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

IN THE SENATE OF THE UNITED STATES

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

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

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

(3) by adding at the end the following:

“(5) facilitate reductions in groundwater consumption to support local, regional, or State groundwater management.”.

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

“SEC. 1265E. GROUNDWATER CONSERVATION EASEMENT PROGRAM.

“(a) DEFINITIONS.—In this section:

“(1) ELIGIBLE ENTITY.—The term ‘eligible entity’ means—

“(A) an agency of State or local government;

“(B) an Indian Tribe; or

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

“(2) ELIGIBLE LAND.—The term ‘eligible land’ means the surface estate of land on which eligible water rights have been historically used, as determined by governing State law, including—
“(A) cropland;
“(B) grassland;
“(C) rangeland;
“(D) pasture land;
“(E) nonindustrial private forest land; and
“(F) other agricultural land.
“(3) ELIGIBLE WATER RIGHTS.—The term ‘eligible water rights’ means rights that are—
“(A) owned or controlled by 1 or more private, governmental, or Tribal landowners to groundwater that has been used on eligible land; and
“(B) subject to a pending offer for the purchase of a groundwater conservation easement from an eligible entity, the purchase of which would—
“(i) promote reduced groundwater consumption and reduced reliance on groundwater; and
“(ii) advance local, regional, or State groundwater management consistent with the purposes of the groundwater conservation easement program.
“(4) GROUNDWATER CONSERVATION EASEMENT.—
“(A) IN GENERAL.—The term ‘groundwater conservation easement’ means an easement or other interest in eligible water rights that—

“(i) is conveyed for the purpose of supporting local, regional, or State groundwater management that reduces groundwater consumption while providing community and environmental benefits;

“(ii) includes restrictions on the consumption of groundwater related to the historical withdrawals of the groundwater of the landowner associated with the entirety of the eligible land associated with the eligible water rights; and

“(iii) expressly permits the landowner the right to continue agricultural production and other uses compatible with reduced groundwater consumption, consistent with the legally permissible use and administration of the water rights by the applicable State.

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

“(b) E\nstellishment.—The Secretary shall estab-
lish a groundwater conservation easement program for the
conservation of groundwater resources associated with eli-
gible water rights, which may include eligible land associ-
ated with those eligible water rights, through groundwater
conservation easements.

“(c) Pur\nposes.—The purposes of the groundwater
conservation easement program are—

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

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

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

“(d) Availability of Assistance.—The Secretary
shall facilitate and provide funding for—
“(1) the purchase by eligible entities of groundwater conservation easements; and

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

“(e) Cost-share Assistance.—

“(1) In general.—The Secretary shall encourage conservation of groundwater resources through cost-share assistance to eligible entities for purchasing groundwater conservation easements.

“(2) Scope of assistance available.—

“(A) In general.—An agreement described in paragraph (4) shall provide for—

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

“(ii) an additional payment in an amount not to exceed 5 percent of the Federal share determined under clause (i) for costs associated with securing a deed to the groundwater conservation easement, including the costs of valuation, survey, inspection, and title.
“(B) Fair market value.—The fair market value of a groundwater conservation easement shall be determined by the Secretary using—

“(i) the Uniform Standards of Professional Appraisal Practice;

“(ii) an areawide market analysis or survey;

“(iii) another industry-approved method;

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

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

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

“(C) Reimbursable costs.—

“(i) In general.—Except as provided in clause (ii), the Secretary shall provide a payment under subparagraph (A)(ii) to an eligible entity as a reimbursement after the costs described in that subparagraph are incurred by the eligible entity.
“(ii) **LIMITED RESOURCE LANDOWNERS.**—In the case of eligible water rights or eligible land owned by a limited-resource landowner, as determined by the Secretary, the Secretary shall provide a payment under subparagraph (A)(ii) in advance as part of an agreement described in paragraph (4).

“(D) **LOWER FEDERAL SHARE OPTION.**—

“(i) **IN GENERAL.**—An eligible entity may elect to enter into an agreement described in paragraph (4) under which the Federal share does not exceed 25 percent of the fair market value of the groundwater conservation easement, as determined under subparagraph (B).

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

“(E) **PERMISSIBLE FORMS.**—The non-Federal share provided by an eligible entity under this paragraph may comprise—
“(i) cash resources;

“(ii) a charitable donation or qualified conservation contribution (as defined in section 170(h) of the Internal Revenue Code of 1986) from the landowner from which the groundwater conservation easement will be purchased;

“(iii) costs associated with securing a deed to the groundwater conservation easement, including the cost of appraisal, survey, inspection, and title; and

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

“(3) Evaluation and ranking of applications.—

“(A) Criteria.—The Secretary shall establish evaluation and ranking criteria to maximize the benefit of Federal investment under the groundwater conservation easement program.

“(B) Considerations.—In establishing the criteria under subparagraph (A), the Secretary shall emphasize support for—

“(i) maintaining or enhancing groundwater-dependent ecosystems; and
“(ii) advancing long-term groundwater sustainability consistent with existing State or local groundwater management initiatives.

“(C) BIDDING DOWN.—If the Secretary determines that 2 or more applications for cost-share assistance under this subsection are comparable in achieving the purpose of the groundwater conservation easement program, the Secretary shall not assign a higher priority to any of those applications solely on the basis of lesser cost to the groundwater conservation easement program.

“(4) AGREEMENTS WITH ELIGIBLE ENTITIES.—

“(A) IN GENERAL.—The Secretary shall enter into agreements with eligible entities to stipulate the terms and conditions under which the eligible entity is permitted to use cost-share assistance provided under this subsection.

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

“(i) in the case of an eligible entity certified under the process described in paragraph (5), a minimum of 5 years; and
“(ii) for all other eligible entities, not less than 3, but not more than 5, years.

“(C) MINIMUM TERMS AND CONDITIONS.—

An eligible entity shall be authorized to use such terms and conditions for groundwater conservation easements as the eligible entity may establish, subject to the condition that the Secretary shall determine that those terms and conditions—

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

“(ii) permit effective enforcement of the conservation purposes of the groundwater conservation easements, including—

“(I) a mechanism for the measurement of groundwater pumping reductions; and

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

“(iii) except as provided in paragraph (2)(D)(ii), include a right of enforcement for the Secretary, which may be used only if the terms of the groundwater conservation easement are not enforced by the
holder of the groundwater conservation easement; and

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

“(I) a description of the activities that demonstrate protection of soil resources and reduced groundwater use and meet any other conservation purposes for which the groundwater conservation easement was acquired;

“(II) a groundwater conservation plan, where appropriate, that includes, at the option of the Secretary, activities that will help maintain or enhance groundwater-dependent ecosystems; and

“(III) any other provisions that the Secretary determines to be necessary to accomplish the purposes of the groundwater conservation easement program.

“(D) SUBSTITUTION OF QUALIFIED PROJECTS.—An agreement under this para-
graph shall allow, on mutual agreement of the parties, substitution of qualified projects that are identified at the time of the proposed substitution.

“(E) EFFECT OF VIOLATION.—If a violation of a term or condition of an agreement under this paragraph occurs, the Secretary may—

“(i) terminate the agreement; and

“(ii) require the eligible entity to refund all, or part of, any payments received by the eligible entity under the groundwater conservation easement program, with interest on the payments, as determined appropriate by the Secretary.

“(5) CERTIFICATION OF ELIGIBLE ENTITIES.—

“(A) CERTIFICATION PROCESS.—The Secretary shall establish a process under which the Secretary may—

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

“(ii) enter into long-term agreements with certified eligible entities; and

“(iii) accept proposals for cost-share assistance for the purchase of groundwater
conservation easements throughout the duration of those agreements.

“(B) Certification criteria.—To be certified under subparagraph (A), an eligible entity shall demonstrate to the Secretary that the eligible entity will maintain, at a minimum, for the duration of the agreement—

“(i) a plan for administering groundwater conservation easements that is consistent with the purposes of the groundwater conservation easement program;

“(ii) the capacity and resources to monitor and enforce groundwater conservation easements; and

“(iii) policies and procedures to ensure—

“(I) the long-term integrity of groundwater conservation easements;

“(II) timely completion of acquisitions of groundwater conservation easements; and

“(III) timely and complete evaluation and reporting to the Secretary with respect to the use of funds pro-
vided under the groundwater conservation easement program.

“(C) REVIEW AND REVISION.—

“(i) REVIEW.—The Secretary shall conduct a review of eligible entities certified under subparagraph (A) not less frequently than once every 3 years to ensure that the eligible entities are meeting the criteria established under subparagraph (B).

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

“(I) allow the certified eligible entity a specified period of time, but not less than 180 days, during which to take such actions as may be necessary to meet the criteria; and

“(II) revoke the certification of the eligible entity, if, after that specified period of time, the certified eligible entity does not meet the criteria.
“(f) GEOGRAPHIC SCOPE.—The Secretary may only enroll eligible water rights or eligible land under this section in regions—

“(1) experiencing significant groundwater depletion, as determined by the Secretary consistent with data of the United States Geological Survey; and

“(2) where groundwater monitoring and permitting exists through the State, a local government, or a groundwater management district.

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

“(1) permanent easements; or

“(2) easements for the maximum duration allowed under applicable State laws.

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

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

“(2) implementation of an approved groundwater conservation easement plan described in subsection (e)(4)(C)(iv).”
SEC. 3. ADJUSTED GROSS INCOME LIMITATION.

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

(1) in subsection (a)(1)—

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

“(A) IN GENERAL.—In this”; and

(B) by adding at the end the following:

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

(2) in subsection (b)(3), by inserting “, or aquifer recovery or a permanent reduction in consumptive use of water would be achieved,” after “protected”.