

7/20/04

Easement Division
Natural Resources Conservation Service
P.O. Box 2890
Washington, DC 20013-2890

Attention: Grassland Reserve Program

To Whom It May Concern:

On behalf of the National Cattlemen's Beef Association, California Rangeland Trust, and Colorado Cattlemen's Ag Land Trust, we want to express our appreciation for the opportunity to comment on the Natural Resources Conservation Service's (NRCS) Interim Final Rule on the Grassland Reserve Program (GRP). Producer-directed and consumer-focused, the National Cattlemen's Beef Association is the trade association of America's cattle farmers and ranchers, and the marketing organization for the largest segment of the nation's food and fiber industry.

According to USDA, in 2000, grassland pasture and range was the single largest land use in the country, accounting for 578 million acres, or 31 percent of the major land uses in the lower 48 states. Livestock operators also manage a substantial portion of the more than 300 million acres of land used for cropland. These statistics alone provide ample justification for a major and substantial federal investment in helping conserve the lands owned and operated by livestock and poultry producers.

Members of our organizations were among the principle drivers behind the creation of the GRP during the last Farm Bill. A principle concern in supporting the program was to keep large grass landscapes intact for working ranches and biodiversity by providing an incentive to keep the land intact and not break it. The relatively simple notion of keeping grass intact reflects the interest of our groups in seeing that program money get spent on the narrow, though critical, goal of the program and not for ancillary activities.

We are concerned the Department is moving away from this basic concept in its implementation of the program. Moreover, we are concerned the Department is implementing the GRP in a way that is not sufficiently respectful of the rights of private landowners. The following are specific concerns we have with the interim-final rule.

Conservation Plans

First, the NRCS requirement that a conservation plan be developed in conjunction with GRP contract and easements was considered and rejected by those who drafted the statute. The grass is either kept intact or not. Creation of a conservation plan will do

nothing to help determine whether this goal is met. Requiring the production of a conservation plan makes more sense in connection with the Conservation Security Program which explicitly contemplates implementation of progressive levels of conservation practices to meet ever more comprehensive resource threats. At a time when NRCS is concerned about whether it will have sufficient technical assistance dollars to pay for program implementation and its core conservation activity, we believe that production of conservation plans in connection with GRP contracts and easements is a particularly poor use of these funds, and not consistent with the spirit animating the program.

Ownership of Easements

A key goal of the program as drafted was to extend the reach of conservation to producers who do not normally participate in programs. So the statute authorizes the Secretary of Agriculture to transfer ownership of program easements and contracts to qualified third party land trusts. The underlying issue is that a number of our producers are not comfortable selling an easement that will be held by the government. These producers would be more likely to enroll in the program if a non-federal entity owned the easement. Unfortunately, the Department somehow misconstrued this provision of the program and has barred ownership of program easements and contracts by third party land trusts. Nevertheless, it is within the authority of the Department to correctly apply these provisions through this rulemaking proceeding.

If third party land trusts were allowed to hold and own easements and contracts as expressly authorized by the statute, USDA would still retain the right and obligation to monitor program performance. USDA would benefit by sharing some of the costs associated with easement administration with outside parties. The land trusts would be partially saddled with this enforcement cost (which may be reimbursed under the third party provider program), but nevertheless are willing to do so if this type of involvement with the program encourages some landowners to participate in the program who would otherwise not do so. Compliance with program objectives would be ensured to as great an extent if not greater as with other easement programs such as the Wetland Reserve Program.

Grazing Value

The statute makes clear that landowners are to be paid for the “grazing value” of the land, whether they enter into easements or contracts under the program. This definition for payment was identified because the Grassland Reserve Program is intended to support working ranches and biodiversity. This is clear from the statute which gives priority to funding “grazing operations” and “biodiversity” and grassland under the greatest threat of conversion. The term “ranching operations” was selected to emphasize that active ranches engaged in the business of raising cattle be one of the principle purposes for which the program was selected. Grazing is always a part of the calculation for identifying which parcels to enroll in the program.

Nowhere does the statute say that payment is to be based on “hunting, fishing, hiking, camping, bird watching, and other non-motorized recreational activities,” which is the

rationale identified in the preamble for basing payment on the “grassland value.” We recognize the Department is correct that the lands enrolled in the program may be used for these other purposes. Nevertheless, these other purposes are not a lawful basis for enrolling land in the program or determining payment rate.

The Farm Bill Conference managers intended that “[a]ll grasslands should receive equitable treatment in the sign-up and enrollment process.” (Conference Report, Subtitle F, section (5)(a), p. 503). NRCS’ proposal to make payments differently for contracts and easements is at odds with both the congressional intent and the plain language of the statute.

Project Management

Under the Interim-Final Rule, the USDA is requiring participants to manage the GRP acreage to move toward a certain natural resource condition. The rule also requires that each participant have a conservation plan to preserve the viability of the grassland enrolled in the program. The interim rule also defines “conservation plan” to require a planning process that meets the NRCS Field Office Technical Guide quality criteria for each natural resource (soil, water, air, plants, and animals). We are uncertain about the rationale for expanding the GRP to now become a program that requires the protection of all resources, not just grasslands. We certainly understand that all resources must be managed to maintain healthy ecosystems, but are concerned that by this requirement, the USDA is attempting to make this program larger than Congress authorized or provided the means to accomplish.

Inclusion of conservation plans was explicitly considered and rejected by Congress during the drafting of the GRP. At a time when NRCS is short of technical assistance dollars, it is difficult to understand why the agency would assume an obligation that adds little to the core GRP goal of stopping the conversion of grasslands to cropping or other uses. Additionally, the requirement for a conservation plan is confusing when taken together with the requirement for a restoration agreement which are necessary for setting out a plan to bring a landscape into a prospective condition.

Landowner Notification

The rule should include a requirement that landowners will receive written notification from NRCS prior to the agency coming onto their land to verify compliance with the terms of the easement, pursuant to section 1415.4(d).

Reserve Interest Deed

The rule requires landowners to use a standard deed under which all “interest” in the easement area is granted to USDA under section 1415.4(f). There is simply no reason for the USDA to strip landowners of an interest in land which is not necessary to effectuate the purpose of the program. Deeds should only restrict those uses which defeat the purposes of the program. USDA should be working to protect the rights of landowners who produce food and fiber for our nation, not to subvert their rights.

Maintenance and Necessary Cultural Practices

The statute provides that landowners are authorized to perform common grazing practices including “maintenance and necessary cultural practices” consistent with maintaining the viability of the grassland. The regulation authorizes “common grazing practices” but omits reference to “maintenance and necessary cultural practices.”

This omission is significant. The purpose of the program was to protect grasslands while doing nothing to prevent the normal use of these lands for grazing purposes, including for example light disking of the land to control noxious weeds. Through this provision, USDA is again acting to undermine both the purpose of the program and the express intent of Congress. We urge USDA to include the phrase “maintenance and necessary cultural practices” and allow program participants to manage as usual privately owned land covered by program easements and contracts.

Life of Cost-Share Practices

Section 1415.11(e) provides that cost-shared practices are to be maintained by the participant for the life of the practice. Is this a sensible requirement to impose? What if a landowner enrolls in a 10-year rental agreement, but the life of the practice is for 15 or 20 years. Will NRCS continue to enforce the agreement past its expiration? This provision could be rewritten to provide for maintenance “for the life of the practice or the term of an agreement or easement.”

The National Cattlemen’s Beef Association, California Rangeland Trust, and Colorado Cattlemen's Ag Land Trust appreciate this opportunity to comment on the Interim-Final Rule for the Grasslands Reserve Program. We look forward to working with NRCS in making it the best possible program.

Sincerely,

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