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MISSOURI DEPARTMENT OF CONSERVATION
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Fax

To: Easement Program Division NRCS	Date: March 16, 2009
Fax:	From: Missouri Dept of Conservation
Re: Wetland Reserve Program (WRP)Comments	Total pages including cover: 5

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JOHN D. HOSKINS, Director

March 13, 2009

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

Dear Director:

The Missouri Department of Conservation (Department) is a state agency responsible for the management of fish, forest and wildlife resources in the state of Missouri. The Department (MDC) has been involved with the Wetlands Reserve Program (WRP) as a partner with the Natural Resource Conservation Service (NRCS) in Missouri since its inception. We have provided biological and technical assistance to NRCS and private landowners since the "WRP pilot" in 1992. MDC is known for its long-term partnership with NRCS on many critical habitat and resource issues within the state and often has been referred to as a national "model" as how state and federal agencies can work cohesively together to accomplish critical resource gains in a state.

We offer the following comments for the Wetland Reserve Program rule, Docket Number NRCS-IFR-08013, posted in the Federal Register:

- We commend USDA for raising the enrollment cap to 3,041,200 acres through the year 2012. Nationally, the program has been successful in assisting states to attain wetland gains that were tied to the North American Waterfowl Management Plan, individual state Wetland Restoration Plans, as well as interagency Comprehensive Wildlife Strategy (CWS) Plans.
- We also commend USDA on successfully 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 FY07. Missouri had experienced as much as a 58% decline in acceptance by landowners who were made offers in WRP during FY06. A major redistribution of program acres shifted to the southeastern portion of the state causing workload, program efficiency and distribution of priority wetland restorations at risk. In a state where wetlands declined almost ninety percent from the historical land base, WRP has been very effective in the wetland gains Missouri has experienced.
- Under Section 1467.3, we request that a definition for at-risk species be added which is consistent with the definitions in EQIP and WHIP and follows the definition outlined in the MOU between NRCS, AFWA and USFWS.

COMMISSION

DON R. JOHNSON
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 Marshfield

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 Jefferson City

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 Grand Pass

- We have noted under Section 1467.4, Program requirements, (c) *Landowner eligibility*, that enrollment is open only to "a person, legal entity or Indian Tribe," which in effect, eliminates state agency involvement. We feel this is not in the best interest of the WRP and the restoration of several critical wetlands located in areas identified as conservation areas of opportunity. Missouri, like many other states, has developed a Coordinated Wildlife Strategy (CWS) plan that, in part, identifies nine major areas of the state deemed critical for the state's wetland restoration and development goals

Some examples of this would be the Four Rivers Conservation Area, a 30-year WRP easement in Vernon County encompassing over 7,000 acres. It has allowed for the formation of three (3) disconnected wetland areas into one contiguous 14,000 acre area, which is now the largest state owned and operated wetland in the state. It is visited by 10,000–12,000 individuals annually. It also represents a tremendous cost savings to NRCS in the easement acquisition as they purchased a 30-year easement, but MDC will manage the site in perpetuity. Another example is the B K Leach Conservation Area, which comprises over 2,830 acres and adds to an existing MDC area of 1,413 acres. This wetland complex is located within a 45 minute drive from St Louis, Missouri. MDC feels that some of the best WRP sites located in Missouri are owned by state or federal agencies. State agencies also have the personnel, budget and management skills that offer superior management and public use, as well as research opportunities those private landowners often refrain from offering.

- MDC has significant concerns under Section 1467.4, Program requirements, (c) *Landowner eligibility*, (2) where it is required to own the land for a seven-year period prior to enrollment. MDC often purchases land offered into the WRP from willing sellers to bolster the wetland resources, especially in critically defined areas of the state. This provision would deny this opportunity to proceed and offer the public use and educational processes that MDC often offers the general public. NRCS State Conservationists should be encouraged in the rule and policy to allow the greatest flexibility possible for waivers to this rule including consideration of the greater social good, flood control, water quality, highest ranking applications or addressing at-risk species and state wildlife action plans.
- Under 1467.4 (e)(6) we request that riparian areas 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.
- MDC has significant concerns under Section 1467.4, Program requirements, (c) *Landowner eligibility*, (3) (d) where it describes "when a parcel of land that has been accepted for enrollment into WRP is sold or transferred prior to the easement being perfected, the application or option to purchase will be cancelled and acres removed from enrollment." MDC is opposed to any final rule provision that limits a state agency's ability to negotiate with the original landowner as a willing seller, to acquire wetland tracts significant to the state resources, as identified in many resource orientated plans, and to attain goals in gains of wetland acres.

- MDC has significant concerns regarding the exclusion of state or local governments from participating in WRP as described in Section 1467.4, Program requirements, (e) *Land eligibility*, (1) where "only private land or land owned by Indian tribes may be considered for enrollment into WRP" for similar reasons as listed above

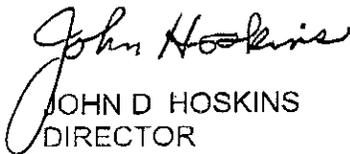
In Missouri, MDC has purchased WRP tracts from willing sellers and has assisted NRCS in attaining wetland restorations critical to the North America Wetland Management Plan, state Wetland Management Plan and increasing the wetland base in Missouri's CWS plan as described in Conservation Opportunity Areas (COA). These COAs were developed by intra-agency teams comprised of state, federal (including NRCS) and non-government organizations that identified seven "wetland" COAs in Missouri. Over 52,000 acres of the 127,000 acres of WRP are located within these COAs, indicating a significant gain on wetland loss, as proposed by this collection of resource based agencies. As described previously, state owned WRP easements are some of the best examples that this program offers

- MDC has concerns about the limitation on compensation for easements or 30-year contracts valued at more than \$500,000 as described in Section 1467.8 - Compensation for easements and 30-year contracts, (2)(ii). Missouri landowners who participate in easement and 30-year contracts prefer "lump sum" payments. The new rule provides that when easement compensation exceeds \$500,000, the payments will be made in at least five, but not to exceed thirty annual payments. MDC believes that this will dissuade landowners from enrolling large tracts due to the 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. If this rule was in effect late in 2007, the largest privately owned WRP tract enrolled in Missouri (5,550 acres) mostly likely would not have materialized according to the landowner.
- MDC has significant concerns under Section 1467.10, Cost-share payments, (e) (1), (2), (3), and (4) which describes scenarios involving the transfer of ownership from the original landowner to a subsequent landowner involving penalties and repayment of contract compensations. MDC feels this section needs to be omitted from the final rule. This describes situations in which MDC, as a state agency, would be prevented from participating in the WRP, as well as penalizing a willing seller of the legal sale of this property to MDC. MDC has an excellent working relationship with the private landowners of the state to such an extent, that in 2000, MDC formed a new Division (Private Land Services) to address the resource and technical service needs of private landowners within the state
- MDC has significant concerns under 1467.11, Easement and 30-year contract participation requirements, (a)(2),(ii) which describes hunting and fishing as compatible uses of a WRP easement area. MDC envisions hunting, fishing and trapping as "landowner rights." Under the State Wildlife Code, MDC is constitutionally charged with

the control, management, restoration, conservation and regulation of bird, fish, game, forestry, and all wildlife resources of the state NRCS should not interject themselves in individual state's wildlife codes and regulate individual landowners inalienable rights to hunt, fish and trap on land they own or lease. Doing so will create an additional workload on USDA personnel as they develop and manage Compatible Use Agreements for hunting and fishing requests each year. This is not required in statute and is not necessary

The Missouri Department of Conservation appreciates the opportunity for comment. If you require additional information, please contact Private Land Programs Supervisor, Bill White at 573-522-4115, Ext. 3512

Sincerely,


JOHN D HOSKINS
DIRECTOR

c: Mr. Bill White