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Northern Great Plains Working Group

July 9, 2004

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

RE: Comments of the Northern Great Plains Working Group (NGPWG) on the Interim Final Rule for the Grassland Reserve Program, as Published in the Federal Register, Vol. 69, No. 99, on Friday, May 21, 2004

The Grassland Reserve Program (GRP) is of great importance to the states in the northern Great Plains. This area of the country contains some of the best and most expansive remaining native grassland tracts in the country. However, grasslands, both native and tame, continue to be lost through conversion to cropland and, to a lesser extent, urban development. Further, there is substantial potential for improved management of existing grasslands. The following comments, in priority order, are intended to further both the goals of protection and improved management of the important grassland ecosystems that were so historically prevalent and make the northern Great Plains unique today.

Payment Calculation for GRP Easements

There are two issues of concern in this category. First is the payment approach proposed for easements restricted in length by state or tribal law, and second is the method of calculating easement value.

Easements Restricted by State or Tribal Law – Both statute and the interim final rule specify that easements, restricted in length by state or tribal law, be valued at 30 percent of the value of a permanent easement. Within northern Great Plains states (and, as far as we know, throughout the country), North Dakota is the only state that restricts easement length to 99 years. Extensive data from hundreds of US Fish and Wildlife Service (FWS) grassland and wetland easements

The Northern Great Plains Working Group is a local coalition of organizations and agencies committed to the continuance of the wildlife benefits of Farm Bill initiatives in the Dakotas and Montana. The group includes representatives of Ducks Unlimited, Inc., Delta Waterfowl Foundation, Pheasants Forever, Audubon Society, Central Flyway Council, North Dakota Natural Resources Trust, Northern Great Plains Joint Venture, North Dakota Game and Fish Department, South Dakota Game, Fish and Parks, the North Dakota Chapter of The Wildlife Society, and representatives of the U.S. Fish and Wildlife Service who provide wildlife and habitat resource data, and consultation relative to Farm Bill statutes, regulations, and programs. The views and positions of the Northern Great Plains Working Group may not represent the official policy of individual organizations and agencies. For more information, please write the Northern Great Plains Working Group, 1605 E. Capitol Ave., Suite 101, Bismarck, ND 58501-2102.

indicates that, for all practical purposes, the appraised value of permanent easements and 99-year easements are essentially the same. Discounting a 99-year GRP easement by 70 percent in North Dakota would render the program relatively ineffective for securing long-term GRP easements in one of the most important states for retaining grassland acres. Therefore,

WE RECOMMEND THAT NRCS CONSIDER GRANTING A VARIANCE THAT ASSIGNS VALUE FOR MINIMUM 99-YEAR EASEMENTS THE SAME AS PERMANENT EASEMENTS FOR PURPOSES OF THE GRP.

Method of Calculating GRP Easement Values – 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 increase interest in rental agreements. If this is the intent of the interim final rule, we believe that USDA may be superseding statute and Congressional intent. Therefore,

WE RECOMMEND THAT (1) USDA MORE CLEARLY DEFINE THEIR INTENT FOR DETERMINING “GRAZING VALUE/GRASSLAND VALUE,” AND (2) USDA REVERT TO THE METHOD OF DETERMINING GRAZING VALUE USED IN 2003.

Prohibited Uses

The interim final rule is clear in stating that, “Any activity that would disturb the surface of the land covered by the easement is prohibited except for common grazing management practices carried out in a manner consistent with maintaining the functions and values of grassland common to the local area, including fire rehabilitation and construction of firebreaks, construction of fences, and restoration practices.” However,

WE RECOMMEND THAT USDA CONSIDER GREATER FLEXIBILITY IN ALLOWING MITIGATION AND EXCHANGE OPPORTUNITIES TO TREAT UNEXPECTED USES FOR THE PUBLIC GOOD, AS WELL AS USES THAT MAY BE DETERMINED TO BE A MINOR IMPACT TO THE LAND ENCUMBERED BY A GRP EASEMENT OR RENTAL AGREEMENT.

Unexpected uses for the public good would include such things as rights-of-way needed for installation of underground pipelines, transmission towers, microwave towers, etc. These situations will certainly be presented in the future, particularly for permanent easements. The termination of a GRP easement encumbering a large tract of grassland may not be called for due to the installation of a microwave tower with a small footprint.

There are other uses integral to the northern Great Plains that may have a minor impact to the land encumbered by GRP easement or rental agreement, including subsurface fossil fuel or wind energy potential. Both elicit surface disturbance of some sort, and much discussion has taken place about how to reconcile surface disturbance in the context of land protection programs and projects.

For example, in regard to wind energy development – The interim final rule states, "USDA is prohibiting industrial windmills on GRP acreage." Much of the valuable grassland in the northern Great Plains, and in particular remaining native grassland, has high wind energy potential. Other land protection programs have struggled with this same issue and have come to recognize that surface disturbance on easement tracts can be minimized with proper coordination between the landowner, energy company, and easement holder. Further, the "green" benefits of renewable wind energy in comparison to fossil fuel based energy production require consideration of the "big picture" and that the total effect of conservation programs be considered.

WE URGE USDA TO REVISE THIS RATHER INFLEXIBLE APPROACH TO SURFACE DISTURBANCE FOR WIND ENERGY SITES IN FAVOR OF A MORE FLEXIBLE, CONDITIONED APPROACH.

We believe that USDA can establish criteria that will provide flexibility for minimal use of the land not otherwise permitted under GRP while at the same time protecting the overall integrity of the GRP easement or rental agreement.

Balance of GRP Funding Priorities

USDA has used both national and state-level funding allocations when implementing conservation programs.

WE SUPPORT STATE ALLOCATION OF FUNDING FOR GRP. WE SUPPORT THE CURRENT ALLOCATION FORMULA, WITH ADDITIONAL CONSIDERATION FOR DECLINING GRASSLAND WILDLIFE SPECIES, AS WELL AS THREATENED AND ENDANGERED SPECIES.

The interim final rule states that funding for GRP will be based on the number of grazing operations, acres of grassland under threat of conversion, bio-diversity considerations, and state demand for funds based on bids during the previous GRP sign up. States will be allowed

flexibility in setting scoring strategies that could, for instance, rank lands with high threat of conversion higher than other offers (**WE SUPPORT THIS SCORING PRIORITY**) and/or rank easement or agreement offers based on the cost of land protection. **WE SUPPORT STATE FLEXIBILITY IN SETTING PRIORITIES AND SCORING FORMULAS.** The rules also clarify that overall program emphasis will be on preserving native and natural species.

THE NORTHERN GREAT PLAINS WORK GROUP SUPPORTS THIS EMPHASIS.

Restoration and Ongoing Management

In keeping with overall program emphasis on native and natural species,

WE SUPPORT THE PROPOSED HIGHER RESTORATION COST SHARE (90% vs. 75%) ON LANDS THAT HAVE NEVER BEEN CULTIVATED.

The interim final rule also addresses another issue common to many farm bill and conservation programs, specifically asking for input whether a participant should be allowed to keep poor cover (i.e. monoculture) or be required to move toward a better grassland condition. While better grassland condition is always a worthwhile goal, especially in long-term contracts where the high cost of grassland improvement can be amortized over the life of the project, it might be advisable for states to require improved grassland condition but also prioritize scoring weighted toward tracts already in good condition. This has the obvious benefit of reducing restoration and management costs. Further, it rewards producers and landowners who have taken good care of their existing grasslands, whereas most conservation programs reward producers and landowners who have managed land poorly and now need to remedy the situation.

Bid Sizes

The interim final rule provides for 40-acre minimum tracts, but allows less than 40-acre tracts to be considered with USDA waiver and clarifies that state ranking priority may be set by parcel size. In the northern Great Plains, large tract size is generally desirable, but overall,

WE SUPPORT STATE FLEXIBILITY ON THE ISSUE OF SCORING PRIORITY RELATIVE TO TRACT SIZE.

Balancing of Federal Programs

The interim final rule provides for consideration of land already under a USDA program to see if existing programs can be cancelled and land enrolled in GRP.

WE SUPPORT THIS CONCEPT, BUT SUGGEST THE RULE BE CLARIFIED TO MAKE IT CLEAR THAT THE PROGRAM THAT PROVIDES THE BEST RESOURCE PROTECTION SHOULD BE USED.

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Conservation Compliance

***THE NGPWG SUPPORTS CONSERVATION COMPLIANCE FOR GRP AND EVERY
USDA CONSERVATION AND COMMODITY PROGRAM.***

In closing, we want to emphasize two important points:

1. A program providing long-term grassland protection has been long overdue in federal farm policy. Insidious loss of the nation's grasslands has been occurring for decades, making grasslands one of the most altered ecosystems of the country. Recognition of the importance of grassland, especially native grassland, is encouraging and exciting. We encourage Congress to properly fund, and USDA to properly develop and manage, this critical program.

2. Most federal farm programs, and nearly all conservation programs, are designed to provide landowner incentives to correct problems in land management. The GRP can and should be designed to, first and foremost, reward landowners who have provided good stewardship of native grasslands. There is a useful place in the program for restoration and grassland improvement, but first priority should go to those who have not negatively altered the landscape but who have rather, often at their own expense, preserved and enhanced pristine expanses of well-managed native grassland. It is past time those land stewards received recognition and reward. The GRP is a program that can and should offer that opportunity.

We appreciate the chance to comment on the interim final rule for the GRP.

Sincerely,



Keith Trego
Northern Great Plains Working Group