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Are Changes Needed to Improve the Speed and Efficiency of Wetland Determinations?

BACKGROUND

The Natural Resources Conservation Service (NRCS) is responsible for determining whether land qualifies as a wetland and, therefore, is protected for conservation purposes according to “Swampbuster” rules. If property is determined to be a wetland, certain changes, such as laying drain tile in a field, are not allowed without a landowner losing the ability to participate in federal Farm Bill programs and receiving premium discounts for crop insurance.

In recent years, producers have faced a significant backlog in wetland determinations. As of June 1, 2016, 3,086 requests were outstanding in the Prairie Pothole Region – 1,374 of which were made in South Dakota, 757 in North Dakota, and 325 in Minnesota.

ISSUE

Representatives Kristi Noem (R-SD), Kevin Cramer (R-ND), and Collin Peterson (D-MN) introduced the Wetland Determinations Efficiency and Transparency Act to attempt to address the backlog of wetland determinations and enact permanent reforms that make the determination process more efficient, accountable, and transparent.

The legislation includes the following provisions:

- Ensures timely determinations by limiting USDA to 60 days to make wetland determinations. After 60 days producers would be protected from penalties during a transition period to come back into compliance.
- Makes the appeals process more efficient. If a producer believes a determination is incorrect, he or she would be given the option of either going through the administrative appeals process or appealing directly to the federal district court.
- Allows third parties to be better used as a resource to shrink backlog and ensure timely determinations. The USDA would be able to utilize approved third-party data and technical assistance when making a final certification, leveraging outside expertise without a cost to taxpayers.
- Improves transparency. The bill clarifies the NRCS’s responsibility to share with producers any and all information used to make the determination. Additionally, the legislation puts the burden of proof on the federal government rather than on the producer.

OPTION #1

Support the legislation to reduce backlogs in wetland determinations at NRCS.

OPTION #2

Oppose any legislation aimed at reducing backlogs.

OPTION #3

Some in NRCS have suggested a 120-day time limit would be more appropriate than a 60-day time limit. Does Farm Bureau have a position on that idea?