

July 14, 2004

Easement Division
Natural Resources Conservation Service
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Ducks Unlimited, Inc. (DU), the world's largest, nonprofit waterfowl conservation organization, appreciates the opportunity to offer comments on the interim final rule for the Grasslands Reserve Program (GRP) as published in the Federal Register, Vol. 69, No. 99. Please include the following comments in your official record.

We believe that a program that provides long-term grassland protection has been long overdue, and therefore we welcome the addition of GRP to the mix of conservation programs offered by the USDA. We urge USDA to implement GRP in the spirit of recognizing and rewarding landowners who have provided, and continue to provide, good stewardship of grasslands. We also believe that GRP should be focused on working lands in rural landscapes, and that USDA should avoid expending GRP funds to secure grasslands threatened with development on the fringe of urban areas. **Directing support towards good land stewards in rural landscapes should be the overriding priority of the GRP.**

We commend the USDA for their thoughtful approach to GRP implementation, and support many of the recommendations described in the interim final rule. In particular, **Ducks Unlimited supports state allocations of funding for GRP; state flexibility in setting priorities and funding formulas; and the proposed higher restoration cost-share (90% versus 75%) on lands that have never been cultivated.** DU also supports rules that provide for consideration of land already under a USDA program to become eligible for GRP, provided that the rule can be clarified to ensure the program that provides the best resource protection will be the one implemented. In that regard, while DU agrees that a focus on native grasslands is appropriate, we should not overlook the opportunity to enroll valuable, re-established grasslands (e.g., select CRP tracts) into GRP to provide long-term protection.

Ducks Unlimited agrees that the number of grazing operations within a state, the threat of grassland conversion, and the biodiversity of plants and animals should be weighted equally when considering state funding allocations. We think it is appropriate to consider and weight "demand" in the allocation criteria as well. **However, we urge incorporation of a fifth criterion that should receive co-equal weight with these others: that of cost-effectiveness.** As noted in the interim final rule, approximately 13,000 applicants offered 8.9 million acres in FY03. To enhance the scope and scale of GRP's impact, USDA should consider and factor into state allocations the per acre cost of rental agreements and easements, and provide relatively more funding to states where large acreages of grasslands can be secured for low cost. This is

particularly important given the recommendation to not have all applications evaluated and selected nationally, and the limited funding available for GRP.

DU has some concerns with payment calculations for GRP. In North Dakota, a key state for grassland resources, easements are limited by state law to a term of 99 years. Yet the appraised value for 99 year grassland easements purchased by the U.S. Fish and Wildlife Service is essentially the same as the value of perpetual easements. As currently formulated, discounting a 99-year GRP easement by 70% in North Dakota (equal to the valuation of a 30-year easement) would render GRP ineffective for securing long-term grassland protection in that important state. **Ducks Unlimited therefore recommends that NRCS consider granting a variance that allows 99-year easements to be valued as perpetual easements.**

The interim final rule reiterates the standard method of easement valuation by stating that easement payments are “based on the land's current market value less the grazing value of the land encumbered by easement.” The rule goes on to state, “In addition to grazing, haying, mowing, and seed production, other uses may include hunting, fishing, hiking, camping, bird watching, and other non-motorized recreational vehicles”. Since landowners retain certain rights to grassland resources, for appraisal purposes, grazing value has been defined as grassland value.” This passage is confusing and insufficient for describing USDA’s intent. As written, this passage may be construed to mean that the market value of numerous other compatible uses are to be added to and included in the determination of the grazing value of land encumbered by the easement. The value of these uses is already determined in the appraisal of fair market value of the land encumbered by the easement. Adding their value to the grazing value will result in substantially reduced easement payments and substantially increased rental agreement payments. If this is the intent of the interim final rule, we believe that USDA may be superseding statute and Congressional intent. **Therefore, Ducks Unlimited recommends that USDA more clearly define their intent for determining “grazing value/grassland value”, and revert to the method of determining grazing value that was used during 2003.**

Our last comment with respect to valuation concerns the determination of annual rental payments. We found nowhere in the interim final rule a clarification of whether the annual rental payments over the term of the agreement were the same each year (fixed at year one for the life of the agreement), or whether annual rental payments were recalculated annually and thus payments varied annually. This requires further clarification.

Page 29178 of the interim rule indicates haying and mowing will be permitted “except during the nesting season for birds in the local area that are in significant decline”, whereas page 29184 expands on the first statement by stating that these activities will be restricted during the nesting season for “birds in the local area that are in significant decline **or are conserved in accordance with Federal or State law**” (emphasis added). The distinction is important. Haying and mowing dates must be regulated to avoid the nesting season of important trust species such as waterfowl and other migratory birds, not just birds whose populations are in decline.

Lastly, in reference to provisions that authorize private organizations to assume management and enforcement of GRP easements, we urge the USDA to consider the financial burdens associated with these activities and to develop a reimbursement formula to compensate organizations for

costs incurred. Monitoring and enforcement – particularly for perpetual easements – are enormous commitments for any organization. Without financial backing, it is problematic that USDA will achieve the laudable goal of creating these important agency-NGO partnerships.

Thank you for seeking and considering our comments. The Grasslands Reserve Program is a valuable compliment to other conservation programs in the Farm Bill. With relatively minor revisions to the interim rule and substantially more funding, it has the potential to be a shining example of progressive policy.

Sincerely,

James K. Ringelman, Ph.D.
Director, Conservation Programs