

February 5, 2019

Public Comments Processing

Attention: National Leader for Wetland and Highly Erodible Land Conservation

USDA, Natural Resources Conservation Service

1400 Independence Avenue SW, Washington, DC 20250

**Re: Docket Number NRCS-2018-0010; Comments on the NRCS Interim Rule on Highly Erodible Land and Wetland Conservation (7 CFR Part 12)**

The undersigned organizations, representing conservation, water, and agriculture organizations, write to express our concerns about the impacts of the interim final rule on wetland determinations. In particular, we are concerned that this rule promotes the exclusion of seasonal wetlands from the Farm Bill's wetland conservation compliance safeguards, encouraging additional wetland drainage in the Prairie Pothole Region and beyond. Given these concerns, we urge USDA to withdraw the interim final rule and instead propose a rule that promotes accurate wetland determinations that include all seasonal wetlands and one that is subject to robust environmental review and public comment.

Over its 30 year history, conservation compliance has saved billions of tons of soil from erosion and protected millions of wetland acres, resulting in healthier soil, better wildlife habitat, and cleaner rivers, lakes, and streams. It is critical that any actions that NRCS takes related to wetland conservation compliance are done in a manner that ensures that the legacy of conservation compliance is not diminished. Unfortunately, this interim final rule undermines protections for seasonal wetlands, encouraging wetland drainage and ignores the letter and spirit of the Farm Bill wetland conservation compliance provisions. Our major concerns are that:

- The rule systematically excludes seasonal wetlands from wetland maps that form the basis for producer compliance. Of particular concern is the rule's certification of old (pre-1996) wetland determinations that have consistently excluded seasonal wetlands, have been shown to under-identify wetlands by as much as 75%, and that were for years considered too inaccurate to be used.<sup>1</sup>
- The rule relies on aerial imagery from the hottest time of the year (July/August), when many seasonal wetlands have dried out. Seasonal wetlands fill early in the spring, which is when they provide their most important flood storage and wildlife benefits, particularly for migrating and nesting waterfowl. For example, an analysis of three decades worth of U.S. Fish and Wildlife Service waterfowl and pond surveys in eastern South Dakota, the heart of the Prairie Pothole region, found that the number of wetland basins containing water that show up in July surveys was 73% lower than in May surveys. Any NRCS wetland determination rule should account for the use of summer imagery and promote the use of and investments in accurate spring imagery.
- The rule relies on precipitation data from a historically dry period (1971-2000), further limiting the number and size of seasonal wetlands subject to the wetland conservation compliance requirements. Coupled with the mid-summer imagery, this focus on drier rather than wetter conditions significantly skews wetland maps towards excluding seasonal wetlands. Even more concerning is that there has been no scientific analysis of the impacts of using this outdated information.

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<sup>1</sup> USDA Office of Inspector General Audit Report 10601-0003-31; January 2018.

<https://www.usda.gov/oig/webdocs/10601-0003-31.pdf>

- There has been inadequate analysis of the environmental impacts of the rule, including the potential for impacts on endangered species.

We thank you for the opportunity to provide input into this rulemaking, and for your consideration of the above comments. Given these concerns, we urge USDA to withdraw the interim final rule and instead propose a rule that promotes accurate wetland determinations that include all seasonal wetlands and one that is subject to robust environmental review and public comment.

Signed,

American Bird Conservancy  
Apalachicola Riverkeeper  
Audubon Chapter of Minneapolis  
Bird Conservation Network  
Center for a Sustainable Coast  
Center for Food Safety  
Chesapeake Wildlife Heritage  
Chicago Audubon Society  
Citizens Committee to Complete the Refuge  
Clean River Alliance  
Clean Water Action  
Committ on the Middle Fork  
Conservation Coalition of Oklahoma  
Defenders of Wildlife  
Delta Chapter, Sierra Club (Louisiana)  
Earthjustice  
ECOAN  
Endangered Habitats League  
Environmental Law & Policy Center  
Environmental Working Group  
Florida Wildlife Federation  
Food & Water Watch  
Friends of Black Bayou, Inc.  
Friends of Blackwater, Inc.  
Friends of the Central Sands  
Friends of the Santa Clara River  
Georgia Wildlife Federation  
Gulf Restoration Network  
Illinois Council of Trout Unlimited  
Illinois Division of the Izaak Walton League of America  
Illinois Ornithological Society (IOS)  
Indiana Sportsmen's Roundtable  
Indiana Wildlife Federation  
Iowa Audubon  
Iowa Natural Heritage Foundation  
Izaak Walton League of America  
Izaak Walton League of America - Indiana Division  
Izaak Walton League of America - National Great Lakes Committee

Johns Hopkins Center for a Livable Future  
Kansas Wildlife Federation  
Kentucky Waterways Alliance  
Lake Champlain Committee  
Lake Erie Waterkeeper  
Los Angeles Audubon Society  
Louisiana Audubon Council  
Maryland Ornithological Society  
Minnesota Conservation Federation  
Mississippi River Collaborative  
Missouri Coalition for the Environment  
Monongalia County, WV, Izaak Walton League of America  
Montana Wildlife Federation  
National Audubon Society  
National Latino Farmers & Ranchers  
National Sustainable Agriculture Coalition  
National Wildlife Federation  
Natural Resources Defense Council  
North Dakota Wildlife Federation  
NYC H2O  
Ohio River Foundation  
Ohio Environmental Council  
Prairie Rivers Network  
River Network  
Rural Coalition  
Salem Audubon Society  
Sierra Club  
South Dakota Wildlife Federation  
Southern Maryland Audubon Society  
Southwestern Wisconsin Chapter, Izaak Walton League of America  
Sycamore Audubon Society  
Tennessee Clean Water Network  
Tennessee Ornithological Society  
The Institute for Agriculture and Trade Policy  
The River Project  
The Wetlands Initiative  
Union of Concerned Scientists  
Virginia Conservation Network  
Waterkeeper Alliance  
West Virginia Division, Izaak Walton League of America  
Wild Farm Alliance  
WildEarth Guardians  
Winyah Rivers Alliance  
Wisconsin Division, Izaak Walton League of America  
World Wildlife Fund