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Executive Director

March 16, 2009

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

RE: Public comment on Wetland Reserve Program interim final rule Docket  
Number NRCS-IFR-08013

Texas Parks and Wildlife Department (TPWD) appreciates the opportunity to submit comments to the Natural Resources Conservation Service in response to the request for public comments regarding the Wetlands Reserve Program in the January 15, 2009 Federal Register (7 CFR Part 1467)

As the primary state fish and wildlife resource agency in Texas, TPWD recognizes the fact that the Wetland Reserve Program (WRP) assists eligible landowners restore and protect critical wetland habitat that benefits not only wildlife but the quality of life for all Texans. TPWD also greatly appreciates the efforts that went into restoring the Uniform Standards of Professional Appraisal Practice system, which had provided fair compensation to landowners, and expanding the national enrollment cap by a million acres. TPWD is concerned, however, about the lack of guidance for maintenance cost share payments, the exclusion of some previously eligible lands, the restriction of eligibility for lands flooded by overflow from a closed basin lake to the Prairie Pothole Region, and statements that hunting, fishing and trapping are compatible use when in fact they are reserved rights of the landowners. Attached are our suggested rule modifications to address these concerns.

Please do not hesitate to contact Chuck Kowaleski, TPWD's Farm Bill Coordinator, at 254-742-9874 or [Chuck.Kowaleski@tpwd.state.tx.us](mailto:Chuck.Kowaleski@tpwd.state.tx.us) if you have any questions or need additional information. Thank you again for the opportunity to submit our comments.

Sincerely,

Carter Smith  
Executive Director

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Attachment

## Texas Parks & Wildlife Department's WRP Interim Final Rule Comments

### Page 2330 § 1467.3 Definitions

TPWD recommends deleting the final portion of the *Converted wetland* definition: "and before such land was wetland; and such land was neither highly erodible land nor highly erodible cropland."

This addition serves no purpose other than causing confusion. According to the remainder of this definition the wetland hydrology would have to have been altered for this land to qualify. Excluding highly erodible land from meeting the converted wetland definition would impact areas with high organic soils such as bogs and muck soils that exhibit highly erodible characteristics once drained. Such an addition to the definition is not required by the 2008 Farm Bill and should not be included in this rule.

### Page 2331 § 1467.4 Program requirements

TPWD is concerned about the impact of the 2008 farm bill language in § 1467.4 (c) (2) that requires land to be owned 7 years before it can be offered for WRP enrollment. This is a major change from the previous 1 year ownership requirement and could impact many WRP participants. Fortunately NRCS state conservationists have the flexibility to waive this requirement. TPWD recommends that such waivers be granted for areas that contain species at-risk or where wetland restoration would benefit these species, in cases where a large tract is purchased but only a small part of it would be placed in WRP and in those cases where historically underutilized producers purchase land eligible for WRP. This would require striking the language found in §1467.4 (c)(2)(iii) "such as demonstration of status as beginning farmer or rancher". Preventing beginning farmers and ranchers from signing land up for WRP is contrary to 2008 farm bill language that allows this class of producer to purchase expiring Conservation Reserve Program (CRP) land and use other farm bill programs as part of the conservation plan that puts it back into production.

TPWD is also concerned about the restriction of 30 year easements to farmed and converted wetlands and natural overflow from closed basins in the Prairie Pothole Region. The 2008 farm bill requires no such restriction. Such a restriction impacts Texas ability to apply 30 year easements to the areas surrounding our 30,000 playa lakes and other farmed and converted wetlands.

TPWD recommends that the Prairie Pothole language be deleted in § 1467.4 (e)(5) so that it now reads: "Land under paragraph (e)(3)(ii)(B) of this section may be considered for enrollment into 30 year easements if it meets the criteria under paragraph (e)(3) of this section and the size of the parcel offered for enrollment is a minimum of 20 contiguous acres."

TPWD would also like to remove the restrictions on eligible adjacent land found in § 1467.4 (e)(6) through the following deletions and additions in the current language:

~~“If land offered for enrollment is determined eligible under paragraph (e)(3) and (e)(5) of this section, then NRCS may also enroll land adjacent or contiguous to such eligible land together with the eligible land, if such land that maximizes wildlife benefits and.”~~

- (i) Is farmed wetland and adjoining lands enrolled in CRP, with the highest wetland functions and values, and is likely to return to production after it leaves CRP;
- (ii) Is a riparian area along streams or other waterways that links or, after restoring the riparian area, will link wetlands which are protected by an easement or other device or circumstance that achieves the same objectives as an easement; or
- (iii) Land adjacent to the eligible land that would contribute significantly to wetland functions and values, such as buffer areas, wetland creations, non-cropped natural wetlands, ~~and restored wetlands and other wetlands that would not otherwise be eligible but would significantly add to the wetland functions and values of the eligible land.~~ but not more than the State Conservationist, in consultation with the State Technical Committee, determines is necessary for such contribution.

#### **Page 2334 §1467.10 Cost-share payments**

As mentioned in the cover letter, TPWD would like to see some guidance placed in this rule concerning cost share for maintenance practices which was allowed by the 2008 farm bill

It would seem that §1467.10(3)(b) might be an appropriate place to insert this language TPWD suggests the following language:

Cost-share payments may be made only upon determination by NRCS that an eligible conservation practice or component of a conservation practice has been implemented in compliance with appropriate NRCS standards and specifications; or an eligible activity, including maintenance, has been implemented in compliance with the appropriate requirements detailed in the WRPO. Identified conservation practices or activities may be implemented by the participant, NRCS, or other NRCS designee.

TPWD recommends striking sections 1-4 of §1467.10(e). This section is not required by law, does not fulfill Congress intent and takes away from the long term viability of the program. Original landowner has no control over land activities and actions occurring after sale yet would be held responsible under these sections. Language at the end of §1467.10(e)(2) would require a former landowner to repay the full cost of an easement or 30-year contract to NRCS if the new landowner was ineligible or unwilling to continue even though NRCS would continue to retain the easement. This amounts to a “free” easement being held by NRCS and could negatively impact the program.

#### **Page 2335 §1467.11 Easement and 30-year contract participation requirements**

Page 2335 §1467.11 (a) (2) (ii) and (b)(2)(ii)- State that hunting and fishing are compatible uses. TPWD recommends that hunting, fishing and trapping should remain reserved rights of the landowner not subject to the control of the easement. NRCS does not have a role in setting hunting or fishing seasons or bag limits. TPWD’s

recommendation is to strike "hunting and fishing" so that it reads "The right to permit compatible uses of the easement area, including such activities as managed timber harvest, or periodic haying or grazing, if such use is consistent with the long-term protection and enhancement of the wetland resources for which the easement was established."

Along the same lines §1467.11 (a) (2) (iii) currently states that NRCS claims "All rights, title and interest in the easement area; "

If NRCS had all rights, then NRCS would own the property and be responsible for paying all property taxes on the easement area which it currently doesn't do. This is an obvious error and needs clarification.

TPWD suggests that the above language in §1467 11 (a) (2) (iii) be changed to match the WRP warranty deed, a recent copy of which included the language: [Certain] rights, title and interest in the easement area [Except:

- A. Title. Record title, along with the Landowner's right to convey, transfer, and otherwise alienate title to these reserved rights
- B. Quiet Enjoyment. The right of quiet enjoyment of the rights reserved on the easement area.
- C. Control of Access. The right to prevent trespass and control access by the general public subject to the operation of State and Federal law.
- D. Recreational Uses. The right to recreational uses, including hunting, fishing, and trapping and including leasing of such rights for economic gain, pursuant to applicable State and Federal regulations that may be in effect at the time.
- E. Subsurface Resources. The right to oil, gas, minerals, and geothermal resources underlying the easement area, provided that any drilling or mining activities are to be located outside the boundaries of the easement area, unless activities within the boundaries are specified in accordance with the terms and conditions of EXHIBIT C in the Warranty Deed Form CCC-1255 once the easement has been perfected ]

TPWD also notes that § 1467.12(a), 1467.13(a)(1) and 1467.13(b) mentions input from the FWS and Conservation Districts but fails to mention getting input from state fish and wildlife agencies who may be responsible for species at-risk associated with these sites. TPWD requests that the term "state game and fish agency" be added after FWS in each of these sections.