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

Re: Wetlands Reserve Program Comments (Docket Number NRCS-IFR-08013)

Environmental Defense Fund appreciates the opportunity to provide comments on the interim final rule implementing the changes to the Wetlands Reserve Program (WRP) included in the 2008 farm bill. We understand that NRCS may reissue the interim final rule with changes and another opportunity for comment. If that occurs we look forward to revising and extending our comments at that time.

WRP has been a successful conservation program associated with significant benefits. The 2008 farm bill made a number of changes to the program, some of which can be implemented to increase the environmental benefits that the program delivers, and others which could hurt the program's effectiveness. The recommendations below include suggestions for making the most of the former and minimizing the damage associated with the latter.

Compensation schedule for easements or 30-year contracts valued at more than \$500,000

The 2008 farm bill included a new provision stating, "For easements valued more than \$500,000, the Secretary may provide easement payments in at least 5, but not more than 30 annual payments, except that, if the Secretary determines it would further the purposes of the program, the Secretary may make a lump sum payment . . ." (See Sec. 2205, amending subsection (f) of the section 1237A of the Food Security Act of 1985.) The interim final rule includes language in 7 C.F.R. 1467.8 that echoes this statutory language. The preamble to the rule, however, states (with respect to easements valued at more than \$500,000):

"NRCS will make a single payment when such a payment will result in the restoration, protection, or enhancement of wetlands on eligible land, unless installment payments are requested by the landowner. Single payments facilitate the administrative efficiency of the program, especially in situations where the landowner must negotiate subordination of mortgages or other liens in order to provide clear title to the easement area."

We strongly support the explanation in the preamble. We agree that the authority to waive the requirement of installment payments for easements valued at over \$500,000 should be exercised in all cases in which the landowner prefers that option, because the administrative efficiency fostered by single payments furthers the purposes of the program. We urge NRCS to provide additional guidance – if not in the language of Section 1467.8, then in other guidance documents – to State Conservationists to clarify that they should provide single payments for easements valued at over \$500,000 unless the landowner requests installment payments.

Landowner eligibility and the 7-year ownership requirement

In another unfortunate (and ill-considered) move, Congress extended from one year to 7 years the length of time a landowner must have owned the land in order to be eligible to place an easement on that land through WRP. The 2008 farm bill retained the exceptions to the ownership requirement, allowing a landowner to enroll land owned for less than 7 years if (1) the land was acquired by will or succession as a result of the death of the previous owner; (2) the ownership change was a result of foreclosure where a right of redemption was exercised; or (3) “the Secretary determines that the land was acquired under circumstances that give adequate assurances that such land was not acquired for the purposes of placing it in the program . . .” (See Section 1237E(a) of the Food Security Act of 1985, as amended.)

While it cannot undo the statutory change made by Congress, NRCS has the discretion, under Section 1237E(a)(3), to interpret broadly its authority to waive the 7-year ownership requirement whenever it determines that the land was not acquired for the purposes of placing it in WRP. It is therefore disappointing that Section 1467.4(c) includes the same language as the statute (but for the suggestion that demonstration of status as a beginning farmer or rancher may constitute “adequate assurances”), but does not provide any guidance to encourage State Conservationists to exercise this waiver authority consistently to ensure that the 7-year ownership requirement does not provide a significant obstacle to enrollment. We recommend that additional guidance be provided to State Conservationists regarding what circumstances and documentation provide “adequate assurances,” both to ensure that the 7-year ownership requirement is minimized as an obstacle to the successful and effective implementation of WRP, and that the waiver authority is exercised consistently across states.

Enrollment of Riparian Areas

The 2008 farm bill did not modify the provisions of WRP related to the enrollment of riparian areas. The Statement of Managers accompanying the 2008 farm bill stated the Managers’ support for maintaining existing NRCS policy, which allowed the enrollment of riparian areas in certain circumstances. Despite this, the interim final rule appears to restrict further the circumstances under which riparian areas can be enrolled in WRP.

At a minimum, NRCS should revise Section 1467.4(e) (related to land eligibility) to return to the policy on enrolling riparian areas that was in place prior to the publication of the interim final rule. In addition, NRCS should consider broadening eligibility for these areas to the extent that it can. Greater flexibility with respect to enrolling riparian areas in WRP is critical to making this program more effective in many western states, where it could be an important tool in protecting and restoring riparian areas that provide crucial habitat and are important movement corridors for wildlife.

Wetlands Reserve Enhancement Program

Section 1237B(h), as amended by the 2008 farm bill, authorizes a Wetland Reserve Enhancement Program (WREP). Prior to the farm bill’s enactment, the agency had already used its discretion to enter into agreements with partners to leverage WRP to increase the program’s

conservation benefits. The authorization in the farm bill and the provisions included in the interim final rule to implement that authorization, however, should mean that WREP will be a more robust part of WRP in the future. We believe WREP provides a significant opportunity for partners to work with NRCS to focus WRP on addressing state, regional, and national conservation priorities.

Section 1467.9(a) establishes the general process by which WREP proposals will be selected and approved. Paragraph (2) states that a subsequent announcement in the Federal Register will establish the amount of funding that will be available for WREP, the criteria by which proposals from partners will be evaluated, and the match requirement. We ask NRCS to consider the following recommendations as the agency develops this announcement:

- The announcement should make clear that WREPs should be designed to address significant state, regional or national conservation priorities, with highest priority given to proposals that are likely to achieve important regional or national conservation objectives. An example might be a proposal to restore a wetland complex that crosses state boundaries and will serve to connect fragmented habitat and restore movement corridors for a species that is a candidate for listing under the Endangered Species Act or one that is a high priority under applicable State Wildlife Action Plans.
- Priority should be given to proposals in which partners are bringing significant contributions to the table. These contributions might include extensive outreach by partners to landowners in order to achieve enrollment sufficient to accomplish the goals of the project, a commitment by the partner to provide technical assistance to landowners, and/or a commitment by the partner to monitoring to demonstrate project results
- The announcement should not require a non-federal contribution greater than 20% of the total project's cost. In addition, in-kind contributions should be accepted, with flexibility as to the percentage of the match provided in cash.
- The announcement should make clear that WREP proposals may include plans to enhance the values and functions of wetland currently enrolled in WRP in addition to the protection and restoration of additional lands in the project area, as has been allowed under WREP to date.

Section 1467.9(b) establishes a Reserved Rights Pilot within WREP that will allow a landowner to reserve grazing rights provided the exercise of the grazing rights is compatible with the land subject to the easement, consistent with long-term wetland protection, and complies with a conservation plan. Section 1467.9(b)(1) notes that the pilot will be subject to the requirements established for WREP as a whole. The same recommendations we supplied above for evaluating WREP proposals should apply to evaluating proposals for projects involving reserved grazing rights. Specifically, proposals involving reserved grazing rights in which the exercise of those rights will increase values and functions, rather than simply be compatible, should be prioritized. Where grazing increases values and functions, flexibility should be provided regarding any decrease in easement compensation or other payments.

The establishment of the Reserved Rights Pilot should be distinguished from the use of grazing as a management tool that does not provide an economic benefit to the landowner but does improve values and functions. For example, goats have been used to manage lands enrolled in

WRP in the Northeast for the benefit of the bog turtle. NRCS should ensure that the new availability of payments for management are available for such activities.

Thank you for the opportunity to provide these initial comments. Please contact Sara Hopper at 202-572-3379 with any questions.