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Nebraska Wildlife Federation

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Easements Program Division
Natural Resources Conservation Service
U.S. Department of Agriculture
Room 6819-S
PO Box 2890
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Via fax: 202-720-9689

Comments on Wetlands Reserve Program Rules

I am writing to provide the comments of the Nebraska Wildlife Federation on the Interim Final Rule for the Wetlands Reserve Program.

Organized in 1970, the Nebraska Wildlife Federation is one of Nebraska's oldest statewide wildlife conservation organizations and during this time they have been at the forefront of efforts to conserve fish and wildlife, and protect Nebraska's wild places.

The Wetlands Reserve Program

The Wetlands Reserve Program has been one of the Department of Agriculture's most successful conservation programs, providing restoration and long-term protection to 2 million acres of wetlands across the country. Wetlands perform many vital, and often underappreciated, functions, providing habitat for fish and wildlife, filtering nutrients and pesticides, recharging groundwater, and slowing flood waters. By restoring the hydrologic and biological functions to wetlands that were converted to cropland in the past, the WRP has provided benefits to farmers, fish and wildlife, and rural communities.

The purpose of the program is to encourage landowners to restore and protect wetlands by providing them with the technical and financial assistance needed. While interest and participation in the program is very strong in most states, there are some states where WRP offers and enrollments lag well behind.

• We recommend that NRCS, working with state and federal agencies and conservation partners, undertake a study (or studies) of states where the WRP seems to be most underutilized. The study (or studies) should identify the reasons for low participation rates, and provide recommendations for boosting participation.

Change in Valuation Method, Section 1467.8

The USDA's adoption of the "Yellow Book" method for estimating the value of easements for Wetlands Reserve Program purposes caused problems in some states. Congress changed the law to fix the valuation problem while being fair to landowners and taxpayers, and flexible enough to address important local situations. The new language provides three tests for maximum easement value. The first is "the fair market value of the land," determined using a Uniform Standards for Professional Appraisal Practices appraisal or an area-wide market analysis. The second is "a geographical cap, as determined by the Secretary in regulations" Section 1467.8(a)(4) sets out how that rate cap will be determined.

Eliminating the need for an individual appraisal will reduce the administrative cost of the program, and speed up the approval process. However, both the area-wide market analysis and the geographic rate cap need to reflect current market values, just as an individual appraisal does. The specific area-wide market analysis also needs to

be clearly identified by the State Conservationist.

- *We recommend in Section 1467.8(a)(3)(i), that the words “annually updated” be inserted before “area-wide...”, and the words “adopted by the State Conservationist in consultation with the State Technical Committee” be inserted after the word “survey”.*
- *We support having the geographic rate cap determined by the State Conservationist, consulting with the State Technical Committee, and having the Chief approve geographic rate caps to ensure they are set high enough to attract quality projects to the program. We recommend that in the first sentence of Section 1467.8(a)(4), the words “which shall be reviewed and updated annually” be inserted before the period, to ensure that those geographic rate caps continue to reflect current market values.*

The key test will be whether the area surveys, appraisal method, and geographic caps result in dollar values that will continue to attract farmers to enroll in the Wetlands Reserve Program.

- *We urge USDA to carefully track interest and enrollment in the program, including state to state comparisons, to review any substantial drop in participation, and to adjust the geographic rate caps where needed to continue to attract quality restoration projects.*

The rule (Section 1467.8(b)(ii)) provides that for easements valued at \$500,000 or less, the payment schedule would be set as requested by the participant, and for easements valued at over \$500,000, the payments may be made in annual installments over 5-30 years, or as a single payment if the Chief determines it would further the interests of the program. The rules should not discourage participants from enrolling in the program. Larger wetland complexes can be critically important to water quality, groundwater recharge and wildlife habitat.

- *We support the NRCS stated intent to make easement and long-term contract payments in a single lump sum unless requested by the participant.*

Ownership Eligibility Requirements

The new law (Sec. 2203(b)) prohibits someone who has owned the land less than 7 years from enrolling in the WRP, unless it was acquired through a will or succession, certain foreclosures, or where “the Secretary determines that the land was acquired under circumstances that give adequate assurances that such land was not acquired for the purposes of placing it in the program established by this subpart.” The proposed rule (Sec. 1467.4(c)) leaves it to the State Conservationist to determine if the land is eligible, and adds an example of the landowner being a beginning farmer or rancher. The rule should include examples of the many other types of sales that would fit easily into the law’s provisions.

- *We recommend that NRCS revise the rule to provide more examples of the kinds of “adequate assurances” that will meet the test of the law. Section 1467.4(c)(iii) should be revised to read: “(iii) The land was acquired under circumstances that give adequate assurances, as determined by NRCS, that such land was not acquired for the purpose of placing it in the program. In making this determination, the State Conservationist may consider signed statements by the landowner or seller, whether the landowner owns contiguous land, whether the landowner will continue to farm or ranch a substantial portion of the land acquired at the same time as the land offered to the program, whether a substantial portion of the landowner’s income is from farming and ranching, the landowner’s status as a beginning farmer or rancher, or other facts and circumstances of the sale that may indicate whether the primary purpose was enrollment in the program.”*

In the field, some NRCS employees are already using shorthand explanations that imply that people need to have owned the land for 7 years to be eligible, which will unnecessarily discourage people from pursuing a WRP easement who are actually eligible under the law.

• We recommend that NRCS be clear in the program summaries it publishes, its directives to State Conservationists, the training it provides to NRCS employees and others, and its outreach to landowners, about the law so people don't (wrongly) assume they are not eligible.

We suggest that NRCS outreach material simply state that landowners "may not be eligible" for an easement if they have held the land for less than 7 years, depending on the purpose of the purchase.

Wetlands Reserve Enhancement Program

The new law (Sec. 2206) provides specific authority for NRCS to enter into Wetlands Reserve Enhancement Program (WREP) agreements with a state, political subdivision, non-government organization, or Tribe. NRCS is already using WREP agreements, and we believe WREP agreements have proven a valuable way to leverage WRP funding with other funds to obtain environmental benefits.

The proposed rule (Sec. 1467.9) outlines how NRCS proposes to select WREP projects, through an announcement in the Federal Register and an annual decision by the Chief. The details on how NRCS will prioritize and rank applications, matching funding requirements, etc. would presumably be left for the announcement(s).

• We recommend that NRCS add the following sentence at the end of Section 1467.9(a)(1): "In selecting WREP projects for funding, NRCS will prioritize proposals that address wetland restoration needs of national or regional importance, including regional or multi-state proposals that address wetland restoration priorities that might not adequately be addressed through state ranking criteria."

WREP partnerships, like Conservation Reserve Enhancement Programs, can take a substantial amount of time and energy to develop and often involve multiple federal, state, and non-governmental partners. The language in the rule (Sec. 1467.9(a)(2)) is not clear whether NRCS contemplates an annual or a single announcement of the availability of funding. If NRCS were to put out an *annual* WREP request for proposals, with a relatively short deadline to respond, it would be very difficult for partners to develop and submit WREP proposals on a timely basis.

• We recommend NRCS issue a single announcement of the availability of WREP funds, which would be good for the duration of the current Farm Bill, and accept WREP proposals as they are developed.

The new Farm Bill (Sec. 2206) provides a specific new WREP pilot program involving reserved grazing rights. The pilot program would allow for the reservation of grazing rights where that "(i) is compatible with the land subject to the easement; (ii) is consistent with the long-term wetland protection and enhancement goals for which the easement was established; and (iii) complies with a conservation plan."

In some areas, carefully managed grazing can be compatible with or even beneficial for the vegetation in wetlands. In other regions and with other kinds of wetlands, livestock use of wetland areas can contribute excess nutrients and disturbance that can harm the wetland's functions and degrade surface water quality. For NRCS to adequately assess the impacts of a reserved grazing rights pilot program, it will need to carry out the program in one or a limited number of designated areas, where it has been demonstrated that grazing can enhance wetland values, and where the pilot program can be carefully monitored and studied for the impacts on wetland vegetation, wildlife use, hydrology, water quality, and landowner acceptance. Easements with reserved grazing rights will require carefully designed and executed management plans to protect the biological and hydrological value of the wetland. With the uncertainty surrounding the impact

of grazing rights on wetland values, NRCS will need to have flexibility built into the agreements to adjust the WRPOs if needed to ensure that the management plans adequately protect wetland values.

• We recommend that NRCS use an approach for the WREP reserved grazing rights pilot program similar to the other WREP proposals, by putting out a request for proposals from WREP partnerships, and selecting from among those proposals ones that appear to provide the clearest habitat and other wetland benefits. Partner contributions under such a WREP pilot program should include funding for monitoring and assessment of impacts, the development of appropriate legal instruments, and the development and monitoring of conservation plans that can integrate livestock use in ways that enhance wetland values.

• We recommend that NRCS carefully monitor, evaluate and provide written reports on the results of this pilot program with respect to livestock use, wetland vegetation and hydrology, wildlife use, water quality impacts, and landowner acceptance.

Having a reserved grazing right would likely impact the financial value of the easement obtained by USDA under this program. We do not believe it was the intent of Congress, in establishing this pilot program, to subsidize grazing on WRP lands at taxpayer expense.

• We support language in the rule (Sec. 1467.9 (b)(4)) that requires a reduction in the allowable WRP easement payment by the value of the retained grazing rights.

Hunting and Fishing Rights

The new law makes no mention of hunting or fishing rights with respect to WRP agreements. The proposed rule (Sec 1467(11)) requires that a WRP easement or 30-year agreement grant to the NRCS the right to permit compatible uses of the land, "including such activities as hunting and fishing..." Hunting and fishing rights should be reserved to the landowner, subject to state fish and wildlife agency regulation as necessary.

• We recommend that NRCS remove the term "hunting and fishing" from Sections 1467.11(a)(2)(ii) and 1467.11(b)(2)(ii) of the rule.

Enrollment of Riparian Areas

The new rule appears to have made it more difficult than under the old rule to enroll riparian areas in the WRP. Nothing that we can find in the new Farm Bill justifies a change that would make the enrollment of riparian areas more difficult, and in fact the Managers Explanation notes the value of riparian wetlands and indicates they can already be enrolled either as uplands that are functionally dependent on a wetland or where they link wetlands that are otherwise protected.

• We recommend that, at a minimum, NRCS restore the provisions of the old rule allowing for the enrollment of riparian areas. We urge NRCS to recognize the tremendous value of riparian areas in the arid western region of the United States and make appropriate use of the WRP to restore and protect these areas.

Sincerely,



Dan Stahr, Executive Director
Nebraska Wildlife Federation