

**Comments of the Izaak Walton League of America on the
United States Department of Agriculture Natural Resources Conservation Service
Interim Rule on the Agricultural Conservation Easement Program**

Matt Lohr, Chief
Natural Resources Conservation Service
United States Department of Agriculture
1400 Independence Ave SW
Washington, DC 20250

Via Regulations.Gov
Docket ID NRCS-2019-0006



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Dear Chief Lohr,

The Izaak Walton League of America appreciates the opportunity to comment on the Interim Rule for the Agricultural Conservation Easement Program. The League was chartered in 1922 by 54 anglers to protect America's rivers, wetlands, prairie, woodlands, and other natural resources for future generations. Today the League has 40,000 members in more than 220 chapters across America. Our members hunt, fish, hike, bike, canoe, kayak, camp, and generally enjoy the great outdoors. Our involvement in agricultural policy dates back nearly a century, when the League was assessing water pollution in America's rivers. The League supported efforts to improve soil conservation as early as the first Farm Bill, signed by President Franklin Roosevelt in 1933 to help farmers and rural communities devastated by the Dust Bowl. The League's "Walton Soil Plan" of 1954 presaged the 1956 Soil Bank Act, which was the precursor of the Conservation Reserve Program enacted in the 1985 Farm Bill.

The League was a strong supporter of the original Wetlands Reserve Program, Farm and Ranch Protection Protection, and Grassland Reserve Program, and we continue to be a strong supporter of the Agricultural Conservation Easement Program. Throughout the decades the League has consistently recognized the need for permanent and long-term protection for critical wetlands, prairies, woodlands, and farmland, supported common sense conservation on America's farms and ranches, and promoted good stewardship of our tax dollars.

Allocation and Priorities for Funding

We supported the 2018 Farm Bill provisions that increased the Agricultural Conservation Easement Program (ACEP) annual funding level to \$450 million, which should provide increased funding for all types of easements (wetlands, prairies and other farmlands). We recognize the importance of both wetland and agricultural land easements, and also recognize that because wetland easements typically involve restoration costs they are often significantly more expensive per acre than agricultural land easements.

In developing program priorities and allocating ACEP funds to states, we urge NRCS to maintain initial allocations based on the historic allocation and demand for funding, which was about 70% wetlands and 30% agricultural lands. This should also help state NRCS offices deal with the need to provide assistance in managing wetland and other easements that have been under easement for many years. We see great value in the Wetlands Reserve Enhancement Program, which targets federal funds to critical

need areas and leverages state and local funding, and we urge NRCS to set aside at least \$50 million per year for WREP projects.

We also note that only a few ACEP projects are able to be funded each year in any one state, and that the quality and cost of proposed projects in a state can vary considerably from year to year. We therefore urge NRCS to give state NRCS offices flexibility to award ACEP funds to the best projects available, without regard to the 70%/30% initial allocation recommended above, to ensure the best use and highest return from the federal investment.

Protecting Related Conservation Values

The Agricultural Conservation Easement Program (ACEP) statute with respect to Agricultural Land Easements (ALE) provides that the purpose of the program is to “protect the agricultural use, including grazing, and related conservation values of eligible land” (16 USC § 3865b(b)). On its face the statutory language places the protection of “related conservation values” on an equal footing with protecting “agricultural use” of the land, yet the ranking criteria proposed by the Natural Resources Conservation Service (NRCS) provide far more emphasis on the agricultural use than on the related conservation values of the land.

The Interim Rule (§ 1468.22(b)) provides that “national ranking criteria will comprise at least half of the ranking score,” yet all but 1 of the 13 enumerated criteria deal primarily with the protection of agricultural use, the estimation of development pressure on the land (reductions in agricultural land and grassland), or the viability of the agricultural operation. Only one, related to land in the Conservation Reserve Program, arguably deals in part with the conservation value of the land.

Of the 8 enumerated state criteria (§ 1468.22(c)), three deal with agricultural viability, 1 with the administrative performance of the eligible entity, and 1 with a geographic adjustment. Just one (criteria (5)) deals solely with natural resource benefits while two others ((3) and (4)) deal with multi-functional benefits that include both agriculture and conservation. None of the criteria would appear to provide a preference for the enrollment of important native habitats, such as unbroken native prairie over grasslands dominated by non-native species, or native woodland communities over woodlands dominated by non-native species, unless there is a protected species involved.

Unfortunately Congress complicated the challenge of ensuring that related conservation values are protected by removing the statutory requirement that ALE easements include a conservation plan. We understand the primary reason for removing the requirement was the problems created when inflexible conservation requirements are included in a permanent deed or easement document, making it difficult to adjust a conservation plan as circumstances and dynamic biological systems change. However the benefits of having a dynamic conservation planning process in place are clear, and NRCS should continue to encourage landowners and eligible entities to ensure that the conservation values of the land are protected through a robust conservation planning process that continues for the life of the easement.

NRCS should correct this clear imbalance in ranking criteria, ensure the federal investment provides maximum value to taxpayers in the form of long-term conservation benefits, and address the benefits of conservation planning, native vegetation, and pollinators in its selection criteria by making several important changes.

1. NRCS should include a new national ranking criteria: “(14) The long-term protection of related conservation values as evidenced by a commitment to implementing and updating a conservation plan appropriate to the land being protected (a native prairie or grassland management plan, forest management plan, or comprehensive conservation plan for cropland).” Adding this criteria at the national level for all ALE easements would help ensure that the conservation values of each easement are protected for the term of the easement. At a minimum, NRCS should enable and encourage state NRCS offices to consider a commitment to conservation planning as a requirement or in ranking criteria at the state level. While the details of the conservation plan need not (and probably should not) be part of the deed or easement, the commitment to conservation planning should be included to ensure long term benefits.

2. NRCS should amend state ranking criteria #5 to ensure it addresses the state-specific benefits of protecting and enhancing native habitats and locally-important pollinators: “(5) Diversity of natural resources to be protected or improved, including the protection of native prairie and other native habitats, and the protection or improvement of habitat for pollinators.”

3. We believe that the higher federal investment (75%) in easements for Grasslands of Special Environmental Significance, which is based on the higher environmental value that those easements provide, warrants a requirement that such easements are managed subject to a grassland management plan designed to protect the related conservation values that are the basis for the easement. That would help ensure the long-term protection of the federal investment and interest in the conservation value of these lands. At a minimum, NRCS should provide direction to NRCS state conservationists to include the development and implementation of a conservation plan as one of the most significant state ranking criteria with respect to grasslands of special environmental significance.

Native Plants and Pollinators

Native plants provide conservation benefits for wetlands, grasslands, woodlands, and lands associated with farmland like buffer strips and windbreaks. Native plants are better adapted to local climates, soils, and growing conditions, and they provide benefits for pollinators and other wildlife while providing better or equal benefits with respect to water quality, soil erosion, carbon storage, and forage production. Pollinators are crucial to our food supply and the production of many agricultural crops. Congress recognized the importance of native plants and pollinators in the 2018 Farm Bill, including language in the Conference Report:

“The Managers recognize the benefits of native vegetation to improve water and air quality and enhance soil health. By encouraging the adoption of native vegetation seed blends, USDA programs are supporting habitat restoration for the northern bobwhite, lesser prairie-chicken, great sage grouse, other upland game birds, songbirds, monarch butterflies and pollinators. The Managers encourage the use of native vegetation where practicable.”

NRCS can and should encourage the use of diverse native vegetation that includes pollinator-friendly plants (such as milkweed and nectar-rich species that provide habitat and food for pollinators) in implementing the Agricultural Conservation Easement Program in several ways:

1. NRCS should include a recommendation for the use of diverse native plants that includes pollinator-friendly species in remediation and restoration plans for subsurface mineral development projects.

2. NRCS should provide a preference for using a diverse mix of native plants that includes pollinator-friendly species in developing wetland and grassland restoration and management plans under WRE and ALE easements.

3. As noted in the section above, NRCS should include in its ranking criteria recognition of the value of diverse native plants that include pollinator-friendly species, including by providing points or priority for unbroken native prairie (especially extremely rare plant communities like tallgrass prairie) over other grasslands, and native woodlands over non-native woodlands, and for projects that benefit pollinators.

Consultation with Wildlife Agencies

The 2018 Farm Bill removed the requirement that NRCS consult with the Department of Interior on eligibility and whether a wetland easement under ACEP will maximize wildlife benefits and wetland functions and values. The US Fish & Wildlife Service handles those duties at the state and local level. Although NRCS is no longer required to formally consult with the Fish & Wildlife Service (FWS), we strongly urge NRCS to continue to seek the advice and input from FWS and state fish and wildlife agencies in assessing ranking criteria, determining eligibility, development of management plans and other decisions where expertise in wetlands, native habitats, and fish and wildlife are needed. The Fish & Wildlife Service and state fish and wildlife agencies have expertise and statutory responsibility for fish and wildlife resources and they should be involved in agency decisions that impact those resources. We appreciate that the Interim Rule includes coordination with FWS at the local level with regard to prioritization of easements and development of operating plans.

Concentrated Animal Feeding Operations and Impervious Surface Limit

Large concentrated animal feeding operations (CAFOs) don't provide any of the conservation benefits that are provided by wetland, grassland, and cropland easements. With limited funding available for ACEP, we think it would be irresponsible and a waste of taxpayer dollars to use ACEP funds to protect CAFOs and associated lagoons, animal carcass disposal, and related facilities. We strongly urge NRCS to amend the Interim Rule in Section 1468.20(e) to specifically make ineligible Concentrated Animal Feeding Operations, animal waste lagoons and associated structural facilities. If NRCS does not make these lands ineligible, it should at a minimum ensure that animal waste lagoons not be exempt from the 2% limit on impervious surfaces.

We note that the Interim Rule generally limits impervious surface to 2% of an ALE easement's land cover, which we support to allow for the inclusion of a homestead, barns, corrals, and related facilities. However the Interim Rule allows NRCS to waive the limit and allow up to 10% of an ALE easement to be in impervious surface, and we think that could undermine the conservation purposes of ACEP. We urge NRCS to amend the Interim Rule to limit a waiver to 5% of an ALE easement, and to ensure that, if they remain eligible, waste treatment lagoons, animal carcass disposal, and other related facilities count towards the 2% limit (or 5%) impervious surface limit.

Climate Change and Carbon Sequestration

We commend NRCS for including carbon sequestration and climate change resiliency on the list of state and local criteria in Section 1468.22(e). We think carbon sequestration and resiliency can be important benefits of ALE easements that protect grassland, cropland, and woodland. However, the science to date has demonstrated clearly that the key to carbon sequestration lies in the management of

the land. The same land, whether grassland, cropland, or woodland, can be managed in ways that result in a net loss of carbon to the soil or in ways that actively store carbon in the soil. This makes necessary a requirement for conservation planning that includes carbon storage and/or soil health goals as a prerequisite for any easement premised on carbon sequestration or climate change resiliency goals. Without a robust requirement for a conservation planning process that includes carbon sequestration goals, there can be no assurance that net carbon sequestration will occur as a result of an easement.

Nonindustrial Private Forest Land

We support the Interim Rule eligibility restriction to land with less than two-thirds of the easement in non-industrial private forest. We strongly support the protection of forest land and good forest management, but recognize that there are other programs that can address the need for easements and conservation on forest land, including the Healthy Forests Reserve Program, Regional Conservation Partnership Program, and Forest Legacy Program. Wetland easements under ACEP also protect many forested wetland acres.

Mineral Development

The 2018 Farm Bill allows the Secretary to approve mineral development projects on agricultural land easements, provided it is subsurface mineral development that has a limited and localized impact, does not harm the conservation or agricultural values of the land or alter existing topography, and there is a mineral development plan in place that includes a clear and robust plan for remediation and restoration of the land. The Interim Rule provides clear criteria with respect to this provision, and we encourage NRCS to be cautious and not approve mineral development where it would have significant impacts on the conservation values of the land. We urge NRCS to seek State Technical Committee input when considering the impacts of proposed mineral development projects on wildlife, water quality, and other conservation values.

Definitions

The Interim Rule includes a definition of agricultural commodity: “*Agricultural commodity* means any agricultural commodity planted and produced in a State by annual tilling of the soil, including tilling by one-trip planters or sugarcane planted and produced in a State.”

We urge NRCS to revise this definition to recognize the growing body of science showing that tilling is not only *not necessary* for crop production but is actually *harmful* to soil health by disturbing or destroying mycorrhizal fungi in the soil, but other agricultural practices like the use of herbicides can be just as destructive of wetland functions as tilling the soil.

We suggest the definition be revised as follows:

“Agricultural commodity means any agricultural crop planted in a State with intent to harvest at least annually, including annual crops, sugarcane, or alfalfa.”

The only place we find “agricultural commodity” used in the rule where this definition comes into play is in the definition (later in this same section) of “converted wetland”, which depends on hydrologic or other changes made to make the production of an agricultural commodity possible. We think our revised definition would be appropriate for determining what is an agricultural commodity for purposes of determining what is a converted wetland without materially changing the long-settled definition of

“converted wetland”.` It is our intent to correct the inappropriate use of “tillage” in the definition of agricultural commodity production, not to change the historic definition of what constitutes a converted wetland.

Thank you for the opportunity to comment on the NRCS Interim Rule with respect to the Agricultural Conservation Easement Program. We would be delighted to discuss these comments and proposed changes at your convenience.

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