



Northern Great Plains Working Group

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Rec'd
3/17/09

March 9, 2009

The Honorable Tom Vilsack
Secretary
United States Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250-0001

Dear Secretary Vilsack:

Congratulations on your appointment and confirmation as Secretary of Agriculture. As you know, effective farm policy and well delivered farm bill programs are essential to the future of production agriculture and natural resource conservation. Farm policy and the farm bill are also the most important factors affecting fish and wildlife populations here in the northern Great Plains. We look forward to working with you and your staff at the local, regional and national level to help deliver farm policy and programs that strengthen American agriculture and enhance our cherished natural resources.

We write this letter as a follow-up to a recent request from Senator Kent Conrad for an increased Wetland Reserve Program (WRP) allocation for North Dakota. WRP has great potential to protect many acres of wetland and associated upland habitat in this state. Several of us on the Northern Great Plains Work Group (NGPWG) worked closely with Senator Conrad's staff to craft the concept and language that found its way into the 2008 farm bill as the WRP flooded lands provision. We expect strong landowner interest in this excellent, voluntary conservation program in North Dakota and join Senator Conrad in encouraging a larger WRP allocation for our state. We pledge our support and cooperation in making the program successful.

We do have one major concern about a component of the WRP interim final rule that we believe, if not addressed and corrected, could have serious negative consequences for the delivery of the flooded lands provision in the Devils Lake basin of North Dakota. We intend to include this concern in our

The Northern Great Plains Working Group is a local coalition of organizations and agencies committed to the continuance of the wildlife benefits of Farm Bill initiatives in the Dakotas and Montana. The group includes representatives of Ducks Unlimited, Inc., Delta Waterfowl Foundation, Pheasants Forever, Audubon Society, Central Flyway Council, North Dakota Natural Resources Trust, Northern Great Plains Joint Venture, North Dakota Game and Fish Department, South Dakota Game, Fish and Parks, the North Dakota Chapter of The Wildlife Society, and representatives of the U.S. Fish and Wildlife Service who provide wildlife and habitat resource data, and consultation relative to Farm Bill statutes, regulations, and programs. The views and positions of the Northern Great Plains Working Group may not represent the official policy of individual organizations and agencies. For more information, please write the Northern Great Plains Working Group, 1605 E. Capitol Ave., Suite 101, Bismarck, ND 58501-2102.

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The Honorable Tom Vilsack
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comments on the Interim Final Rule, but due to its importance wanted to bring it to your attention in this letter as well.

The Interim Final Rule (1467.4 (e)(5)) proposes that the 6.5 feet maximum depth criteria for eligibility be measured at the time of enrollment. For this program to be successful, it is critical that this criteria be measured at the time of application, not enrollment. With the increased applicant disclosure requirements imposed by the 2008 farm bill, it is conceivable that the application and enrollment process could take up to 6 months. The level of lakes such a Devils Lake can change dramatically over that time period. Flooded land deemed eligible at the time of application may not be at the time of enrollment, causing many landowners to lose the opportunity to receive reasonable compensation on land adversely affected by high water and negate future conservation opportunities on those lands. This outcome is clearly not what was intended for the WRP flooded lands provision.

The agencies and NGOs of the NGPWG look forward to working closely with your Natural Resources Conservation Service (NRCS) in promoting and delivering outstanding voluntary farm bill conservation programs like WRP. If you or your staff have any questions, or if we can be of further assistance in any way, please feel free to contact me or any member of the NGPWG.

Best regards,



Keith Trego
For NGPWG

cc: NRCS Acting Chief Dave White
Senator Kent Conrad
Senator Byron Dorgan
Congressman Earl Pomeroy
State Conservationist J.R. Flores



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Comments on WRP Interim Final Rule

Docket Number NRCS-IFR-08013

March 16, 2009

The Wetland Reserve Program (WRP) is the preeminent wetland program for protecting and enhancing the nation's important wetland resources. We welcome the additional attention and funding the WRP has attained across the nation. This emphasis recognizes the importance of offering agricultural producers and other landowners incentive based alternatives to keep wetlands and associated upland habitat in a functional state. We would like to offer a few comments on rule provisions that we think might be modified in a way that would make the program even more useful to landowners and better reflect both the intent and spirit of both new and existing statutory provisions.

LAND ELIGIBILITY – Pages 2331 and 2332

Section 1467 4(e)(5)

As the key entry point to any program, land eligibility criteria are critical to a program's adherence to purpose and intent, as well as landowner acceptance. In that context there are two areas of land eligibility rules we suggest need amendment.

The WRP in the 2008 farm bill contains an expanded provision allowing enrollment of cropland or grassland flooded by the natural overflow of a closed basin lake or pothole. Key language is contained in Section 1467.4(e)(3)(B), which says in part "Cropland or grassland that was used for agricultural production prior to flooding from the natural overflow of a closed basin lake or pothole, together with the adjacent land". It is our understanding that authors of the statutory language meant this opportunity to be inclusive rather than restrictive. We understand the spirit behind the language ".....likelihood of successful restoration.....", but suggest the language in Section 1467 4(e)(5), which requires land to have both hydric soils and have water depth of 6.5 feet or less at time of enrollment misses both the intent and spirit of the drafters on these two points.

- Land that was used for cropland or grassland agriculture in the proximity to a rising closed basin lake or pothole will most likely contain some hydric soils. But to require the soils be hydric, even utilizing the 51 percent predominance test, will potentially disqualify large acres of land that are adversely affected

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by flooding and were intended to be included in the program. We support a more flexible interpretation of soil criteria for eligibility. The flooded lands intended to be included under this new provision were predominantly uplands that were both farmed and grazed, and to hold them to predominant wetland standards seems inconsistent with both the science of their origins and the intent of the program.

- For this program to be successful, it is critical that eligibility criteria be measured at the time of application, not enrollment. With the increased applicant disclosure requirements imposed by the 2008 farm bill, it is conceivable that the application and enrollment process could take up to 6 months. The level of lakes such as Devils Lake in North Dakota, for example, can change dramatically over that time period. Flooded land deemed eligible at the time of application may not be at the time of enrollment, causing many landowners to lose the opportunity to receive reasonable compensation on land adversely affected by high water and negate future conservation opportunities on those lands. This outcome is clearly not what was intended for the WRP flooded lands provision.

Section 1467.4(e)(6)

The interaction of farm bill conservation programs affect landowner interest, delivery, and efficiency of both dollars and staff resources. This section appears to run counter to all those interests and reverses an approach that has proven successful. This language says that lands enrolled in the Conservation Reserve Program (CRP) can only be enrolled in WRP if they otherwise qualify and are "... adjacent or contiguous ..." to qualifying WRP lands. Past practice has allowed qualifying CRP tracts (primarily wetland practices such as CP23, CP23a, CP37, etc.) to be "rolled over" into WRP, where the CRP contract was simply discontinued with no penalty and the WRP contract put in its place for the full duration selected by the landowner. This practice should be allowed for all CRP lands that meet wetland criteria

Established CRP wetland practices have already accomplished the two most important elements of the conservation programs: wetlands have been restored and uplands have been seeded to appropriate cover. The government dollars that go into cost sharing these activities, as well as the additional cost share and incentive dollars provided by state and local government and NGOs to encourage conservation decisions have already been invested. The idea that you can take those existing investments and amortize them over an additional 30 to 100 years of continued conservation, is both a conservation and a fiscal benefit. We see no reason why this restrictive language was inserted in the interim final rules and suggest it be removed.

Cost Share – Page 2334

Practical, flexible provisions for cost share, designed to ensure wetland and upland restorations are done in a quality manner so full project values are realized, need to be paramount. We have two suggestions for your consideration in that regard.

Section 1467.10(a)(3)

The \$50,000 annual limit on restoration cost share should accommodate multi-year restoration agreements to ensure the full potential of large, complex projects is realized.

Section 1467.10(e)

Ensuring completion of restoration activities is essential to achieving project potential for any WRP contract. Requiring the participant with the contractual obligation to be responsible for restoration should land with a WRP contract be sold to a party not eligible for participation in WRP could certainly reduce interest in the program. The rules should not be written in a manner so restrictive that the restoration could not be completed

through other innovative NRCS partnerships with the original landowner or other conservation partners, so long as payments are not made to an ineligible landowner.

We appreciate the opportunity to comment on the interim final rule for this critical wetland conservation program. All organizations participating in the NPGWG look forward to working with NRCS and all our agricultural and conservation partners to implement a successful WRP in the northern Great Plains.

Best regards,

Keith Irego for
Northern Great Plains Working Group

Hawkins, Catherine - Washington, DC

From: Harrison, Danelle [Danelle.Harrison@osec.usda.gov]
Sent: Tuesday, March 17, 2009 6:22 PM
To: Hawkins, Catherine - Washington, DC
Subject: RE: WRP Support for Senator Conrad's WRP Letters

Cathy,
Here is the control number: 5791532

From: Hawkins, Catherine - Washington, DC [mailto:Catherine.Hawkins@wdc.usda.gov]
Sent: Tuesday, March 17, 2009 3:18 PM
To: Harrison, Danelle
Subject: FW: WRP Support for Senator Conrad's WRP Letters

See attached document to add to the system for NRCS response. I have informed Stephanie to inform John Glover that this document must be assigned by OES to assign to us

From: Glover, John - Washington, DC
Sent: Tuesday, March 17, 2009 2:58 PM
To: Edelen, Stephanie - Washington, DC; Hawkins, Catherine - Washington, DC
Cc: Lahren, Ross - Washington, DC
Subject: FW: WRP Support for Senator Conrad's WRP Letters

Stephanie:

Can you please log the attached memorandum and prepare for routing within NRCS. The EPD will prepare a formal response for the signature of the Chief. I assume the Chief will respond? Please route the memo to the EPD once it has been logged.

Thank you,

John Glover
Acting Director
Natural Resources Conservation Service
Easement Programs Division
1400 Independence Avenue S.W., Room 6819-S
Washington, D.C. 20250
Phone: (202) 720-1875
Fax: (202) 720-9689
Email: john.glover@wdc.usda.gov

From: Christensen, Thomas - Washington, DC
Sent: Tuesday, March 17, 2009 2:29 PM
To: Glover, John - Washington, DC
Cc: Lahren, Ross - Washington, DC
Subject: FW: WRP Support for Senator Conrad's WRP Letters

john,

3/18/2009