

THE WILDLIFE SOCIETY

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FACSIMILE TRANSMISSION

DATE: 3/16/09

TIME: 2:45 pm

TO: Easements Programs Division
NRCS

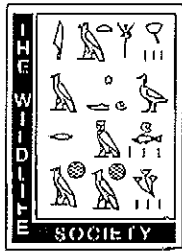
FROM: The Wildlife Society
Government Affairs

We are transmitting 8 pages (including this cover letter).

If you do not receive all pages, please call back as soon as possible. (301)897-9770.

Thank you.

MESSAGE: Comments on WRP (docket # NRCS-IFR-08013)



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16 March 2009

Easements Programs Division
Natural Resources Conservation Service
Wetlands Reserve Program Comments
P.O. 2890
Room 6819-S
Washington, DC 20013

The Wildlife Society appreciates the opportunity to provide comments on the interim final rule for the Wetlands Reserve Program (Docket Number NRCS-IFR-08013). The Wildlife Society was founded in 1937 and is a non-profit scientific and educational association representing over 8,000 professional wildlife biologists and managers, dedicated to excellence in wildlife stewardship through science and education. Our mission is to represent and serve wildlife professionals—the scientists, technicians, and practitioners actively working to study, manage, and conserve native and desired non-native wildlife and their habitats worldwide.

The Wetlands Reserve Program is a very important program for the conservation of fish and wildlife resources. The 2 million acres presently enrolled in the program are providing significant environmental benefits and have positively affected populations of wetland dependent wildlife. The program's reauthorization in the 2008 Farm Bill will continue to serve fish and wildlife resources throughout the Nation. Therefore, flexibility in implementation should be stressed to ensure that opportunities to further wetland conservation are not missed.

The 2008 Farm Bill limits participation to landowners who have owned the land for 7 years or longer. This will significantly reduce important opportunities to enroll critical wetlands into the program. However, Congress provided for NRCS to allow waivers to this time period. We recommend that specific conditions where waivers can be granted should be identified in the rule, especially for those enrollments that provide unique and valued wetland resources for at-risk wildlife and those that increase connectivity and provide more functional wetland complexes.

The 2008 Farm Bill added enhancement as a program purpose. We applaud this addition since many wetland systems have been dramatically altered by dams and large drainage systems. Therefore the wetland restoration, protection, and enhancement projects need to make up for many values lost within the greater landscape. In suitable landscapes, enhancement beyond minimal restoration will help to compensate for functions and values lost within the greater landscape.

We commend NRCS for changing the easement acquisition valuation methodology from the Uniform Appraisal Standards for Federal Land Acquisition (Yellow Book) back to the Uniform Standards of Professional Appraisal Practice (USPAP) as was used prior to FY2007.

NRCS also should be commended on raising the enrollment cap to 3,041,200 acres through the year 2012. Nationally, the program has been successful in assisting states attain wetland gains that were tied to the North American Waterfowl Management Plan (NAWMP), individual state Wetland Restoration Plans as well as interagency Comprehensive Wildlife Strategy (CWS) Plans identifying inherent deficiencies that carry regional importance for restoring these state important sites

Section 1467.2 – Administration

We commend USDA for inclusion of 1467.2 (f) – consultation with FWS is important and this provision should remain in the final rule. TWS recommends that NRCS also establish benchmarks for fish and wildlife habitat/species targets, to not only meet desires of landowners, but also insure that NRCS contributes to healthy landscapes across the US

Section 1467.3 Definitions

To ensure consistency with other NRCS programs, we recommend that definitions for “at-risk species” and “wildlife” be added to the WRP rule and consistent definitions for these terms used across programs. Maintenance needs to be clarified that approved maintenance activities are cost-sharable on WRP easements. We recommend the following definitions:

At-risk species means any plant or wildlife species as determined by the State Conservationist, that are listed as endangered or threatened under the Endangered Species Act (ESA); proposed or candidates for listing under ESA; likely to become candidates for listing in the near future; species listed as endangered or threatened (or similar classification) under State law; and State species of conservation concern.

Wildlife means non-domesticated birds, fishes, reptiles, amphibians, invertebrates and mammals

Maintenance means work performed to keep the enrolled area functioning for program purposes for the duration of the enrollment period. Maintenance includes cost-sharable actions and work to manage, prevent deterioration, repair damage or replace conservation practices on enrolled lands, as approved by NRCS.

Section 1467.4 – Program Requirements

The 2008 Farm Bill statute continues to allow riparian areas to be included within the Wetlands Reserve Program when they link protected wetlands. This is an important tool since riparian areas are critical to many species of wildlife. In addition, these areas are corridors that provide for the movement of plants and animals through often otherwise uninhabitable landscapes. However, the WRP Interim Rule has placed greater restriction on the enrollment of riparian areas than either the law or past NRCS policy.

Specifically, Section 1467.4 relegates riparian area enrollment to only be included when other lands as specified in Section 1467.4 are included (e.g., farmed wetland or converted wetlands, farmed under natural conditions). This discretionary change by NRCS will make it extremely difficult to enroll important riparian areas into WRP. Therefore, we request that riparian area be eligible for enrollment as a stand alone land eligibility that only has to meet the statutory criteria of linking protected areas. In addition, latitude should be provided to the State Conservationist to waive this requirement when special circumstances support doing otherwise.

We are concerned how the new landowner requirements in 1467.4(c)(2) requiring ownership of the offered tract for the previous seven years will limit potential enrollment of wetlands with high ecological value. NRCS criteria should allow State Conservationists to grant waivers when it is clear the land was not acquired with intent to enroll in the program:

- If enrollment precludes need to list at-risk species, T&E species or candidates as listed by FWS or State agencies, and species of conservation need identified in State Wildlife Action Plans
- If proposed actions provide demonstrable greater good (significant wildlife habitat or water quality/control benefit), this should constitute reason for waiver without tenure. If offered lands contribute to the connectivity of functional wetland complexes in natural landscapes, or will contribute to higher levels of restoration benefit on existing WRP lands.
- When cropped wetland on a recently purchased tract is being offered because it is not economically viable for agricultural production.
- If land was previously enrolled and ownership transferred within the family.

The WRP Interim Rule has placed greater restriction on areas that may be enrolled than either the law or past NRCS policy. If not revised, this will further restrict the ability to enroll riparian wetlands in WRP. 1467.4(e) indicates that if a new landowner acquires the property and if they do not meet eligibility criteria for cost share or if it is transferred to a public agency or other ineligible person/entity prior to restoration completion then funds can no longer be directed towards the easement. This is counter-productive to the public's interest and does not ensure the restoration or maintenance of the wetland functions and values that the easement was originally acquired for. We understand NRCS must use eligibility requirements as identified in Statute but once the easement is perfected it becomes the responsibility of the Federal Government to ensure the original investment is secured and maintained. Therefore, landowner eligibility should no longer be a consideration. We recommend that Section 1467.10(e)(1)-(4) should be eliminated.

Section 1467.5 – Application procedures

Since most assessments are done by inter-agency teams, 1467(5)(b) should be expanded to include the USFWS and a state fish and wildlife agency representatives that provide technical expertise to NRCS during assessment processes for comprehensive evaluation of wildlife habitat restoration opportunities. Change “an NRCS representative” to “an NRCS, USFWS, or state fish and wildlife agency representative.”

Section 1467.7 – Enrollment Process

1467.7(c) eludes to changes to the language in the Option to Purchase (OTP) agreement that describe “the landowners obligation if the land is sold before restoration to an ineligible landowner; and other terms and conditions for participation that may be required by NRCS as appropriate.” However, the interim rule does not explain what these changes may be or how they may affect participants, or potential participants. Has NRCS drafted a new OTP document that has significant additions, changes, or clarifications from the existing OTP?

Section 1467.8 – Compensation for easements and 30-year contracts

We are concerned about the limitation on compensation for easements or 30-year contracts valued at more than \$500,000 as described in Section 1467.8(2)(ii) in the 2008 Act. The new rule provides that in those cases where easement compensation exceeds \$500,000, that payments be made in at least five, but not to exceed thirty annual payments. This may dissuade landowners from enrolling large tracts due to no lump sum payment option. Although there is verbiage that states the Chief may decide to waive this in those cases where the tract’s importance “would further the purposes of the program”, it may be a rare event. Larger tracts have proved to be more economical per acre to restore, provide more opportunity to restore “mosaics” of habitats providing critical seasonal habitats to a wider array of wetland wildlife species, especially when T/E species are found on or in close proximity to the tract.

Congress was very specific in the 2008 Farm Bill as to how states would pay compensation to the landowner and the language from the statute is copied verbatim in the interim rule. Item (a)(4) gives the State conservationist, in consultation with the state technical committee, the responsibility to establish Geographic Area Rate Caps (GARC). While in the old rules, the “Geographic Area Cap” represented the maximum amount that could be offered for an easement, the process on how to derive the GARC was not specified and in many states, represented the higher end of land values in a county, region, or state. Under guidance sent to states to develop the GARC, the GARC now represents an average of land values, and states are further instructed to reduce the GARC by the expected “residue value of the land as encumbered.”

This appears to be contrary to the intent of Congress, which was to allow the State conservationist and state technical committee to establish the GARC and discontinue the use of the controversial “yellow book” appraisal process used by NRCS to establish and deduct the residue value from the easement compensation. Further, basing the GARC on an average in land values may result in many if not most landowners with land value above the GARC, to not participate, thereby reducing the pool of opportunities, and increasing the enrollment of less-desirable offers.

Section 1467.9 – Wetlands Reserve Enhancement Program

The statute and Interim Rule provides for the pilot of a Wetlands Reserve Enhancement Program that allows grazing rights to be reserved to the landowner with a reduction in easement payment. This will be an important tool in the West to protect and restore areas critical to wetland dependent wildlife. The existing program only allows for grazing to be provided as a compatible

use at the discretion of NRCS. This has deterred many traditional ranching operations from participating in the program because they would not give up their right to graze and meet their economic goals for the lands. Therefore, many important wetland landscapes are unprotected. Reserved grazing rights have the potential to greatly extend the opportunities for program enrollment in the west. We recommend that NRCS issue a Request for Proposal in the near future and work to make this a successful tool for the conservation of wetlands and important wildlife habitat in the western United States.

The WREP pilot program with reserved grazing rights is a long needed tool to further the conservation of wetlands in the western U.S. To minimize workload for NRCS we recommend that instead of preparing individual grazing plans for the easements, that an ecological condition be integrated into the easement document. This would be an agreed to condition between NRCS and the landowner. The landowner would be responsible for managing the ecosystem to the predetermined level of rangeland health. This condition would target the wetland functions being targeted through easement acquisition. In some landscapes (e.g., non-native grasses) moderate to heavy grazing pressure may be the most important tool for ensuring the value and functions of the easement. NRCS or a partner would periodically determine whether the landscape goals are being met. If not, the landowner would be notified and given a date to implement a management strategy that would achieve the landscape objectives.

1467.10 Cost-share payments.

We are concerned with the language contained in 1467.10(e)(1) and (e)(2). As agricultural and land markets change, landowners consolidate or expand farming operations to reduce debt or retire less product land, oftentimes, they do not want to retain ownership of the land once it is encumbered by an easement. When WRP encumbered easements sell, often the sale occurs shortly after the easement closes. The new owner may not be an "eligible" participant and therefore not eligible to assume an existing or enter into a new restoration agreement. This language puts the seller at a huge risk. We agree that the landowner enrolling land into a 30-year program has the responsibility to provide 25 percent of the restoration cost, but once land has been sold, the original owner should not be held liable for restoration or the lack of restoration activity except for reimbursement of the 25% share of restoration cost for 30-year easements. It seems like an extreme invasion of property rights for the federal government to recoup the entire easement payment while retaining the purchased easement rights and this added provision may deter many possible participants.

In 1467.10(b), NRCS should clarify that cost-share payments are available for maintenance activities to protect the long-term values of restored WRP wetlands, by adding "including maintenance" after "eligible activity."

In 1467.10(d), we would like clarification that another partner may pay for additional work that will benefit the wetland that is not being funded by NRCS as part of the WRP. As an example, there are projects where NRCS pays for a ditch plug but their engineers feel that a water-control structure is not necessary. In some of these cases, other state or federal partners will pay for the water-control structure added to enhance the ability to manage a restored wetland. We

recommend adding "or enhancements" to the end of 1467.10(d), after "the total actual cost of the restoration."

We recommend that NCRS strike 1467 10(e)(1) through (4). We understand NRCS must use eligibility requirements as identified in Statute, but once the easement is perfected it becomes the responsibility of the Federal Government to ensure the original investment is secured and maintained. Therefore, landowner eligibility should no longer be a consideration. Additionally, the Federal Government should not be absolved of responsibility and commitments to fully restore wetlands enrolled in this program, regardless of change in ownership following the perfection of an easement.

Section 1467.11 – Easement and 30-year contract participation requirements

Section 1467.11(a)(2)(ii) includes hunting and fishing as a compatible use. Compatible uses are activities that NRCS allows through a process that further the conservation of wetland functions and values. NRCS does not have the authority to regulate hunting and fishing activities; that authority and responsibility rests with the state fish and wildlife agencies and the US Fish and Wildlife Service. Therefore, hunting and fishing, as well as trapping, must be reserved rights of the landowner in all NRCS programs and easement deeds.

Section 1467.12 – The WRP Development

The Wetland Reserve Plan of Operation (WRPO) is a living document and NRCS and partners need to constantly work with the landowner and other conservation professionals to make sure that work done is functioning correctly and that needed conservation improvements that have been missed should be identified in routine monitoring effort and should be added to revised and updated WRPO over time.

Sections 1467.12(a) and 1467.13(a)(1), and 1467(13)(b) mention input from FWS and Conservation Districts, but not from the state fish and wildlife agency. State fish and wildlife agency staff have both authority and expertise related to wetland functions and values for wildlife, as well as in restoring and managing wetlands. This role should be stated in the rules. We recommend the following language:

1467.12 (a): The development of the WRPO will be made through the local NRCS representative, in consultation with the State Technical Committee, with consideration of site-specific technical input from the state fish & wildlife agency, FWS, the Conservation District, and other resource agency partners.

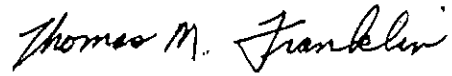
1467.13 (a)(1): The Chief will consult with the state fish & wildlife agency, FWS, the Conservation District, and other resource agency partners prior to making any modifications to easements

1467.13 (b): Insofar as is consistent with the easement and applicable law, the State Conservationist may approve modifications to the WRPO that do not affect provisions of the easement in consultation with the participant and with consideration

of site specific input from **the state fish & wildlife agency, FWS, the Conservation District, and other resource agency partners.**

Thank you for considering the views of wildlife professionals.

Sincerely,

A handwritten signature in cursive script that reads "Thomas M. Franklin".

Thomas M Franklin
President