

March 12, 2009

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

RE: Docket Number NRCS - 08013

Programs Division Staff:

We offer our comments on the Wetlands Reserve Program Interim Rules Docket Number NRCS-IFR-08013 issued on January 15, 2009. We appreciate the opportunity to comment on these rules and hope they will help to build on WRP as an effective conservation opportunity for landowners. In addition to our comments, we recognize the comments submitted by Association of Fish and Wildlife Agencies and fully support their findings.

We commend USDA-NRCS on successfully changing the easement acquisition valuation methodology from the Uniform Appraisal Standards for Federal Land Acquisition (Yellow Book) back to the uniform Standards of Professional Appraisal Practice as was used prior to FY 2007. This will assure a more equitable easement value for landowners and increase the number of offers

We also commend USDA-NRCS for including cost share for maintenance of the WRP easement. However, the interim rules indicate that if a new landowner acquires the property and they do not meet eligibility criteria for cost share or if it is transferred to a public agency, then funds can no longer be directed towards the easement. This is counterproductive to the public's interest and does not ensure the restoration or maintenance of the wetland functions that the easement was originally acquired. We understand NRCS must use eligibility requirements as identified in Statute but once the easement is perfected it becomes the responsibility of the Federal Government to ensure the original investment is secured and maintained. Therefore, landowner eligibility should no longer be a consideration.

Section 1467.2(f) Administration - We support the participation and consultation with the Fish and Wildlife Service at the local level in program implementation process. The Fish and Wildlife Service (FWS) has been an integral part of the WRP process here in Kansas and their input is vital.

1467.3 Definitions - Converted wetlands: We recommend striking the new addition to the definition "and before such action such land was wetland; and such land was neither highly erodible land nor highly erodible cropland" located at the end of the definition. There is no reason for such restriction and could restrict some upland enrollment that is needed.

1467.4(c)(2) Program requirements – We are quite concerned with this provision that requires landowners to own the tract offered in WRP for the previous seven years prior to enrollment. This will reduce application rates significantly and impact the ability for NRCS to gain easements on some very valuable wetlands. We would encourage State Conservationists to use the greatest flexibility possible in granting waivers.

1467.4(6)(ii) We would recommend removing this change in the riparian area eligibility. Riparian areas should be eligible as long as they meet the statutory criteria of linking protected areas
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1467.5(b) Include the wetland team (FWS, State Wildlife Agency) that is allowed to enter the land to review an application for purposes of assessing the wetland and other activities to carry out the WRP process

1467.6(a)(2) Environmental benefits should be defined to include those components of WRP wetland restoration process that will address and allow for maximum restoration for wildlife, flora, watershed protection and water quality. Biofuel and energy production should not be included as an environmental benefit of WRP.

1467.8(b)(2)(ii) Requiring a minimum of 5 annual payments for easements valued over \$500,000 will create a hardship on landowners who wish to participate in a 1031 exchange. This is one of the better ways for landowners to dispose of marginal land (WRP) and replace it with more productive farm land in their operation. The 1031 exchange requires this to take place within 180 days from the date the land is sold or placed in an easement. We recommend allowing NRCS to make one annual payment to the landowner if the landowner chooses that option to rectify this problem.

1467.10 (e)(1-4) We recommend striking this entire section. The original landowner has no control over land activities and actions occurring after the sale. This section is a problem for all subsequent owners of WRP and it unnecessarily hamstrings those owners. This language does not fulfill the intent of WRP as authorized by Congress and does not serve to uphold the Federal government's responsibility in managing these easements

1467.11 (a)(2)(ii) Hunting, fishing and trapping are recreational uses reserved by the landowner in the easement document. They should not be included as compatible uses. NRCS does not have a role in setting hunting, fishing and trapping regulations and as long as these activities are carried out within the law and regulations set by the state, a compatible use authorization is not needed. For most WRP landowners in Kansas, recreational use is very important and if hunting, fishing and trapping were to become a compatible use authorized or denied by NRCS (or others) we would expect there to be very little interest in the program.

1467.11 (a)(2)(iii) All rights, title and interest in the easement area are not granted to NRCS. This should be changed to "certain rights" as set forth in the current easement document

1467.11 (b)(2)(ii) The same comment applies to 30 year contract requirements as for permanent easements above in 1467.11 (a)(2)(ii).

1467.12 (a) The state wildlife agency should also be listed as a partner in the development of the WRPO

Thank you again for the opportunity to comment on the WRP interim rules. We sincerely hope these comments and those of the Association of Fish and Wildlife Agencies will help make positive changes for WRP in Kansas and across the nation. This is a great program with boundless potential to restore wetlands, improve wildlife habitat, protect endangered species and provide a workable option for landowners with land that is unproductive to farm because of flooding and wet conditions.

Sincerely,

A handwritten signature in black ink that reads "Keith Sexson". The signature is written in a cursive, flowing style.

Keith Sexson
Assistant Secretary of Operations
Kansas Department of Wildlife and Parks

