



Worldwide Office
4245 North Fairfax Dr.
Suite 100
Arlington, Virginia 22203

tcl (703) 841-5300
fax (703) 841-7400
nature.org

133

COMMENTS ON WETLANDS RESERVE PROGRAM

Docket Number NRCS-IFR-08013

Fax: (202) 720-9689

The Nature Conservancy (Conservancy) appreciates the opportunity to comment on the 2008 Farm Bill Interim Final Rules for the Wetlands Reserve Program. With over 2 million acres enrolled in WRP since inception of the program in 1990 its importance to the restoration, protection and enhancement of wetlands, their associated natural communities and the biodiversity dependent upon them cannot be questioned.

The Conservancy is encouraged to see new and important changes being made to WRP through these Interim rules and would highlight: the further formalization of the Wetlands Reserve Enhancement Program (WREP) and the accompanying Reserved Rights Pilot Program as not only important ways to advance partner involvement in WRP, but also demonstrating needed new concepts and flexibility in the WRP to accommodate landowner, system and species needs. The Conservancy is also encouraged by the opportunity for Market-Based Conservation Initiatives such as Ecosystem Services Credits to be compatible with and applied on WRP.

Specific comments on the interim final regulation are:

Section 1467.4 (c)2 – The Conservancy does not support the change to a 7 year ownership requirement. While recognizing it is a statutory change, the Conservancy encourages NRCS to maintain maximum flexibility with its interpretation of this provision. The change will significantly reduce important opportunities to enroll critical wetlands into the program. NRCS does have some discretion to determine purchase intentions within the 7 year window. Therefore we urge that eligibility be granted where landowners purchased the land for primarily other purposes even if the farmer is not a beginning farmer. For example, if landowners purchase a large tract of land and learn that a small portion of it is eligible for WRP the 7 year requirement should be waived under the Secretary's authority. NRCS has already issued draft policy indicating a 4 year wait would be required. The Conservancy does not believe this is in the best interest of wetland resources. In addition, waivers should be granted for areas that contain at-risk species or for which restoration would benefit these species. Declining species need special attention to ensure they are not listed through the Endangered Species Act or removed when possible and every opportunity to meet this goal should be actively sought.

Section 1467.4(e) – The Conservancy is concerned that the following sections were deleted from the list of lands eligible for enrollment:

"other wetlands that would not otherwise be eligible but would significantly add to wetland function and values" and

"Wetlands that have been restored under a private, state or federal restoration program with an easement or deed restriction with a duration of less than 30 years"

The Conservancy can find no basis in statute for the deletion of these sections.

Section 1467.4(e) – The Conservancy urges NRCS to add the following to the eligibility section under section 1467(e)(3) as subsection (C):

(C) a riparian area or floodplain 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;

The 2008 Farm Bill statute continues to allow riparian areas to be included within the WRP when they link protected wetlands. This is an important tool since riparian areas are critical to many species of wildlife. In addition, these areas are corridors that provide for the movement of plants and animals through often otherwise uninhabitable landscapes. However, the WRP Interim Rule has placed greater restriction on the enrollment of riparian areas than either the law or past NRCS policy. Specifically, Section 1467.4(e)6 relegates riparian area enrollment to only be included when other lands as specified in Section 1467.4(e)6 are included (e.g., farmed wetland or converted wetlands, farmed under natural conditions). This discretionary change by NRCS will make it extremely difficult to enroll important riparian areas into WRP. Therefore, the Conservancy requests that riparian area 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.

Also, the Conservancy urges NRCS to amend section 1467(e)(i) to read:

(i) the enrollment of such land maximizes wildlife benefits and wetland values and functions; "including but not limited to emergent marshes, seasonal wetlands, vernal pools and other wetland types that have wetland values and perform ecologically significant wetland function."

Vernal pools occur through portions of the Western United States and host a number of listed plant species and listed invertebrates. Technically vernal pools should be eligible, however because these are not the proto-type wetland with more traditional waterfowl/ waterbird benefits, it's harder to get support within the WRP. Nonetheless these are important wetlands. Most vernal pools have been grazed historically and would qualify as farmland/grassland.

Section 1467.8 – Compensation for easements. The Conservancy urges NRCS to use its authority to waive 1467.8(b)(2)ii for easements valued at \$500,000 in most if not all

cases. This requirement is a major deterrent to landowner participation. Often farmers are enrolling land in WRP in order to receive a payment and purchase additional land that is better suited for farming. An installment payment plan of the easement will deter farmers from participating in the program.

Section 1467.9(b) – The Conservancy strongly supports the Reserved Rights Pilot. The statute and Interim Rule provides for the pilot of a Wetlands Reserve Enhancement Program that allows grazing rights to be reserved to the landowner with a reduction in easement payment. This will be an important tool to protect and restore areas critical to wetland dependent wildlife. The existing program only allows for grazing to be provided as a compatible use at the discretion of NRCS. This has deterred many traditional ranching operations from participating in the program because they would not give up their right to graze and meet their economic goals for the lands. Therefore, many important wetland landscapes are unprotected. Reserved grazing rights have the potential to greatly extend the opportunities for program enrollment. We recommend that NRCS issue a Request for Proposal in the near future and work to make this a successful tool for the conservation of wetlands and important wildlife habitat in the United States.

Because this Pilot is a partnership program (within WREP), the Conservancy urges NRCS to add to the following subparagraph to 1467.9(b)(2) to ensure the partnership is adequately engaged:

“(iv) Is approved by the WREP funding partners.”

Additionally, to minimize workload for NRCS the Conservancy recommends that instead of preparing individual grazing plans for the easements, that an ecological condition be integrated into the easement document. This would be an agreed to condition between NRCS and the landowner. The landowner would be responsible for managing the ecosystem to the predetermined level of wetland health. This condition would target the wetland functions being targeted through easement acquisition. In some landscapes (e.g., areas with non-native grasses) moderate to heavy grazing pressure may be the most important tool for ensuring the value and functions of the easement. NRCS or a partner would periodically determine whether the landscape goals are being met. If not, the landowner would be notified and given a date to implement a management strategy that would achieve the landscape objectives.

Section 1467.11 (a) (2) (ii) - includes hunting and fishing as a compatible use. Compatible uses are activities that NRCS allows through a process that furthers the conservation of wetland functions and values. In our opinion hunting and fishing are rights that should remain with the land owner. The Conservancy requests hunting and fishing be removed from this paragraph and that the Interim Final Rule indicate that hunting and fishing is a reserved right not a compatible use.

Section 1467.14 – Transfer of land. Currently, the State Conservationist can extend offer of enrollment to the new landowner, but the new rules have taken this option out. The Conservancy recommends adding the following at the end of subparagraph (a):

“Except that at the option of the State Conservationist, an offer can be extended to the new landowner, if the new landowner agrees to the same or more restrictive easement and contract terms and conditions.”

In addition, the Conservancy has concerns over how NRCS will address the transfer of ownership of WRP to public entities that are ineligible for the program. If a landowner enrolls in WRP, but then sells the underlying interest to a state or local agency, it may be difficult to complete the restoration since that agency would not be able to receive restoration funds. The Conservancy understands NRCS must use eligibility requirements as identified in law but once the easement is completed it becomes the responsibility of the federal government to ensure the original investment is secured and maintained. NRCS should consider what to do if this situation arises.

Section 1467.15 Violations and Remedies. The Conservancy is concerned that under paragraph 3 of this section it appears NRCS can seek a full refund of the WRP payment if the restoration is not completed, but yet still retain the easement. This is problematic since “restoration” is subjective and many landowners would not participate in the program if they think there is some chance that they would need to fully reimburse NRCS yet NRCS would still own an interest in their land should NRCS determine that restoration was not complete. There needs to be some clarification of this and more specific guidelines of when this action would be appropriate. Additionally, it might make sense to separate easement covenant violations from violations of the restoration plan and have separate remedies for each. Another approach might be for NRCS to seek a partial refund of the easement money yet still enforce the easement.