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FAX SHEET

DELIVER TO: Wetland Reserve Program PHONE: 202-720-4527

FAX NUMBER: 202-720-9689

FROM: Iowa DNR

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MESSAGE: Iowa DNR comments on the Wetlands Reserve Program interim final rules

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STATE OF IOWA

CHESTER J. CULVER, GOVERNOR
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
RICHARD A. LEOPOLD, DIRECTOR

March 12, 2009

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

Dear Sir:

The Iowa Department of Natural Resources wishes to provide comments on the interim final rules for the Wetlands Reserve Program. Our comments follow:

General Comments

We wish to complement USDA-NRCS on raising the enrollment cap to 3,041,200 acres through the year 2102. The WRP has been a very successful program in Iowa for landowners and assisting our state in achieving wetland creation goals as identified in the North American Waterfowl Management Plan and our state wildlife action plan. We consider WRP to be a vital USDA program with respect to deterring wetland losses and providing landowners a viable alternative to wetland drainage. The Iowa DNR is committed to work diligently with our local NRCS staff to help deliver this program.

We are dismayed that state and local units of government will no longer be eligible to receive benefits including WRP restoration payments. We find this disheartening because NRCS and the Iowa DNR share many of the same conservation goals and objectives with respect to this program. State ownership of WRP easements also provide producers with a viable option for selling WRP easement lands when it is beneficial to their farming operation. We certainly hope that producers that enrolled their lands in WRP prior to full implementation these rules will not be penalized nor denied restoration funding. We feel it only fair that they be allowed to complete their WRP responsibilities by the same rules under which they applied.

Specific Comments

1467.4(c) 2 - this section reflects the statutory change in ownership from 12 months to seven years. We appreciate that the State Conservationist will be given flexibility to enroll land if the land was acquired by will or due to foreclosure and consideration can be given to new or beginning farmers. We also encourage these rules to grant waivers for applications that demonstrate significant wildlife, water quality, or flood control benefits and for enrollments that benefit species of greatest conservation need, T&E species, and at-risk species. This flexibility ensures that wildlife remains an important goal of WRP. Additionally, alternative language should be included to provide State NRCS offices with criteria that could establish eligibility under the seven year provision such as signed statements from the buyer or seller, documentation that the applicant is an active producer, that the applicant owns contiguous land and other facts or circumstances that indicate the purpose was not simply WRP enrollment.

1467.4(d) – this section now requires the producer to perfect the WRP easement before it can be sold or transferred. Perfecting a WRP easement generally takes about a year to complete. By not allowing a transfer or sale prior to that time removes some options from producers that want to sell this land and purchase replacement land. We recommend that producers be allowed to sell their land at any time during the application process to another qualified, eligible applicant including not for profit organizations.

1467.4(e) – in this section, riparian lands are now only eligible when included along with other eligible lands such as fanned wetland or converted wetland. This change will exclude important “stand alone” riparian areas from enrollment in WRP. We request that riparian areas be eligible for enrollment when they meet the statutory requirement of linking protected areas. Furthermore, the State Conservationist should be provided the ability to waive this requirement when special circumstances support it.

1467.4(e) 6 – we recommend that this section be expanded to allow NRCS to also enroll land that maximizes wetland benefits such as:

- (iv) Wetlands that have been restored under a private, state, or federal restoration program with an agreement period of less than 30 years,
- (v) Other wetlands that would not otherwise be eligible but would significantly add to the wetland functions and values of the enrolled land.

1467.4(f) – this section deals with enrollment of CRP lands. It states that to enroll in WRP, the CRP contract must first be terminated. Our concern is that it takes a while for a WRP easement to be perfected. If the CRP contract is terminated before the WRP easement is perfected, a producer may be forced to till the CRP land. We recommend that the CRP contract not be terminated until the WRP easement has been perfected.

1467.5 – Consent is allowed for NRCS to enter the property and make an assessment. In many cases, these assessments are performed by interagency teams. We recommend adding the U.S. fish & Wildlife Service and state fish and wildlife agency to the assessment process.

1467.8(a) – this section allows the State Conservationist to establish a geographic area rate cap as a method of easement compensation. We are fearful that use of the GARC does not keep current with market trends and can be artificially low during rising land prices. We recommend that these GARC's be reviewed at least quarterly and that offers and enrollments be tracked to ascertain any substantial drops in participation which would trigger a review of the GARC payment.

1467.8(b) – We are very concerned about the payment limitations particularly the new rule requiring payments over \$500,000 to be made in at least five but not exceeding thirty annual payments. Removing lump sum payments is a disservice to producers that want to participate in a 1031 land exchange and purchase replacement land for the purpose of improving their farming operations. We recommend allowing lump sum payments regardless of easement value.

1467.10(d) this section states that the participant shall not receive more than 100% of the total cost of restoration. For the most part we agree with this statement. However, we

are concerned that it fails to recognize enhancement measures above and beyond planned restoration that is paid for by a partner. We suggest adding the words "or enhancements" to the end of this section to ensure that these enhancements are still allowed.

1467.10(e) – this sections states that if a new landowner acquires the property and they do not meet eligibility criteria for cost share or it is transferred to a public agency or other ineligible person and prior to completion of the restoration, then the original landowner or the new landowner would be responsible for completing the restoration work at their own cost and without NRCS payment. These rules place undue hardship on landowners and go too far in restricting the transfer of property once an easement is perfected. The new rules should establish eligibility at the time the easement id s approved. After that, it is NRCS responsibility to fulfill the goals and objectives of the WRP program by completing the restoration. We strongly recommend that 1467.10(e) 1 through 4 be eliminated in their entirety.

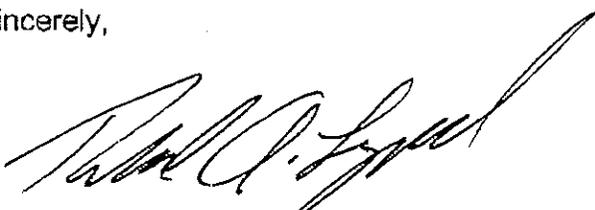
1467.11(a) 2(ii) – this section indicates that hunting and fishing are activities regulated by NRCS as compatible uses. Hunting and fishing are landowner rights along with the right of ingress and egress, conveyance of title and mineral rights unless these rights are specifically purchased in the easement. We request that hunting and fishing be removed from this section and that this rule recognize that hunting and fishing are reserved rights.

1467.11(a) 2(iii) – this section infers that the easement grants all rights in the area to NRCS. This is not correct and should be changed to reflect that the easement grants "certain" rights to NRCS, excluded from which are title, including the landowners right to convey or transfer title, control of access, recreational uses including hunting, fishing and trapping, and any subsurface rights.

1467.12a, 1467.13(a) 1, and 1467.13b – these sections all mention receiving input from FWS and the Conservation District. In Iowa, we have an excellent working relationship with our local NRCS office. We recommend adding "state fish and wildlife agency and other agency resource partners" to these sections to ensure that this partnership is recognized in the rules.

In conclusion, the Wetlands Reserve Program has had significant positive environmental benefits in Iowa and throughout the country. We commend NRCS on this truly successful program and commit our assistance as a partner in promoting and implementing these new rules. We encourage flexibility at the state level to ensure that the program can be delivered to meet the needs of our producers while accomplishing the goals and objectives of this valuable conservation program.

Sincerely,



Richard A. Leopold
Director