

July 20, 2004

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To whom it may concern:

Defenders of Wildlife welcomes this opportunity to comment on the interim final rule for the USDA's Grassland Reserve Program (69 FR 29173-187). Defenders of Wildlife is a conservation organization with over 450,000 members and supporters nationwide, dedicated to the conservation of native species and the habitats upon which they depend. We look forward to successful implementation of the Grasslands Reserve Program (GRP), an important tool to help conserve our nation's grasslands.

America's grassland ecosystems have been reduced by conversion and fire suppression to a tiny fraction of their original extent. Consequently, grassland-dependent plants and birds are among the most imperiled groups of species in the country. The Grassland Reserve Program, which will enroll up to two million acres of grassland, has the potential to be a vital tool to stem the loss of native grasslands and to restore desperately needed habitats for grassland birds and other wildlife. The interim final rule for the Grassland Reserve Program (GRP) is proposing to pay farmers easement, rental, and cost-share payments to preserve grassland, protect grassland from conversion, support grazing, and maintain and improve plant and animal biodiversity. We applaud NRCS for recognizing that that biological diversity is an important consideration for the GRP. We urge the NRCS to manage the GRP in a way that maximizes benefits to biological diversity, and offer the following comments to help the program better achieve this end:

#### **Allocation of Funds to States**

The interim final rule indicates that NRCS has elected to allocate funds to states rather than evaluate and select applications on a national basis, and is seeking comment on its allocation factors, which include the number of grazing operations in each state, the level of threat of conversion, plant and animal biodiversity, and program demand in the 2003 signup (69 FR 29176-7).

#### *Plant and Animal Biodiversity*

As a biodiversity conservation organization, Defenders of Wildlife believes that this criteria should be the most important in determining state allocation. We are pleased that NRCS intends to give biodiversity equal weight to grazing operations and threat of conversion, and we emphasize that under no condition should biodiversity be given less weight in consideration. We believe allocation should favor those states emphasizing restoration of native biodiversity within the context of state habitat conservation plans,

now being developed under the auspices of the state wildlife grants program under the USFWS.

In its proposed rule NRCS has requested that respondents “provide information on credible data that is national in scope related to grassland plant and animal diversity.” We believe that the use of the U.S. Fish and Wildlife Service’s threatened and endangered species information is crucial, but insufficient to capture the full importance of grasslands for biological diversity. This is because a number of grassland-dependent species are declining or imperiled, but are not listed as threatened or endangered.

We recommend that criteria should also include consideration of the following grassland-related natural resource priorities:

The U.S. Fish and Wildlife Service’s Birds of Conservation Concern, available at: <http://migratorybirds.fws.gov/reports/bcc2002.pdf>

Partners in Flight’s Physiographic Area Plans for priority bird species, available at: <http://www.blm.gov/wildlife/pifplans.htm>

While the notice specifies that it is seeking national-level data, we urge the NRCS to include State Natural Heritage and state biodiversity plan data in its consideration of priorities.

#### *Program Demand in 2003*

The Interim Final Rule indicates that the USDA will provide “equal weight” to the 2003 “demand category in the allocation formula.” Although the level of demand is an important consideration in allocating annual GRP amounts to the states, Defenders believes that this should be a second-tier consideration and not co-equal with the other allocation criteria (acres of grasslands under threat of conversion, grazing operations, and biodiversity conservation). Demand should only be taken into account for states that meet the other allocation criteria and in the context of applications that have been accepted for funding, not total requests. This will avoid the problem of allocating unreasonable level funds to states which may not have met the other criteria.

In short, when determining allocations to states, primary weight should be given to restoring and conserving native biodiversity of plants and animals, followed by threat of conversion, grazing operations, and lastly, level of demand. Project selection criteria, decision processes, and project implementation must be transparent and open and subject to public knowledge.

#### **Definitions**

Several of the defined terms are unclear, and several terms used in the rule require definitions.

#### *Revisions to Current List of Definitions*

“Natural”: NRCS has made the case for allowing enrollments of grassland that are dominated by non-native species because non-native grasslands can also support significant biodiversity and because it may be extremely difficult to restore native-dominated grassland. However, the definition of “natural” is problematic in many ways, including the use of undefined terms such as “adapted” and “ecological site” and the inclusion of “native” which has already been defined separately. We believe that NRCS’s purposes would still be achieved by replacing “natural” with “naturalized” throughout the rule, and using the following definition: “naturalized means an introduced species that can perpetuate itself in the environment without cultural treatment. For the purposes of this part the term “naturalized” does not include noxious weeds.”

“grazing value”: This definition is unclear. What factors does the USDA use in assigning value to grassland cover?

#### *Terms Requiring Definition*

In several places throughout the Interim Final Rule, terms and phrases are used that are not given definitions in section 1415.3 of the rule. As there could be confusion regarding the meaning of these words and phrases, we recommend that the final rule for the program include definitions of the following:

“noxious weed,” first used on page 29183. We recommend the following definition: “Noxious weed means any plant listed as “invasive or noxious” by an authority cited in USDA’s “PLANTS” database [available at <http://plants.usda.gov>] or species that the State Conservationist determines to be invasive or otherwise harmful.”

“significant ecological value,” first used on page 29176

“certain resource condition,” first used at the bottom of the first column on page 29179

“market value,” first used on page 29177. Does this the value in grazing, potential development value, or other value?

“ranking pool,” first used on page 29180.

#### **Enrollment of Projects**

##### *Enrollment Priorities Described in Proposed Rule*

We believe that states should be given ample direction regarding basic guidelines regarding what priorities should be and insists that local criteria be weighted to reflect these priorities. The proposed rule indicates that States will establish ranking criteria that will “emphasize support for: 1) native and natural grasslands; 2) protection of grasslands from the threat of conversion; 3) support for grazing operations; 4) maintain and improve plant and animal biodiversity” (69 FR 29184). The rule here does not give an indication if these four criteria are coequal, or are listed in order of intended importance. Defenders of Wildlife believes that criteria #4, “maintaining and improving plant and animal biodiversity” should be co-equal or greater in importance than protection from

conversion and support for grazing operations. Also, criteria #4 should refer to “native plant and animal diversity.”

Regarding Criteria #1, we recommend revision of the phrase “native and natural grassland” in accordance with our comments above on definitions, and we recommend that NRCS make clear that “native” grasslands should receive higher priority than “naturalized” grasslands. The easiest way to create such a preference would be to simply change rule language under § 1415.8 so that states give preference to native grassland enrollments:

"(b) USDA, at the State level, with advice from the State Technical Committee, shall establish criteria to evaluate and rank applications for easement and rental agreement enrollment following the guidance established in paragraph (a) of this section.

(c) Ranking criteria will emphasize support for:

(i) Native [~~and natural~~] grassland, **and secondarily for naturalized grassland;**"

Regarding Criteria #2, we recommend that "threat of conversion" should be specified as threat of conversion to crops, woody plants, or invasive species cover. We believe that lands whose major conversion threat is to urban or suburban landuse should more properly be enrolled under the Farm and Ranchland Protection Program.

#### *Defenders' Recommendations for Other Enrollment Priorities*

In addition to the priorities laid out in the final rule, Defenders has the following recommendations to help ensure that enrolled acreage maximizes benefits to plant and animal biodiversity:

Where projects include restoration, applications that agree to restore native grassland communities should receive funding priority over those that restore non-native or naturalized plant species, described in the rule as “natural plant communities” (p. 29176). The program’s emphasis, to the maximum extent feasible, should be on protecting and restoring native species, not adapted “natural” ones (see above for our suggested revisions to the definition of “natural”). We recognize that restoration using native species can be more difficult and costly than using naturalized species, and we believe that taxpayer dollars should reward those producers who are willing to undertake the extra effort to restore their land to the best ecological condition. The program should emphasize enrollments of grasslands that are not dominated by noxious weeds and should not provide cost-share for maintenance of weed-dominated habitat or restoration with plants that the USDA has listed as noxious or invasive in its PLANTS database.

State allocation mechanisms should favor permanent or long term easements, with point weighting that favors the maximum allowable under state law. GRP applicant land that is adjacent or within close proximity to land that is being developed for subsurface resources should be weighted less than land that is not.

State allocation mechanisms should favor those applications first which have documented and completed a Conservation Plan. Secondary weighting should go to those applicants

who have documented a Conservation plan but are still in the implementation arena. Conservation Plans should clearly indicate baseline data that will reveal over time that conservation efforts have improved native grasslands.

Applications that have received letters of support from qualified conservation groups should be favored over those that have not.

In order to best expand unfragmented parcels of wildlife habitat and habitat connectivity, larger parcels of native grasslands that are connected to existing protected lands should be favored over those that are not.

State Conservationists and Technical Advisory Committees should coordinate with state Game and Fish Departments and local U.S. FWS officials to determine the most universal and scientifically credible baseline within that state for determining the threatened and endangered biodiversity on land seeking allocation.

We also urge NRCS to ensure that the states are actually revising their ranking criteria in accordance with the new rule and not re-using their ranking criteria from last year.

### **Administration of Program**

The interim final rule indicates that when restoration is undertaken, “The ‘restored’ grassland condition will be determined by the NRCS State Conservationist, with input from the State Technical Committee.” We recommend that qualified grassland ecologists define what restored will be, not the State Conservationist.

As currently drafted, section 1415.2(e) (page 29182) gives the Secretary too much leeway to modify any aspect of the program at any time for any reason. We recommend that this measure should apply only to enrollments, and be moved out of the general administration provisions and into section 1415.8.

Within Section 1415.13, Transfer of Lands, the Interim Final Rule creates no guidelines regarding how state Conservationists and State Tech Committees should handle this situation. All remaining GRP funds dedicated to a parcel of land should be transferred to new owners and operators as long as the new owners or operators agree to the intent of the GRP contract and its terms. All information pertinent to the GRP arrangement made between the seller and buyer should be reflected in the escrow for the sale. If the new owner does not agree to the terms of the GRP contract, the remaining GRP allocation should be refunded with no penalty pro-rated from the date of sale. Additionally, any groups that signed letters of recommendation that assisted the land owner in obtaining the GRP allocation should be consulted by the state conservationist and their opinion weighed into the determination of the new owners’ intent.

In the section on Rental Agreements (page 29177, Col. 3 on. Para. 2 and 3) states that local grazing values will be determined based on CRP methodologies. The problem here is that CRP rental rates are far too low for irrigated lands. The rule must be specific in

stipulating that irrigated rental rates will be used in cases where there exists some form of irrigated native grasslands.

In the section on provisions that apply to both easements and rental agreements (Page 29178, Col 1, Para 2.): Requirement #1 should read "...maintaining the viability of "native" grasslands, shrubs....etc." In Requirement #2, regarding on permits for haying, mowing, or harvesting seed, the granting of exceptions should be determined by a panel of experts, including FWS personnel, for potentially affected birds species, not the NRCS or the State Conservationists.

In the Section on Land Eligibility (Pg. 29179, Col. 3, Para 1), the review on whether ranking criteria discriminates against small or limited resource farmers should be "annual" instead of "periodic."

In Section 1415.10, Compensation for Easements and Rental Agreements (Page 29189, Col. 2), compensation rates should not be based on CRP methods (which does not result in amounts to attract irrigation acreage). Compensation rates should be based on the market value on the land in all uses.

In Section 1415.11, Restoration Agreements (Page 29180, Col. 3), language should be included to encourage landowners to be allowed to experiment with different practices that show potential merit.

In Section 1415.17, Delegations to Third Parties (Page 29181, Col. 1), in paragraphs related to certification, it must be stipulated that third parties are technically qualified to both restore and manage native grassland ecosystems.

We hope that you will incorporate these comments into the final rule. We believe such changes will increase make the program an effective tool in checking the spread of invasive plants and promoting America's biodiversity without compromising GRP's ability to reach and assist ranchers and other grassland landowners.

Sincerely,

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