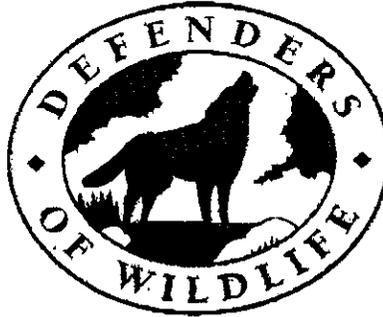


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FAX TRANSMISSION

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Date: 3/16/09

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Number of pages to follow: 5

COMMENTS:

WRP Interim Rule Comment letter

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# CENTRAL VALLEY JOINT VENTURE

## North American Waterfowl Management Plan

California Waterfowl

California Association of  
Resource Conservation  
Districts

Defenders of Wildlife

Ducks Unlimited, Inc

National Audubon  
Society

PRBO  
Conservation Science

River Partners

The Nature Conservancy

The Trust for Public Land

March 16, 2009

*Via electronic mail and facsimile w/ hard copy by mail*

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

**Re: Comments to the Interim Final Rule of the Wetlands Reserve Program (74 Federal Register 2317 (January 15, 2009))**

Dear Sir or Madame:

The Central Valley Joint Venture (CVJV) was established in 1988 as one of six priority initial joint ventures formed to implement the goals of the North American Waterfowl Management Plan (NAWMP) at a time when continental-wide declines in populations of waterfowl were occurring. The NAWMP was developed as a comprehensive response to sustain and enhance waterfowl populations and the habitats on which they depend throughout the western hemisphere. In 2004, the goals of the joint venture were expanded to include all native birds consistent with the North American Bird Conservation Initiative

Historically, of the 100 million waterfowl in North America, 10 million come down the Pacific Flyway, and 60% winter in the Central Valley of California. In addition, so do millions of shorebirds as well as Sandhill Cranes, Long-bill Curlews, and many other wetland-dependent water birds wintering in California's Central Valley. These birds, many coming from Alaskan and Canadian breeding grounds, find their California wintering grounds shrunk to 5% of the historic estimated 5 million acres – a 95% loss in habitat. With habitat loss concentrating populations of birds, density-dependent diseases such as avian cholera and botulism, can have much greater impacts on these populations of birds. Therefore, the work of the Joint Venture to restore, enhance, and conserve the remaining wetlands becomes even more critical. Add the fact that California's human population will grow from 37 million to 50 million people over the next 20 years, and there is a real threat to sustain this internationally recognized and protected resource.

With this introduction, let me come right to the point: The Wetlands Reserve Program has done more to protect and restore privately owned wetlands in California than any other program. California landowners have voluntarily enrolled over 100,000 acres in the wetland reserve program permanently protecting these areas for waterfowl and wetland-dependent flora and fauna.

Specific Comments:

The twenty-two partner organizations and agencies that make up the CVJV of California have been very supportive of this critical program over the last twenty years, and plan on continuing that support for many years to come. This program is critical in helping all the state's Joint Ventures accomplish their wetland protection and restoration goals, and furthers the implementation of California's State Wildlife Action Plan. As such we are pleased that the program will increase the acreage cap to 3,041,200 acres through the year 2012. In addition, the increased flexibility in easement acquisition valuations that allow for appraisals, market analyses, geographic caps, or landowner offers should provide greater program efficiency and address a key bottleneck to program implementation. Finally, we support the pilot program for ranchers to enter into conservation easements with grazing retained by the landowner as a reserved right, provided that the grazing is compatible and consistent with the wetland habitat on site and complies with a WRPO for the property.

However, there are several aspects of the interim rule that are of considerable concern. As such, we have the following specific comments:

- **Section 1467.4(c)(2)**. Statutory change that extends land ownership eligibility requirements from 12 months to seven years.

Issue: The requirement that applicants are ineligible if they have not owned the land for at least seven years could severely reduce, but at least half, enrollment in California. We would encourage that the State Conservationist be given as much latitude as possible to determine that such lands were not acquired solely for the purpose of enrolling the property into the WRP.

Resolution: We propose that the State Conservationist be given authority to grant a waiver when it can be determined that the property was not purchased solely for enrollment in WRP or in special circumstances where restoration activities on marginal or flood prone farmland will clearly have substantial agronomic, ecological, or biological benefits. Special consideration should also be given to projects that help conserve at-risk, candidate and listed species, or will help preclude the listing of a species.

- **Section 1467.20(a)(3)** Limiting restoration payments to \$50,000/year on 10-year restoration cost-share agreements.

Issue: From past experience the average 10-year restoration agreement in California costs \$160,000. A \$50,000 payment cap will result in fewer acres of wetlands restored and will increase the time and expense for restoration on larger acreages. Larger projects will reduce the need to piecemeal restoration, thereby increasing the cost effectiveness of NRCS's work and limiting the disturbance to habitat and wildlife during construction.

Resolution: We proposed that the State Conservationist be given the authority to grant a waiver to projects with high biological value in areas where restoration is expensive and

exceeds the average national restoration cost or to those that can demonstrate cost efficiency through the implementation of a large scale project.

- **Changes to the Land Transfer Requirements.**

There are several issues here that, if not resolved sufficiently, could result in significant reductions of landowner sign-ups and actual restoration implementation.

Issue #1: Section 1467.4(d). When a parcel of land has been accepted for enrollment but then changes hands before the easement is perfected, the rule states that the purchase will be canceled and the acres removed from enrollment.

Resolution: We suggest that the new landowner be checked for eligibility, and if the new landowner is eligible and wishes to continue the enrollment process, the application should be transferred and not canceled.

Issue #2: Section 1467.10(e). If land, after an easement is perfected, is sold to an ineligible party, the rule states that the participant with the contractual obligation (i.e., the previous owner) is still responsible for any remaining items in the Wetland Restoration Plan of Operations (WRPO). If the new ineligible landowner does not agree with the WRPO, NRCS would be forced to require the previous landowner to complete the WRPO or refund the easement cost and restoration payments. This could be a very hard sell for new applicants, could lead to increased enforcement and legal activity, is subject to changing conditions of eligibility, and thus is essentially unworkable for the long-term.

Resolution: We suggest that the NRCS be allowed the flexibility and expressed right to "perform" restoration and maintenance activities on WRP lands as necessary (note the need to reinstate the language "perform" in rule section 1467.11(a)(2) rather than "ensure").

Issue #3: Section 1467.10(3). If land is sold to an ineligible party, it should be made clear that NRCS technical assistance will be made available whether or not financial assistance is allowed.

Issue #4: and suggested resolution. Section 1467.10(e). Finally, easement acquisitions or ten-year restoration agreements that were in process on October 1, 2008, when these rules changes took effect, should not be subject to the new rules based on the date of transfer but should be subject to the rules in place at the time of enrollment.

- **Section 1467.11(a)(2)(ii) Recreation**

Issue: Fully two-thirds of the wetlands in the Central valley are privately owned and most are managed as waterfowl habitat to provide hunting opportunities. The CVJV strongly encourages the NRCS to protect these hunting opportunities to encourage landowner participation.

Resolution: Maintaining hunting on WRP lands as a reserved right – a long-held NRCS practice – is critical to the success of the program. In a related issue, the CVJV strongly

supports the establishment of the Voluntary Public Access and Incentive Program, which seeks to provide additional hunting opportunity to the general public. Given the high percentage of privately owned wetlands in the Central Valley, WRP lands may be ideal for such use and the program should be encouraged on WRP enrollments.

▪ **Section 1467.8(2)(ii) Easement compensation.**

Issue: For easement values in excess of \$500,000, NRCS will provide compensation in at least five but not more than 30 annual payments. In critical wetland areas of the Central Valley, California, even for marginal farmland, WRP easement payments can easily exceed \$500,000. Flexibility in dealing with landowners will ensure that the most valuable wetlands will be protected and restored.

Resolution: We encourage the NRCS to be as flexible as possible in determining when easement payments of more than \$500,000 can be paid in lump sums, rather than annual payments, to further the purposes of the program, and that such decisions be made by the State Conservationist, not the Chief of NRCS.

▪ **Section 1467.20(b) Market Based Conservation Initiative.**

This initiative allows the NRCS to accept and use non-federal funds to support the program, which would come from "Ecosystem Services Credits." It is not at all clear what these "credits" might be, but assume them to be for carbon or mitigation needs. While NRCS asserts no direct or indirect interest in these credits, and retains the authority to maintain the habitat and easement requirements, participants are "highly encouraged" to request a compatible assessment from NRCS. We suggest that this language be changed from "highly encouraged" to "required" prior to entering into such agreements to assure that wetland values are maintained.

▪ **Section 1467.4(e)(ii)© Riparian Areas**

**Enrollment of Riparian Areas**

*Summary of comment:* The interim final rule unnecessarily restricts enrollment of riparian areas, which are tremendously important areas for wildlife. NRCS should make it easier, not harder, for farmers and ranchers to enroll riparian areas. The CVJV recommends insertion of a section 1467.4(e)(3)(ii) "(C) Riparian areas;" and that section 1467.4(e)(6)(ii) be deleted.

*Detailed comment:* The CVJV believes that the Wetlands Reserve Program could significantly enhance its contribution to the protection of vitally important wildlife habitats by expanding the eligibility of riparian areas. Healthy riparian areas improve water quality by reducing soil erosion; lower in-stream water temperatures through shading; and provide cover, food, and a movement corridor for a wide array of bird and mammal species. In the latter capacity, riparian areas are considered to be crucial candidates for protection given that they are likely to constitute important corridors for species migration and adaptation to climate change.

Despite their importance, their eligibility for restoration and protection within the WRP program has been limited to riparian areas that link wetlands which are protected by an easement or similar device. This limitation has excluded miles of very important habitat, where riverine corridors exist largely without connection to other wetland complexes

Thank you for the opportunity to provide these comments on this vitally important program. If we can be of further assistance, please do not hesitate to call on us.

Sincerely,



Kim Delfino  
Management Board Chair

cc: Bob Shaffer, Coordinator, CVJV  
CVJV Partners