Decker, Denise - Washington, DC

From: Erin O'Brien [Erin.OBrien@wisconsinwetlands.org]
Sent: Friday, March 13, 2009 11:15 AM
To: RA.dcwashing2.wrp
Cc: 'Becky Abel'; 'Gildo Tori'; Pena, Alison - Madison, WI
Subject: Comment on Wetlands Reserve Program Interim Final Rule, Docket Number NRCS-IFR-08013
Attachments: WWA 2009 WRP comments.doc

Dear Robin,

Attached please find Wisconsin Wetlands Association's comments on the Wetlands Reserve Program Interim Final Rule, Docket Number NRCS-IFR-08013.

Thank you for your consideration of this input.
Erin O'Brien

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March 5, 2009

Robin Heard
Director, Easements Program Division
USDA-NRCS
P.O. Box 2890, Room 6819-S
Washington, DC 20013

Re: Comment on Wetlands Reserve Program Interim Final Rule, Docket Number NRCS-IFR-08013

Wisconsin Wetlands Association's (WWA) is dedicated to the protection, restoration and enjoyment of wetlands and associated ecosystems through science-based programs, education and advocacy. WWA is a 501 (c)(3) non-profit organization. We submit these comments on behalf of WWA's 1,500 members, and the many other concerned citizens and organizations we regularly assist with efforts to protect and restore wetlands in Wisconsin and throughout the Midwest.

Wisconsin Wetlands Association holds a strong interest in the efficient and effective implementation of the federal Wetlands Reserve Program (WRP). Between 2006 and 2008 we were an active part of regional efforts to secure language in the 2008 Farm Bill that guaranteed full funding for the program and modified the appraisal methodologies state programs must use to determine easement compensation. We were pleased that both of these issues were resolved as part of the 2008 Farm Bill and that the appraisal methodologies prescribed in the 2009 Interim Final Rule are consistent with the appraisal modifications we supported.

Despite this positive development, we remain concerned that the following provisions of the 2008 statute and 2009 Interim Final Rule will continue to hamper the efficient and effective implementation of the program across the nation:

1. The 7-year prior ownership requirement.
The 7-year prior ownership requirement under Section 1467.4 (2)(c)(2) is not in the best interest of the WRP program. We recommend statutory amendments to revert this back to the 12-month requirement as required under previous versions of the Farm Bill.

In the meantime, State Conservationists should be granted broad authority to waive the 7-year prior ownership requirement when the project is consistent with the intent of the program.
We are pleased to see a provision under 1467.4(c)(2)(iii) that gives the State Conservationist discretion to enroll lands when NRCS has "adequate assurances" that the land was not acquired

for the purpose of placing it in the program. However, we oppose the inclusion of criteria in the rule or any subsequent guidance from D.C. that attempts to "prescribe" the scenarios under which such a waiver would be appropriate.

Prescribing the scenarios under which waivers may be granted has the potential to hamper implementation of the program and will do little to prevent the abuses of the program the new 7-year prior ownership criteria is designed to address. Determination of whether the parcel was acquired for the purpose of placing it in the program needs to be based on an evaluation of facts unique to any given application.

Other checks and balances that could be built into the new rule to prevent abuses to the program include:

1. Implement a system to review or audit State Conservationists' performance on the implementation of the 7-year prior ownership requirement to ensure they are exercising their waiver authority appropriately.

2. Replace all prescribed criteria for when waivers may be granted with prescribed criteria thataddress scenarios under which waivers would expressly not be allowed.

2. Loss of eligibility of state and local governments to receive WRP program funds.

Under the 2008 statute and 2009 rule, state and local governments are no longer eligible to own lands enrolled in the program. These provisions have completely hampered NRCS' ability to implement the program because they also render state and local governments ineligible to receive <u>any</u> program funds.

Implementation of the WRP program has always included a variety of partnerships with state and local governmental agencies, including divisions of labor and available technical assistance funds to complete the restoration work and manage the properties. In many cases, WRP projects are completed as joint projects, with WRP paying 75% of project costs and the state covering the remaining 25%.

Negative consequences of these new cost-share restrictions include:

1. NRCS loses the ability to collaborate with government employed biologists who have wetland restoration expertise and in-depth knowledge of the technical standards that must be met in the design and construction of WRP projects.

2. NRCS may be forced to contract with less qualified private contractors, <u>at a much higher cost</u>, to fully implement the program. This could result in lower quality restoration projects and fewer acres restored due to higher per/acre expenses.

3. State and local agencies may decide to no longer help with the identification and recruitment of eligible lands.

4. State and local agencies may no longer contribute matching funds to WRP projects.

We recommend statutory changes to allow allocation of WRP funds to state and local governments for cooperative projects. In the meantime, to ensure full implementation of the program and obligation of program funds, the final rule should make allowances for NRCS to reimburse state and local governments for costs incurred during the restoration and management [illegible] The NRCS practice of separating the obligation of funds for easement acquisition and restoration work causes costly program delays. In difficult financial times, it also makes it hard for NRCS to honor the commitment it makes to landowners to pay for the restoration of obligated lands. For example, if NRCS signs an easement today but it takes 1-2 years to finalize the plans and contracts for the restoration work, there is no guarantee that the money will be available at that time to pay for the work.

The final rule should authorize NRCS to obligate funds for the purchase of easements and restoration work at the same time. Coupling the restoration of easement and restoration funds will help to ensure that every parcel of land enrolled actually gets restored. The new rule should allow NRCS to obligate restoration funds based on a signed plan of operations as part of the easement acquisition process, with the option to adjust the amount obligated for restoration based on a finalized plan and contract.

Thank you for your consideration of these comments. Please contact me at 608-250-9971 if you have any questions.

Erin L. O'Brien (*signed electronically 3/13/09*)
Wetland Policy Director

cc:
Becky Abel, Executive Director Wisconsin Wetlands Association
Gildo Tori, Director of Public Policy Ducks Unlimited
Senator Russ Feingold, c/o Michael Schmidt
Senator Herb Kohl, c/o Phil Karsting
Alison Pena, Wisconsin WRP Program Manager