitle H of title XII of the  
10 Food Security Act of 1985 (16 U.S.C. 3865 et seq.) is  
11 amended by adding at the end the following:

12 **“SEC. 1265E. GROUNDWATER CONSERVATION EASEMENT**  
13 **PROGRAM.**

14 “(a) DEFINITIONS.—In this section:

15 “(1) ELIGIBLE ENTITY.—The term ‘eligible en-  
16 tity’ means—

17 “(A) an agency of State or local govern-  
18 ment;

19 “(B) an Indian Tribe; or

20 “(C) an organization described in section  
21 1265A(3)(B).

22 “(2) ELIGIBLE LAND.—The term ‘eligible land’  
23 means the surface estate of land on which eligible  
24 water rights have been historically used, as deter-  
25 mined by governing State law, including—

1 “(A) cropland;

2 “(B) grassland;

3 “(C) rangeland;

4 “(D) pasture land;

5 “(E) nonindustrial private forest land; and

6 “(F) other agricultural land.

7 “(3) ELIGIBLE WATER RIGHTS.—The term ‘eli-  
8 gible water rights’ means rights that are—

9 “(A) owned or controlled by 1 or more pri-  
10 vate, governmental, or Tribal landowners to  
11 groundwater that has been used on eligible  
12 land; and

13 “(B) subject to a pending offer for the  
14 purchase of a groundwater conservation ease-  
15 ment from an eligible entity, the purchase of  
16 which would—

17 “(i) promote reduced groundwater  
18 consumption and reduced reliance on  
19 groundwater; and

20 “(ii) advance local, regional, or State  
21 groundwater management consistent with  
22 the purposes of the groundwater conserva-  
23 tion easement program.

24 “(4) GROUNDWATER CONSERVATION EASE-  
25 MENT.—

1           “(A) IN GENERAL.—The term ‘ground-  
2 water conservation easement’ means an ease-  
3 ment or other interest in eligible water rights  
4 that—

5           “(i) is conveyed for the purpose of  
6 supporting local, regional, or State ground-  
7 water management that reduces ground-  
8 water consumption while providing commu-  
9 nity and environmental benefits;

10          “(ii) includes restrictions on the con-  
11 sumption of groundwater related to the  
12 historical withdrawals of the groundwater  
13 of the landowner associated with the en-  
14 tirety of the eligible land associated with  
15 the eligible water rights; and

16          “(iii) expressly permits the landowner  
17 the right to continue agricultural produc-  
18 tion and other uses compatible with re-  
19 duced groundwater consumption, con-  
20 sistent with the legally permissible use and  
21 administration of the water rights by the  
22 applicable State.

23          “(B) ELIGIBLE LAND.—An easement or  
24 other interest described in subparagraph (A)  
25 may include eligible land associated with the eli-



1           gible water rights described in that subpara-  
2           graph, subject to the choice of the owner of the  
3           eligible land, consistent with applicable State  
4           law.

5           “(b) ESTABLISHMENT.—The Secretary shall estab-  
6           lish a groundwater conservation easement program for the  
7           conservation of groundwater resources associated with eli-  
8           gible water rights, which may include eligible land associ-  
9           ated with those eligible water rights, through groundwater  
10          conservation easements.

11          “(c) PURPOSES.—The purposes of the groundwater  
12          conservation easement program are—

13                 “(1) to promote the conservation and reduction  
14                 in consumption of groundwater resources, including  
15                 the recharging of declining aquifers, while allowing  
16                 for continued agricultural production and other uses;

17                 “(2) to support landowners in the adaptation  
18                 to, and reduction in reliance on, declining ground-  
19                 water resources; and

20                 “(3) to protect agricultural use, community vi-  
21                 tality, and economic well-being, including through  
22                 the development of renewable energy, in the face of  
23                 long-term declines in groundwater availability.

24          “(d) AVAILABILITY OF ASSISTANCE.—The Secretary  
25          shall facilitate and provide funding for—

1           “(1) the purchase by eligible entities of ground-  
2 water conservation easements; and

3           “(2) technical assistance to implement the  
4 groundwater conservation easement program.

5           “(e) COST-SHARE ASSISTANCE.—

6           “(1) IN GENERAL.—The Secretary shall encour-  
7 age conservation of groundwater resources through  
8 cost-share assistance to eligible entities for pur-  
9 chasing groundwater conservation easements.

10           “(2) SCOPE OF ASSISTANCE AVAILABLE.—

11           “(A) IN GENERAL.—An agreement de-  
12 scribed in paragraph (4) shall provide for—

13           “(i) subject to subparagraph (D), a  
14 Federal share determined by the Secretary  
15 of an amount not to exceed 65 percent of  
16 the fair market value of the groundwater  
17 conservation easement, as determined  
18 under subparagraph (B); and

19           “(ii) an additional payment in an  
20 amount not to exceed 5 percent of the  
21 Federal share determined under clause (i)  
22 for costs associated with securing a deed to  
23 the groundwater conservation easement,  
24 including the costs of valuation, survey, in-  
25 spection, and title.

1           “(B) FAIR MARKET VALUE.—The fair  
2 market value of a groundwater conservation  
3 easement shall be determined by the Secretary  
4 using—

5           “(i) the Uniform Standards of Profes-  
6 sional Appraisal Practice;

7           “(ii) an areawide market analysis or  
8 survey;

9           “(iii) another industry-approved meth-  
10 od;

11           “(iv) a methodology used by another  
12 Federal agency;

13           “(v) a model for valuation developed  
14 by a research institution; or

15           “(vi) a method of valuing ecosystem  
16 services associated with protected water  
17 rights.

18           “(C) REIMBURSABLE COSTS.—

19           “(i) IN GENERAL.—Except as pro-  
20 vided in clause (ii), the Secretary shall pro-  
21 vide a payment under subparagraph (A)(ii)  
22 to an eligible entity as a reimbursement  
23 after the costs described in that subpara-  
24 graph are incurred by the eligible entity.

1           “(ii) LIMITED RESOURCE LAND-  
2 OWNERS.—In the case of eligible water  
3 rights or eligible land owned by a limited-  
4 resource landowner, as determined by the  
5 Secretary, the Secretary shall provide a  
6 payment under subparagraph (A)(ii) in ad-  
7 vance as part of an agreement described in  
8 paragraph (4).

9           “(D) LOWER FEDERAL SHARE OPTION.—

10           “(i) IN GENERAL.—An eligible entity  
11 may elect to enter into an agreement de-  
12 scribed in paragraph (4) under which the  
13 Federal share does not exceed 25 percent  
14 of the fair market value of the ground-  
15 water conservation easement, as deter-  
16 mined under subparagraph (B).

17           “(ii) NO RIGHT OF ENFORCEMENT.—  
18 Notwithstanding paragraph (4)(C)(iii), an  
19 agreement with respect to which an eligible  
20 entity makes the election under clause (i)  
21 shall not include a right of enforcement for  
22 the Secretary.

23           “(E) PERMISSIBLE FORMS.—The non-Fed-  
24 eral share provided by an eligible entity under  
25 this paragraph may comprise—

1 “(i) cash resources;

2 “(ii) a charitable donation or qualified  
3 conservation contribution (as defined in  
4 section 170(h) of the Internal Revenue  
5 Code of 1986) from the landowner from  
6 which the groundwater conservation ease-  
7 ment will be purchased;

8 “(iii) costs associated with securing a  
9 deed to the groundwater conservation ease-  
10 ment, including the cost of appraisal, sur-  
11 vey, inspection, and title; and

12 “(iv) other costs, as determined by the  
13 Secretary.

14 “(3) EVALUATION AND RANKING OF APPLICA-  
15 TIONS.—

16 “(A) CRITERIA.—The Secretary shall es-  
17 tablish evaluation and ranking criteria to maxi-  
18 mize the benefit of Federal investment under  
19 the groundwater conservation easement pro-  
20 gram.

21 “(B) CONSIDERATIONS.—In establishing  
22 the criteria under subparagraph (A), the Sec-  
23 retary shall emphasize support for—

24 “(i) maintaining or enhancing ground-  
25 water-dependent ecosystems; and

1                   “(ii) advancing long-term groundwater  
2                   sustainability consistent with existing State  
3                   or local groundwater management initia-  
4                   tives.

5                   “(C) BIDDING DOWN.—If the Secretary  
6                   determines that 2 or more applications for cost-  
7                   share assistance under this subsection are com-  
8                   parable in achieving the purpose of the ground-  
9                   water conservation easement program, the Sec-  
10                  retary shall not assign a higher priority to any  
11                  of those applications solely on the basis of less-  
12                  er cost to the groundwater conservation ease-  
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14                  “(4) AGREEMENTS WITH ELIGIBLE ENTITIES.—

15                  “(A) IN GENERAL.—The Secretary shall  
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